

548. Par exemple, le 18 juillet 1973 sur les ondes de CBS, aux États-Unis, le vice-président de PM inc. déclare que le tabagisme ne crée pas de dépendance:

- *Mike Wallace Interview of James C. Bowling – July 18, 1973 for CBS Television Program "60 Minutes"*, transcription d'une entrevue, 18 juillet 1973, **pièce PG-500**.

549. En 1979, afin de contrer les mouvements anti-tabac, Benson & Hedges adopte le *Tobacco Action Program*, un programme calqué sur celui de PM inc.:

- *Tobacco Action Program*, PM inc., **pièce PG-501**;
- pièce PG-301.

550. Dans le cadre de ce programme, Benson & Hedges:

- a) invite ses employés et les membres de leur famille à adopter le discours des fabricants des produits du tabac;
- b) produit un document pour aider ses dirigeants d'entreprise à répondre aux employés et aux gens de l'externe qui critiquent leurs produits;
- c) fournit à ses dirigeants un guide de questions et réponses leur permettant de se conformer au discours de l'industrie et leur fournit des arguments pour nier que la nicotine crée la dépendance.

551. Ce faisant, Benson & Hedges induit volontairement le public en erreur en tenant un discours contraire à ses propres connaissances.

552. Les autres sociétés du Groupe PM demandent aussi à leurs employés de tenir le même discours et de nier que la nicotine cause la dépendance:

- *Smoking & Health Quick Reference Guide*, Philip Morris Europe Middle East Africa, **pièce PG-502**.
553. Un tel discours public commande évidemment que les recherches du Groupe PM qui le contredisent demeurent secrètes:
- pièce PG-462;
  - Note de J.L. Charles à T.S. Osdene, PM inc., 16 mars 1983, et critique de V.J. DeNoble, **pièce PG-503**;
  - U.S. Department of Health and Human Services, Public Health Service, *Why people Smoke Cigarettes*, 18 juillet 1983, **pièce PG-504**.
554. Le Groupe PM adopte aussi des guides de référence pour mettre en œuvre son discours public destiné à nier, minimiser et banaliser la dépendance causée par la nicotine.
555. Ainsi, vers 1985, PMI fait imprimer une brochure dans laquelle elle recommande de répondre que le terme «dépendant» [«addicted»] peut référer à des drogues dures, mais aussi à la télévision, aux friandises ou à la lecture de romans policiers:
- *Tobacco Issue Briefs*, PMI, circa 1985, **pièce PG-505**.
556. En 1992, le Groupe PM adopte une politique qui reprend essentiellement le même discours et nie toujours que la nicotine cause la dépendance:
- *Tobacco Issues and Answers*, PM inc., 1992, **pièce PG-506**.
557. En 1994, PM inc. publie dans le *New York Times*, le *Wall Street Journal* et le *Washington Post* un communiqué conforme à cette politique, dans lequel elle déclare qu'elle ne croit pas que le tabagisme mène à la dépendance:

- Communiqué intitulé *Facts You Should Know*, PM inc., 15 avril 1994, **pièce PG-507**.
558. En mai 1994, la directrice de la recherche de PM inc. réitère que la preuve pharmacologique n'étaye pas la conclusion que fumer la cigarette cause la dépendance:
- Lettre de C. Ellis, PM inc., à l'honorable H.A. Waxman, Sénat américain, 9 mai 1994, **pièce PG-508**.
559. En mai 1997, dans le cadre d'un litige en Floride, le président de PM inc. affirme que le tabagisme ne crée pas plus d'addiction que des friandises («Gummy Bears») et ce témoignage est rapporté par plusieurs journaux américains:
- Extrait du témoignage de J. Morgan, PM inc., 10 mai 1997, **pièce PG-509**;
  - «Executive: Tobacco no more addictive than candy», *Tribune Newspaper*, 3 mai 1997, **pièce PG-510**;
  - Michael Siegel, « What Sort of Tobbacco Settlement? PM President Loves Those Gummy Bears », *Washington Post*, 4 mai 1997, **pièce PG-511**;
  - «Morris Head: Smoking no more addictive than Gummy Bears», *The Tampa Tribune*, 2 mai 1997, **pièce PG-512**;
  - «Philip Morris Tobacco Officer Resigns», *The New York Times*, 18 septembre 1997, **pièce PG-513**.
560. Le 26 juin 1997, le président de RBH adresse une lettre au ministre de la Santé de la Colombie-Britannique, dans laquelle il affirme que, sans une définition acceptée du terme qui établit une distinction entre «dépendance» («addiction») et «habitude» («habit»), aucune discussion sur la dépendance ne serait productive:

- Lettre de J. Heffernan, RBH, à J.K. MacPhail, ministre de la Santé et Responsable des Aînés de la Colombie-Britannique, 26 juin 1997, **pièce PG-514**.

561. Ces déclarations sont en tous points fidèles à la politique du Groupe PM, confirmée en octobre 1997 par l'adoption d'un nouvel énoncé de principe, qui rejette la définition de «dépendance» donnée par le *Surgeon General* en 1988:

- PM inc., *Philip Morris' Statement of Position*, 2 octobre 1997, **pièce PG-515**.

562. Toutes ces déclarations contredisent les connaissances internes du Groupe PM.

563. Ainsi, le Groupe PM a menti aux personnes du Québec et les a induites en erreur, puisqu'il savait depuis au moins les années 1960 que les produits du tabac causent la dépendance.

### **3. Le Groupe Rothmans, ses connaissances et son discours trompeur**

564. Le Groupe Rothmans sait depuis de nombreuses années que les produits du tabac causent la dépendance.

565. À l'interne, le Groupe Rothmans insiste pourtant sur le fait que le tabac ne doit pas être classé parmi les produits qui causent la dépendance:

- *Major Points Arising from a Visit to the United States of America and Canada, August 1984, Report by Mr. P.W. Brown – Rothmans International*, **pièce PG-516**.

566. En juin 1984, 25 résidents de la province de l'Ontario déposent une plainte contre Rothmans of Pall Mall Canada Limited alléguant une violation à la *Loi sur les pratiques de commerce*, L.R.O. 1980, c. 55:
- Plainte contre Rothmans of Pall Mall Canada Limited, 11 juin 1984, et lettre de transmission de D. Mitchell, ministère de la Consommation et des Relations Commerciales de l'Ontario, à Rothmans of Pall Mall, 18 juin 1984, **pièce PG-517**.
567. En réponse à cette plainte, le vice-président de Rothmans of Pall Mall Canada Limited se conforme au discours du Groupe Rothmans en affirmant que:
- a) il n'est pas nécessaire d'apposer un avertissement sur les paquets de cigarettes en ce qui concerne la dépendance causée par leurs produits;
  - b) d'autres produits comme le café, le thé, les breuvages alcoolisés ou le chocolat nécessiteraient aussi un avertissement sur la dépendance;
  - c) il n'existe pas de consensus scientifique sur une définition acceptable du terme «dépendance» («*addiction*»);
  - d) l'utilisation d'une définition large créerait une ambiguïté pour les consommateurs et un risque d'erreur interprétative;
- Lettre de J.K. Strickland, Rothmans of Pall Mall Canada Limited, à R. Simpson, ministère de la Consommation et des Relations Commerciales de l'Ontario, 7 août 1984, **pièce PG-518**.
568. En 1993, le Groupe Rothmans produit un livret pour ses employés dans lequel il affirme que le tabac ou la nicotine ne cause pas de dépendance, que la nicotine n'est pas comparable à l'héroïne ou à la cocaïne, qu'une telle comparaison est irresponsable et scientifiquement intenable et que la définition large du terme «dépendance» («*addiction*») adoptée par le

*Surgeon General* en 1988 englobe d'autres habitudes, comme manger du chocolat, boire du café, travailler ou jouer à des jeux vidéo:

➤ pièce PG-321.

569. Par ces déclarations, le Groupe Rothmans, dont Rothmans of Pall Mall Canada Limited, a omis d'informer les personnes du Québec que la nicotine cause la dépendance, les induisant ainsi en erreur puisqu'il savait depuis longtemps que les produits du tabac causent la dépendance.

#### 4. Le Groupe RJR, ses connaissances et son discours trompeur

##### a) Les nombreuses recherches sur la nicotine

570. Dès 1957, le Groupe RJR relie le terme «*addicted*» à la nicotine:

«[...] The situation is also unique in that the majority of our people are involved in a lethal habit which they find agreeable and to which, to some extent, they have become addicted. [...]»

➤ A. Rodgman, *Cigarette smoking termed lethal habit with some addictive involved*, RJRT, **pièce PG-519**.

571. Les recherches menées dans les années 1960 confirment que la nicotine «*is considered to be a sine qua non in smoking satisfaction [...]*»:

➤ C. E. Teague, *Proposal of a New, Consumer-Oriented Business Strategy for RJR Tobacco Company Based Upon An Analysis of the Effects of the Smoking-Health Controversy and the "Safer" Cigarette Strategy On Consumer Behavior*, RJRT, 19 septembre 1969, **pièce PG-520**.

Voir également:

➤ Note de E.D. Nielson à R.E. Farrar, RJRT, 16 novembre 1967, **pièce PG-521**;

- Demande de brevet numéro 649467 de K. Imamoto et H. Mitsui, *Denicotinization Agents and Products Containing Same*, 28 juin 1967, et lettre de transmission de M.R. Haxton à R.E. Farrar, RJRT, 26 octobre 1967, **pièce PG-522**.

572. Au cours des années 1970 et 1980, le Groupe RJR mène ou finance des recherches sur la nicotine qui lui permettent de:

- a) confirmer que la nicotine est l'ingrédient le plus important du tabac, qui fait en sorte que les gens fument et sans lequel ils cesseraient de fumer:
  - C.E. Teague, *Research Planning Memorandum on the Nature of the Tobacco Business and the Crucial Role of Nicotine Therein*, RJRT, 14 avril 1972, **pièce PG-523**;
  - C.E. Teague, *Research Planning Memorandum on a New Type of Cigarette Delivering a Satisfying Amount of Nicotine with a Reduced "Tar"-to-Nicotine Ratio*, RJRT, 28 mars 1972, **pièce PG-524**;
  - *Talk delivered to RJR Tobacco Company management June 23, 1974 and RJR Tobacco International management August 4, 1976 – by Murray Senkus, Smoking Satisfaction*, Groupe RJR, 4 août 1976, **pièce PG-525**;
  - Présentation de Murray Senkus au personnel de la division de marketing et de recherche en marketing de RJR Tobacco, *Some Effects of Smoking*, 1976 et 1977, **pièce PG-526**;
  - C.W. Fitzgerald et al., *New Product/Merchandising Directions A Three Year Action Plan*, Groupe RJR, 19 août 1976, **pièce PG-527**;
  - Note de J.L. McKenzie à A.P. Ritchy, Groupe RJR, 21 septembre 1976, **pièce PG-528**;
  - Note de J.P. Dickerson et C.L. Neumann à D.H. Piehl, Groupe RJR, 7 février 1978, **pièce PG-529**;
  - D.H. Piehl, *Smoking Behavior – A Review*, Groupe RJR, septembre 1979, **pièce PG-530**;
  - Note de C.E. Teague à G.R. Di Marco, Groupe RJR, 1<sup>er</sup> décembre 1982, **pièce PG-531**;

- b) comprendre comment se développe la dépendance chez les jeunes qui commencent à fumer:
- C.E. Teague, *Research Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth Market*, Groupe RJR, 2 février 1973, **pièce PG-532**;
- c) savoir que, dès l'élimination de la nicotine dans le système du fumeur, ce dernier éprouve un manque qu'il comble en allumant une autre cigarette:
- pièce PG-526;
  - pièce PG-527;
- d) reconnaître qu'il est facile de commencer à fumer, mais difficile d'arrêter, que le stress augmente le besoin de fumer et que certains fumeurs continuent de fumer pour éviter de ressentir des symptômes de sevrage:
- Note de D.H. Piehl à A. Rodgman, Groupe RJR, 15 février 1979, **pièce PG-533**;
- e) comprendre les effets et le fonctionnement de la nicotine:
- Note de A.H. Laurene à M. Senkus, Groupe RJR, 24 mai 1971, **pièce PG-534**;
  - pièce PG-525;
  - pièce PG-526;
  - pièce PG-528;
  - Note de W.M. Henley à D.H. Piehl, RJRT, 9 novembre 1976, **pièce PG-535**;



- pièce PG-529;
- Note de D.L. Roberts aux divisions de la saveur et du comportement, Groupe RJR, 13 octobre 1983, **pièce PG-536**;
- D.G. Gilbert et al., *The Role of Nicotine, Smoker/Non-Smoker Status and Personality in Determining Psychophysiological and Self-Report Responses to Stress*, Groupe RJR, 25 avril 1984, **pièce PG-537**;
- P.M. Lippiello et al., *An Integrated Research Program for the Study of Nicotine and its Analogs*, Groupe RJR, 7 octobre 1988, **pièce PG-538**;

f) affirmer que la nicotine fournit un «kick»:

- C.E. Teague, *Implications and Activities Arising from Correlation of Smoke pH with Nicotine Impact, Other Smoke Quality, and Cigarette Sales*, Groupe RJR, circa 1973, **pièce PG-539**;
- Note de F.G Colby à R.A. Blevins, Groupe RJR, 4 décembre 1973, **pièce PG-540**.

573. Au cours des années 1960 et 1970, le Groupe RJR, soit Macdonald, RJRT et RJRTI, développe et met en marché des produits à plus faible teneur en goudron et en nicotine afin de rassurer les consommateurs inquiets pour leur santé:

- pièce PG-23;
- pièce PG-182;
- pièce PG-722.

573.1 Les produits développés et commercialisés par le Groupe RJR au Canada sont notamment les marques *Contessa*, *More*, *Vantage* et les versions «légères» de la marque *Export "A"* :

- pièce PG-1388;
- Extrait de «1978 Business Plans of RJR-Macdonald Inc. and International», RJRTI, pièce PG-1388A.

573.2 En tout temps pertinent, le Groupe RJR :

a) sait que la réduction des teneurs en goudron et en nicotine dans les cigarettes ne produit pas les bénéfices espérés pour la santé:

- pièce PG-644;
- pièce PG-658;
- pièce PG-659;
- pièce PG-660;
- pièce PG-661;
- pièce PG-662;
- pièce PG-676;

b) cache aux consommateurs les informations qu'il possède concernant la compensation et la signification réelle des teneurs en goudron et en nicotine mesurées mécaniquement:

- paragraphe 570 à 589 et pièces qui y sont alléguées;

c) profite de la perception erronée des fumeurs en utilisant les descriptifs «légères» ou «douces» pour les rassurer quant aux effets du tabagisme sur la santé:

- pièce PG-616;
- pièce PG-617;
- pièce PG-618;
- pièce PG-619;
- pièce PG-620;

- pièce PG-621;
- pièce PG-641;
- pièce PG-1388;
- pièce PG-1388A.

574. Cependant, afin de préserver sa clientèle, il sait que ses produits doivent offrir une teneur minimale en nicotine:

- pièce PG-524;
- pièce PG-532.

575. Par ailleurs, le Groupe RJR connaît le phénomène de la compensation:

- pièce PG-524;
- D.H. Piehl, *"Tar"/Nicotine Control and Smoking Satisfaction*, Groupe RJR, 9 mai 1978, **pièce PG-541**;
- pièce PG-533;
- Note de J.H. Robinson et J.H. Reynolds à D. Werner, Groupe RJR, 5 avril 1982, **pièce PG-542**;
- *Smoker Compensation Review*, RJRT, 15 avril 1983, **pièce PG-543**.

576. Il fait donc des recherches sur le transfert de la nicotine vers la fumée de tabac et souhaite développer une cigarette à faible teneur en goudron, tout en conservant l'effet maximum de la nicotine:

- pièce PG-524;
- pièce PG-527;
- Note de J.P. Dickerson à D.H. Piehl, Groupe RJR, 13 septembre 1977, **pièce PG-544**.

577. Le Groupe RJR découvre que la nicotine est présente sous deux formes, que sa forme libre se rend plus rapidement au cerveau et qu'elle peut être augmentée en faisant varier le pH du tabac:

- pièce PG-539;
- pièce PG-540;
- pièce PG-528;
- pièce PG-544;
- Rapport et note de C.L. Neuman et M.D. Wallace à D.H. Piehl, Groupe RJR, 12 octobre 1979, **pièce PG-545**.

578. Dans les années 1990, le Groupe RJR reconnaît qu'il œuvre dans le domaine de la vente de la nicotine:

- REST Program Review, Groupe RJR, 3 mai 1991, **pièce PG-546**.

b) L'organisation et la mise en oeuvre d'un discours public trompeur

579. En 1983, faisant fi de ses connaissances à l'interne, RJRT reprend le discours public de l'industrie selon lequel cesser de fumer est uniquement une question de volonté:

«Most of us would surely agree that dependence on opiates like heroin is an addiction. But we've also heard people say they are "addicted" to things like ice cream, chocolate or watching football on TV.

[...]

The fact is, millions of people have stopped smoking voluntarily, and Government statistics report that 95% of them quit on their own, with no medical help.

It is also a fact that, for lots of reasons, smokers genuinely *enjoy* smoking.

[...]

It's not because they can't stop; it's because they don't want to.»

➤ Communiqué intitulé *Is Smoking an Addiction?*, RJRT, pièce **PG-547**.

580. En 1985, RJRT organise son discours public en fonction des stratégies suivantes:

- a) utiliser une approche basée sur le sens commun du terme «dépendance» («*addiction*»), en mettant l'accent sur les différences entre les fumeurs et les gens traditionnellement perçus comme étant dépendants d'une substance;
- b) affirmer que les experts pro-dépendance («*pro-addiction*») n'utilisent pas le terme «dépendance» dans son sens médical classique, mais plutôt de façon si large qu'il est devenu vide de sens;
- c) soutenir que les réactions et comportements découlant de la cessation du tabagisme sont différents de ceux universellement observés chez les personnes cessant de consommer de l'héroïne, de la morphine, des opiacés, des amphétamines, de l'alcool et toute autre substance qui cause manifestement une dépendance;
- d) prétendre que les fumeurs ne développent pas de tolérance ou un besoin d'augmenter graduellement leur dose de cigarettes, contrairement aux personnes qui sont traditionnellement reconnues comme étant dépendantes d'une substance;
- e) attirer l'attention sur le fait que, en général, de nombreux experts ne s'entendent pas toujours sur toutes les nouvelles classifications scientifiques;
- f) affirmer que le tabagisme est une habitude complexe et qu'il existe plusieurs facteurs expliquant pourquoi les gens fument, lesquels ne sont pas reliés à la nicotine;

- g) soutenir que, depuis 1964, la classification du tabagisme, décrit comme étant une habitude et non une dépendance, n'a pas été modifiée par le *Surgeon General*;
- h) rappeler que même les personnes pro-dépendance reconnaissent que la science n'a pas établi que le tabagisme crée une dépendance physique;
- i) prétendre qu'un fumeur peut cesser de fumer s'il le veut vraiment, tel que démontré par les millions de personnes qui ont cessé de fumer depuis 1964:
  - *Reports on Medical and Scientific Issues, Addiction*, RJRT, 3 juin 1985, **pièce PG-548**.

581. À la suite de la publication du rapport du *Surgeon General* en 1988, qui conclut que le tabagisme crée une dépendance, une firme de relations publiques propose au Groupe RJR d'adopter la position suivante:

- a) des millions de gens ont cessé de fumer depuis 1964;
- b) dans les litiges américains, les fumeurs prétendent que le tabagisme cause une dépendance uniquement pour les excuser de ne pas avoir réussi à arrêter de fumer;
- c) récemment, des autorités, comme la *National Institute on Drug Abuse*, l'*American Psychiatric Association* et l'*Organisation mondiale de la santé*, ont reformulé et élargi la définition du terme «dépendance» de manière à y inclure le tabagisme, alors que cette nouvelle définition peut aussi bien comprendre la dépendance à l'alcool ou à l'héroïne que des habitudes, telles que regarder la télévision, faire du jogging, boire du café ou manger du chocolat;
- d) le rapport du *Surgeon General* de 1964, qui définit le tabagisme comme une habitude demeure l'une des études les plus complètes, alors que le

rapport de 1988 n'est fondé sur aucune nouvelle preuve ou étude scientifique:

- James A. Fyock & Associates, document préparé pour le Groupe RJR, 1988, **pièce PG-549**.

582. Au cours des années 1990, le Groupe RJR continue de mentir publiquement en niant que la nicotine ou le tabac cause la dépendance, s'inspirant des stratégies et guides de références produits pour uniformiser son discours public:

- Lettre de J.F. Spach, Groupe RJR, à Elaine Moss, consommatrice, 8 mai 1990, **pièce PG-550**;
- J.H. Robinson et W.S. Pritchard, «The role of nicotine in tobacco use», *Psychopharmacology*, 14 janvier 1992, **pièce PG-551**;
- J.H. Robinson et W.S. Pritchard, «The meaning of addiction: reply to West», *Psychopharmacology*, 25 mars 1992, **pièce PG-552**;
- Marlene Opdecam, «Positive aspects of nicotine use», *The Canadian Tobacco Grower*, juin 1995, **pièce PG-553**.

583. Ainsi, dans *Caravan*, un magazine destiné à ses employés, le Groupe RJR:

- a) laisse entendre que le tabac ne crée pas plus de dépendance que des aliments communs qui contiennent aussi de la nicotine, comme les pommes de terre, les tomates, les poivrons verts et les aubergines:
  - «Nicotine: Food for thought», *Caravan*, vol. 27, no. 1, 1993, **pièce PG-554**;
- b) prétend que la définition du terme «dépendance» a été réécrite pour inclure le tabagisme et exprime son désaccord avec le fait que ce terme serve à qualifier le tabagisme:

- J. Robinson, «Scientific research highlights evidence in smoking's favour», *Caravan*, vol. 29, no. 6, août 1995, **pièce PG-555**.

584. Par ailleurs, en avril 1994, le président de RJRT nie et banalise la dépendance causée par la nicotine devant le Sénat américain:

«During the past several years, there have been a wide variety of attempts to convince the American public that cigarettes are "addictive," and some public officials have gone so far as to put cigarettes in the same class as heroin and cocaine. You don't need to be a trained scientist to see this isn't true. All you need to do is ask, and honestly answer, two simple questions:

First – "Would you rather board a plane with a pilot who just smoked a cigarette – or one with a pilot who just had a couple of beers, snorted cocaine, shot heroin or popped some pills?"

Second – "If cigarettes were truly addictive, could almost 43 million Americans have quit smoking – almost all of them on their own, without any help?"

The answers are obvious [...]»

- *Oral Statement of James W. Johnston Chairman and Chief Executive Officer R.J. Reynolds Tobacco Company, Before the U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Health and the Environment, RJRT, 14 avril 1994, pièce PG-556.*

585. Cette position est reprise dans un guide du Groupe RJR destiné à aider ses représentants à répondre aux médias:

- Guide du Groupe RJR, 1994, **pièce PG-557**.

586. Toujours en 1994, le *New York Times* reprend le témoignage devant le Sénat américain d'un représentant de RJRT qui prétend que la nicotine ne devrait pas être définie comme une substance qui cause la dépendance:

- P.J. Hilts, «Is Nicotine Addictive? It Depends on Whose Criteria You Use», *New York Times*, 2 août 1994, **pièce PG-558**.



587. En juillet 1994, lors d'un congrès sur la nicotine tenu à Sainte-Adèle, ce même représentant soutient que la science et le bon sens supportent le point de vue que la nicotine ne crée pas de dépendance:

- Présentation de J. H. Robinson et W.S. Pritchard, *Science and Common Sense Support the View That Nicotine is Not Addictive*, RJRT, 1994, **pièce PG-559**;
- Programme du congrès *International Symposium on Nicotine, The Effects of Nicotine on Biological System II*, 1994, **pièce PG-560**;
- Note de N.M. Sinclair, RBH, 26 juillet 1994, **pièce PG-561**.

588. En mai 2002, RJRT énonce des principes directeurs, dans lesquels elle admet finalement qu'il peut être difficile d'arrêter de fumer, mais ajoute qu'elle est en désaccord avec la classification du tabac parmi les substances qui causent la dépendance au même titre que l'héroïne, la cocaïne ou d'autres substances similaires, et répète que des millions de personnes ont cessé de fumer:

- *Guiding Principles*, RJRT, mai 2002, **pièce PG-562**.

589. Par ces déclarations, le Groupe RJR a menti aux personnes du Québec et les a induites en erreur, puisqu'il savait depuis au moins les années 1960 que les produits du tabac causent la dépendance.

## **5. Le discours trompeur du Conseil canadien et des autres organisations**

590. En plus de faire de fausses déclarations en leur propre nom, les défenderesses se regroupent au sein d'organisations qu'elles contrôlent, comme le Conseil canadien, le *Tobacco Institute* et INFOTAB, pour tromper le public au sujet de la dépendance causée par la nicotine.

591. Ainsi, devant le Comité Isabelle, le Conseil canadien dépose un mémoire qui omet volontairement de mentionner que le tabac cause la dépendance:

« In contrasting tobacco against addictive drugs, the 1964 U.S. Surgeon General's Report asserts that the regular use of tobacco should be called "habituation" to distinguish it clearly from addiction..." The Report says, "even the most energetic and emotional campaigner against smoking and nicotine could find little support for the view that all those who use tobacco, coffee, tea, and cocoa are in need of mental care..." »,

➤ pièce PG-23.

592. Par ailleurs, l'une des stratégies des défenderesses est de détourner l'attention du public en faisant financer des recherches qui pourraient leur être favorables.

593. Ainsi, alors qu'elles reconnaissent la dépendance causée par leur produits, elles autorisent le Conseil canadien à financer les recherches du professeur Hans Selye de l'Université de Montréal pour qui la question n'est pas de choisir de fumer ou de ne pas fumer, mais de choisir comment évacuer son stress:

➤ pièce PG-273;

➤ pièce PG-22;

➤ Note H. Wakeham, *Visit with Dr. Hans Selye, University of Montreal School of Medecine*, PM inc., 30 juillet 1969, **pièce PG-563**;

➤ D.G. Felton, *Visit to Prof. Hans Selye, Université de Montréal, Wednesday, 4th November 1970*, BAT Co., 16 novembre 1970, **pièce PG-564**;

➤ Lettre de W.L. Dunn, PM inc., à H. Selye, Université de Montréal, 26 avril 1972, **pièce PG-565**.

594. En 1980, le *Tobacco Institute* sait que l'arme la plus puissante d'un procureur général est de prouver la dépendance causée par le tabagisme puisque celle-ci nie le libre choix des fumeurs:

- Note de P. C. Knopick, *Tobacco Observer*, à W. Kloepfer, *Tobacco Institute*, 9 septembre 1980, **pièce PG-566**.

595. Vers 1986, pour gagner en crédibilité et ajouter à la confusion, le Conseil canadien finance la Société pour la liberté des fumeurs, qui reprend le discours de l'industrie et nie publiquement que le tabac crée une dépendance:

- L. Lachance, «Les fumeurs perdent patience», *Le Soleil*, 3 septembre 1986, **pièce PG-567**;
- L. Picard, «Nouveau débat suscité par l'arrivée de la Société pour la liberté des fumeurs», *Le Soleil*, 17 septembre 1986, **pièce PG-568**;
- Note de A. Whist au conseil d'administration, PMI, 17 décembre 1986, **pièce PG-569**;
- Note de D.K. Hoel, Shook, Hardy & Bacon, à F.S. Newman, PM inc., 27 juillet 1988, et note du 15 juillet 1988, **pièce PG-570**;
- Canada, Chambre des communes, Comité législatif sur le projet de loi C-204, Procès-verbaux et témoignages, 2<sup>e</sup> sess., 33<sup>e</sup> légis., fascicule no 14, 26 novembre 1987, **pièce PG-571**;
- P.E.I. Montegue, «Tobacco board is cautious on backing smoker's rights», *The Gazette*, 6 septembre 1986, **pièce PG-572**;
- C. Landry, «Défense de fumer: une évolution de plus de vingt ans», *Le Droit*, 30 septembre 1986, **pièce PG-573**;
- «Le mouvement pro-tabac manque de souffle», *Le Devoir*, 6 avril 1987, **pièce PG-574**.

596. Les défenderesses se servent également du Conseil canadien et d'INFOTAB pour organiser leur discours public de manière à nier et banaliser la dépendance créée par la nicotine:

a) en 1987, le Conseil canadien adopte un énoncé de position incitant les représentants de l'industrie canadienne à nier publiquement que leurs produits causent la dépendance:

➤ *Advertising in general*, Conseil canadien, 1987, **pièce PG-575**;

b) le 5 octobre 1987, INFOTAB fournit à différents fabricants des produits du tabac un guide qui contient des arguments et stratégies permettant à leurs représentants de nier et banaliser publiquement la dépendance causée par la nicotine:

➤ *Spokespersons' Guides*, INFOTAB, 1987, et lettre de transmission du 5 octobre 1987, **pièce PG-576**;

c) en avril 1990, INFOTAB fait circuler un guide pour aider les représentants de l'industrie à répondre aux médias et aux critiques sur le tabac dans le cadre d'un événement organisé par l'*Organisation mondiale de la santé*, en niant que la cigarette cause la dépendance:

➤ *Children and Smoking: The Balanced View*, INFOTAB, avril 1990, et lettre de transmission du 27 avril 1990, **pièce PG-577**.

597. En 1988, le Conseil canadien et la Société pour la liberté des fumeurs critiquent publiquement le rapport du *Surgeon General* qui conclut que la nicotine contenue dans le tabac est une drogue qui cause la dépendance:

**«Exagération**

M. Jean Clavel, porte-parole du Conseil canadien des fabricants des produits du tabac, affirme quant à lui que «comparer la cigarette aux drogues fortes comme la cocaïne ou l'héroïne est un peu exagéré».

Pour «se débarrasser de leur dépendance», les adeptes des drogues dures doivent suivre des «traitements de désintoxication», alors que «des millions de fumeurs dans le monde entier arrêtent de fumer chaque année, sans aucune aide médicale», rapporte M. Clavel.

[...]

### **Insulte**

D'autre part, le président de la Société pour la liberté des fumeurs, M. Michel Bédard, déclare que le rapport du Dr Everett Koop «constitue une insulte à l'intelligence de la population et stigmatise de façon perverse des millions de citoyens honorables en les rabaissant au rang de 'junkies'»,

- J. Lenneville, «Le rapport liant l'habitude du tabac à celle de l'héroïne ranime les anti-fumeurs», *La Presse*, 18 mai 1988, **pièce PG-578**.

598. Le *Tobacco Institute* fait de même aux États-Unis en émettant un communiqué de presse, lequel est repris au Canada:

- Communiqué intitulé *Claims that Cigarettes are Addictive Contradict Common Sense*, *Tobacco Institute*, 16 mai 1988, **pièce PG-579**;
- A. Steacy, «A new nicotine warning», *Macleans Magazine*, 1988, **pièce PG-580**.

599. En 1989, alors que la Société royale du Canada s'apprête à publier un rapport sur la nicotine et la dépendance, le Conseil canadien prépare déjà sa réponse:

- Note de W.H. Neville à R.J. Fennell et al., *Addiction Study*, Conseil canadien, 28 juin 1989, **pièce PG-581**.

600. Après la publication du rapport *Tobacco, Nicotine, and Addiction* de la Société royale du Canada, en 1989, pièce PG-33, qui conclut que la nicotine cause la dépendance, le Conseil canadien écrit au ministre de la Santé du Canada pour faire valoir que:

- a) ce document n'est pas de nature scientifique, mais constitue plutôt une déclaration politique;
  - b) même si la question de la dépendance et du tabagisme a été politisée depuis quelques années par le *Surgeon General* et d'autres, le Conseil Canadien ne reconnaît pas de preuve scientifique légitime pouvant établir que le tabac crée une dépendance;
  - c) la définition du terme «*addiction*», retenue par la Société royale du Canada, n'est ni cohérente, ni rationnelle, en plus d'être arbitraire:
- Lettre de W.H. Neville, Conseil canadien, à P. Beatty, ministère fédéral de la Santé et du Bien-être social, 20 décembre 1989, et accusé de réception, **pièce PG-582**.

Voir également :

- Lettre de J.R. McDonald, RBH, à O. Morgan, Rothmans of Pall Mall (New Zealand) Ltd., 25 octobre 1990, **pièce PG-583**;
- D.M. Warburton, *Commentary on Tobacco, Nicotine and Addiction*, University of Reading, **pièce PG-584**;
- Note de J. McDonald, RBH, à J.J. Heffernan, RBH, 5 décembre 1989, et version du *Commentary on Tobacco, Nicotine and Addiction* de D.M. Warburton, **pièce PG-585**.

601. La position du Conseil canadien, qui banalise et nie la dépendance causée par le tabac, est d'ailleurs rapportée dans le *Glode and Mail*:

- G. Fraser, «Ottawa pamphlets call tobacco addictive», *Glode and Mail*, 29 juin 1989, **pièce PG-586**.

602. La Société pour la liberté des fumeurs fait également valoir que le rapport de la Société royale du Canada est partial, réducteur et biaisé:

- D. Cormier, *Critical Analysis of the Report by a Committee of the Royal Society of Canada: "Tobacco, Nicotine, and Addiction"*, Université de Montréal, 30 octobre 1989, **pièce PG-587**.

603. En 1990, le Conseil canadien fait aussi valoir sa position dans *Tabacum*, une publication destinée à l'industrie du tabac:
- «Plus de questions que de réponses...», *Tabacum*, Conseil Canadien, hiver 1990, **pièce PG-588**.
604. La position du Conseil canadien est transmise au *Tobacco Institute*:
- Note de F. Panzer, *Tobacco Institute*, 27 décembre 1989, **pièce PG-589**.
605. En 1990, le Conseil canadien conserve le même discours alors qu'il conteste les amendements proposés par le gouvernement fédéral au *Règlement sur les produits du tabac*, DORS/89-21 (Gaz. Can. II), qui obligerait l'apposition de mises en garde relatives à la dépendance sur les paquets de cigarettes:
- Lettre de W.H Neville, Conseil canadien, au gouvernement du Canada, 6 avril 1990, **pièce PG-590**.
606. Le 14 avril 1994, les présidents de sept fabricants américains, dont PM inc., RJRT et Brown & Williamson, déclarent solennellement devant le Congrès américain qu'ils ne croient pas que la nicotine crée la dépendance.
607. Ces déclarations sont rapportées au Canada, dans le *Globe and Mail*:
- «Cigarettes are not an addiction but merely a pleasurable habit, much like a morning cup of coffee or a dessert, the top U.S. tobacco executives told Congress yesterday.»
- «Smoking a habit, not an addiction, tobacco chiefs say», *Globe and Mail*, 15 avril 1994, **pièce PG-591**.
608. En mai 1994, le président du Conseil canadien déclare devant le Comité permanent de la Santé de la Chambre des communes que:

- a) il n'est pas compétent pour dire s'il croit ou non que la cigarette cause une dépendance;
- b) plusieurs Canadiens ont cessé de fumer sans aide;
- c) des experts sont en désaccord sur la définition du terme «*addiction*»;
- d) ces experts ne s'entendent pas à savoir si ce terme s'applique ou non au tabagisme:

➤ pièce PG-257.

609. Le 1<sup>er</sup> avril 1997, devant le Comité permanent des Affaires juridiques et constitutionnelles du Sénat, le président du Conseil canadien refuse toujours d'admettre que le terme «dépendance» puisse s'appliquer pour qualifier le tabagisme:

«Que le tabac soit toxicomanogène ou non, selon la définition donnée, est une question d'opinion et non de fait. Telle est notre position qui, je l'espère, est suffisamment claire.»

- Canada, Sénat, Délibérations du comité sénatorial permanent des Affaires juridiques et constitutionnelles, Témoignages, 2<sup>e</sup> sess., 35<sup>e</sup> légis., fascicule no 52, 1<sup>er</sup> avril 1997, «Projet de loi C-71, 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», **pièce PG-592**.

610. Ce témoignage est rapporté le lendemain dans un article du journal *The Gazette*:

- «Senator gives industry rough ride on bill: Lawyers offer case against C-71», *The Gazette*, 2 avril 1997, **pièce PG-593**.

611. Le 8 juin 2000, les présidents d'ITL, de JTI-Macdonald Corp. et de RBH témoignent devant le comité sénatorial permanent de l'Énergie, de



l'environnement et des ressources naturelles, dans le cadre de l'examen du projet de loi S-20:

- a) le président de RBH prétend qu'il n'a pas les compétences requises pour dire s'il croit que le tabac cause la dépendance, mais il dit croire que certaines personnes considèrent que le tabac entraîne une dépendance, que beaucoup ont du mal à y renoncer, mais que selon Statistique Canada, il y a plus d'ex-fumeurs que de fumeurs, que beaucoup pensent aussi qu'ils devraient perdre du poids et faire plus d'exercice, et que si des gens décident de faire quelque chose, ils peuvent y parvenir avec ou sans aide extérieure;
- b) le président de JTI-Macdonald Corp., quant à lui, affirme qu'il y a autant d'anciens fumeurs que de fumeurs, que tout dépend de la définition donnée au terme «dépendance», que le tabac n'entraîne pas la même dépendance que l'héroïne ou la cocaïne, et que de gens disent aussi qu'ils ont besoin d'une dose de chocolat;
- c) le président d'ITL déclare que, selon la définition utilisée actuellement, on dit que les cigarettes entraînent une dépendance, mais que la définition de ce terme et les normes qui l'entourent ont évolué dans le temps:

➤ pièce PG-263.

- 612. Toutes les défenderesses savent depuis des décennies que les produits du tabac causent la dépendance.
- 613. Les défenderesses savent aussi que, bien que le niveau de dépendance varie d'un consommateur à l'autre, beaucoup d'entre eux éprouvent une très grande difficulté à cesser leur consommation des produits du tabac.

614. Elles omettent pourtant d'en avertir le public et, faisant fi de leurs connaissances à l'interne et de leurs obligations envers les consommateurs, elles le nient publiquement pendant de nombreuses années.

615. Les défenderesses ont donc manqué au devoir de respecter les règles de conduite qui, suivant les circonstances, les usages ou la loi, s'imposaient à elles envers les personnes du Québec qui ont été exposées aux produits du tabac ou pourraient y être exposées.

### C. LES DÉFENDERESSES ONT INDUIT LES PERSONNES DU QUÉBEC EN ERREUR EN LEUR LAISSANT CROIRE QUE CERTAINS DE LEURS PRODUITS SONT MOINS NOCIFS

616. Pour les fins de la présente section, l'acronyme BAT désigne indifféremment les sociétés britanniques membres du Groupe BAT.

617. Le nom Imperial désigne pour sa part indifféremment les sociétés Imperial Tobacco Company, Limited, ITL et Imasco.

#### 1. De nouveaux produits meilleurs ou moins nocifs

##### a) Les fabricants représentent faussement que les cigarettes à bout filtre sont meilleures pour la santé

618. Avant les années 1950, les reproches formulés contre la cigarette sont reliés à ses effets cosmétiques ou ses effets apparents sur la santé, par exemple l'irritation de la gorge, la toux, la mauvaise haleine, les taches sur les dents et le souffle court:

- Note de F.E. Latimer à B.L. Broecker, *Cigarette Advertising History*, Brown & Williamson, le 29 novembre 1976, **pièce PG-594**.

619. À la suite de la publication, au début des années 1950, d'études et d'articles scientifiques reliant le tabagisme et le cancer du poumon, les fabricants réagissent en introduisant dans le marché les cigarettes avec filtres et en réduisant les teneurs en goudron et en nicotine:

- *History and Key Trends in the U.S. Cigarette Market*, Brown & Williamson, 1979, **pièce PG-595**;
- Post, Keyes, Gardner Inc., *A Brief Look at the Dynamics of the Cigarette Industry*, Brown & Williamson, 1977, **pièce PG-596**;
- J. John et H. Wakeham, *Breakthrough of the High Taste, Low Tar Cigarette –A Case History of Innovation*, Groupe PM, 1979, **pièce PG-597**;
- *Statement of Philip Morris, U.S.A. to the subcommittee on transportation, tourism and hazardous materials of the committee on Energy and Commerce*, PM inc., 1988, **pièce PG-598**;
- pièce PG-111;
- *Employee Handbook on Smoking and Health*, Groupe BAT, 19 janvier 1981, **pièce PG-599**;
- pièce PG-203.

620. Durant la période qui suit, connue comme le *Tar Derby*, les fabricants représentent dans leur publicité, tant aux États-Unis qu'au Canada, que la filtration réduit, sinon élimine, les effets négatifs du tabagisme et qu'elle comporte des bénéfices pour la santé:

- Publicités pour la cigarette *Viceroy* parues en 1953 dans le magazine *Time*, **pièce PG-600**;
- *A Review of Health References in Cigarette Advertising (1927-1964)*, Brown & Williamson, 1964, **pièce PG-601**;
- Publicités pour la cigarette *Belvédère* parues en 1957 et 1960, **pièce PG-602**;

- Publicités pour la cigarette *Matinée* parues en 1956, 1958 et 1960, **pièce PG-603**;
- Publicités pour la cigarette *Rothmans* parues entre 1962 et 1964, **pièce PG-604**;
- Publicité parue en avril 1962 pour la cigarette *Craven "A"* dans *Le Petit Journal*, **pièce PG-605**;
- Publicités parues en 1962 pour la cigarette *Matinée* dans la revue *Châtelaine* et le magazine *Maclean*, **pièce PG-606**.

621. En 1962, les fabricants canadiens s'engagent à ne faire aucune référence, dans leur publicité, à des données relatives au goudron, à la nicotine ou à tout autre élément de la fumée de cigarette puisque cela pourrait laisser entendre que le tabac est nocif pour la santé:

- *Policy Statement by Canadian Tobacco Manufacturers on the Question of Tar, Nicotine and Other Smoke Constituents that may have Similar Connotations*, 1962, **pièce PG-607**;
- pièce PG-353.

622. Malgré cet engagement, les fabricants canadiens poursuivent leur offensive pour convaincre le public que les filtres peuvent réduire ou éliminer les effets nocifs de la cigarette.

623. Par exemple, une publicité parue dans le magazine *Actualité* en 1964 et en 1965 fait valoir que la cigarette *du Maurier*, une marque d'Imperial, «possède vraiment des qualités exceptionnelles», dont «le bout filtre le plus efficace jamais conçu»:

- Publicités parues dans le magazine *Actualité* en 1964 et 1965 et dans le magazine *Maclean* en 1967 pour la cigarette *du Maurier*, **pièce PG-608**.

624. En 1968, Benson & Hedges et Imperial Tobacco Company of Canada lancent chacune un filtre qui «élimine les gouttelettes de goudron de la fumée de cigarette» ou «laisse passer moins de goudron de la fumée de cigarette» ou «laisse passer moins de goudron et de nicotine que toute autre cigarette au Canada»:

➤ *Le Devoir*, «La guerre des cigarettes à nouveau filtre», 2 mai 1968, **pièce PG-609**.

625. Peu de temps après, Imperial émet un communiqué vantant les mérites de son nouveau filtre Strickman:

«1) it removes more nicotine and more of the total particulate matter from the smokestream than today's conventional acetate filters tested at the same pressure drop (draw).

it is more efficient in reducing delivery of phenols and volatile acids present in the gas phase of smoke. [...]»

➤ pièce PG-242.

626. Les fabricants laissent ainsi croire aux consommateurs que les cigarettes avec filtres sont moins nocives pour la santé.

627. Devant le Comité Isabelle, le Conseil canadien, au nom des fabricants canadiens, soutient qu'on ne peut pas dire que les cigarettes à teneur réduite en goudron ou en nicotine sont moins dangereuses pour la santé puisque les cigarettes régulières ne sont pas nocives:

➤ pièce PG-23.

628. Dans son rapport de 1969, le Comité Isabelle conclut que les effets nocifs du tabac sur la santé sont suffisamment établis et qu'il y a lieu, à défaut d'éliminer la consommation de tabac, de promouvoir une réduction des teneurs en goudron et en nicotine des cigarettes:

➤ pièce PG-24.

b) Les fabricants laissent faussement croire que les cigarettes à teneur réduite en goudron et en nicotine ou les cigarettes légères ou douces sont moins nocives pour la santé

629. Au Canada, les fabricants commencent à indiquer les teneurs en goudron et en nicotine sur les paquets en 1974 et dans les publicités dans les médias écrits en 1975.

630. En 1976, ils introduisent dans le marché des versions «légères» ou «douces» de leurs marques régulières:

➤ pièce PG-182.

631. La mise en marché des cigarettes à teneur réduite en goudron et en nicotine et des cigarettes dites «légères» vise à offrir aux fumeurs inquiets des produits apparemment moins nocifs pour la santé et à éviter ainsi qu'ils ne cessent de fumer:

➤ *Conference on Marketing Low Delivery Products*, Groupe BAT, janvier 1982, **pièce PG-610**;

➤ pièce PG-396;

➤ *Marketing Plan 1989*, ITL, **pièce PG-611**.

632. À la même époque, les fabricants conduisent ou commandent des études sur le marché potentiel des cigarettes légères.

633. Ces études révèlent que les fumeurs croient qu'une cigarette «légère» ou «douce» ou à teneur réduite en goudron et en nicotine est moins nocive pour la santé.

634. Une étude préparée pour PM inc. en 1976 le mentionne ainsi:

«Even among those who have not switched to a low tar brand, there is fairly high disposition among smokers to consider switching to one. This is probably attributable to the continuing concern over smoking and health, and this study shows that the smoking public is convinced that to the extent any brands are better for health, it is the low tar brands that are.»

- The Roper Organization Inc., *A Study of Smokers' Habits and Attitudes with Special Emphasis on Low Tar Cigarettes*, PM, mai 1976, **pièce PG-612**.

Voir également:

- pièce PG-469;
- *Smoking and Smokers - A Summary of What We Know and Believe*, PM inc., mai 1972, **pièce PG-613**;
- The Roper Organisation Inc., *A Study of Smokers' Habits and Attitudes with Special Emphasis on Low Tar and Menthol Cigarettes*, Groupe PM, 1979, **pièce PG-614**;
- Johnston & Ass., *Segmentation – Phase 1 Focus Group Research*, RBH, 1991, **pièce PG-615**.

635. Le Groupe RJR sait lui aussi que les fumeurs de cigarettes légères ou à teneur réduite en goudron croient fumer un produit moins nocif:

« Currently RJR divides the total cigarette market into three basic categories: Full Flavor; Medium Flavor; High Filtration (See Exhibit H). However, the recent rapid growth of the High Filtration segment, may be a signal that the consumer is beginning to be more health conscious than ever before, and will be even more so as time goes on. If this is the case, we believe that consumers will ultimately divide the market into three categories which in their minds would be categorized as:

"Least Safe Brands"  
"Safer Brands"

"Safest Brands" ».

- Rosenfeld, Sirowitz & Larson Inc., *An Evaluation of the 120 mm Market and its Potential for RJR*, 17 novembre 1975, **pièce PG-616**.

Voir également:

- *Yankelovich – 1974*, Groupe RJR, 1974, **pièce PG-617**;
- The Beaumont Organization Ltd., *Product Attribute Image Study Exploratory Research*, Groupe RJR, août 1981, **pièce PG-618**;
- Social Research Inc., *Vantage Personalities*, Groupe RJR, août 1981, **pièce PG-619**;
- Social Research Inc., *Vantage and Merit Smokers*, Groupe RJR, avril 1982, **pièce PG-620**;
- Social Research Inc., *The NOW Brand Image*, Groupe RJR, mars 1983, **pièce PG-621**.

636. Imperial et le Groupe BAT possèdent des rapports qui vont dans le même sens:

«[...] However, in 1977 with heightened health consciousness aligning closely with product mildness, it is apparent that the 1977 French Canadian market desires a less strong and possible safer product than is perceived to exist in a number of the current brand offerings. However, unlike the English Canadian market case, the French health conscious segment perceives the low tar and nicotine brands to have the appropriate degree of mildness and safety.»

- Market Facts of Canada Limited, *1977 Segmentation of the French and English Speaking Canadian Cigarette Markets*, ITL, juin 1977, **pièce PG-622**.

Voir également:

- *Research Policy Committee McKennell's Segmentation of Smokers Based on Needs Satisfied by Smoking*, Groupe BAT, 30 décembre 1974, **pièce PG-623**;



- M. Oldman, *Cigarette Smoking, Health, and Dissonance (Project Libra)*, BAT Co., 23 avril 1979, **pièce PG-624**;
- Hawkins, McCain & Blumenthal Inc., *Low "Tar" Satisfaction – Step 1 – Identification of Perceived and Unperceived Consumer Needs*, Brown & Williamson, 25 juillet 1977, **pièce PG-625**;
- Marketing Strategy & Planning, *Projects Stereo / Phoenix – Final Report*, ITL, février 1985 (extraits), **pièce PG-626**;
- Johnston & Associates, *Project Linebacker – Qualitative Research Calgary – Vancouver*, RBH, juillet 1994, **pièce PG-627**.

637. L'objectif poursuivi par les fabricants est d'offrir aux consommateurs désormais préoccupés par les dangers du tabac une alternative susceptible de calmer leurs inquiétudes et, ainsi, conserver leur clientèle:

«Some smokers have been strongly alarmed by the extensive publicity concerning alleged health hazards of smoking, to the extent that they seek not merely to moderate their smoking but to eliminate entirely the "danger" that it may present.

Such a smoker has two options. Firstly, he may simply cease smoking altogether. However, in some cases, the smoker does not wish totally to eliminate the benefits of smoking. His second option is to seek a cigarette which he perceives to reduce the alleged health risks to an acceptable – minimal – level.

Within this second option, the smoker essentially seeks a brand that will protect him from the dangers that are alleged to attend smoking. He is often prepared to sacrifice most of the benefits he previously derived from smoking to achieve this. Such a brand provides the consoling sense that the smoker has eliminated the risks of smoking by "quitting", while continuing to engage in ritualized behaviors associated with cigarettes.

An increasing number of brands addressed this benefit, including Now, Carlton, Cambridge and, perhaps, Barclay. The symbolism of such "Ultra Low Tar" brands is discussed in detail in "Product Attribute Image Study – Exploratory Research", Beaumont, August, 1981.»

- The Beaumont Organization Ltd., *The Benefit of Cigarettes Exploratory Research*, Groupe RJR, août 1981, **pièce PG-628**.

Voir également:

- Depth Research Laboratories Inc. pour Wells, Rich, Greene Inc., *Reactions to a Proposed New 85 mm Benson & Hedges Among Current Benson & Hedges Smokers in Dallas*, Groupe PM, 28 août 1978, **pièce PG-629**;
- pièce PG-493;
- Goldstein/Krall Marketing Resources Inc., *Smokers' Reactions to an Ultralight Brand Extension for Marlboro, A Qualitative Study*, Groupe PM, juin 1979, **pièce PG-631**;
- Guiles & Associates, *Benson & Hedges Qualitative Research Exploring Out-Switching*, Groupe PM, novembre 1994, **pièce PG-632**;
- Note de M.D. Shannon à W.M. Henly et R.A. Lloyd, *Project HR*, RJR, 5 août 1980, **pièce PG-633**;
- pièce PG-621;
- Note de M. Oldman à L.C.F. Blackman, *Low Delivery Cigarettes and Quitting*, Groupe BAT, 28 avril 1981, **pièce PG-635**;
- M.J. Weaver, *Cigarette Smoking, Health and Dissonance (Project LIBRA): iv. Further Analysis, Conclusions and Recommendations*, Groupe BAT, 25 août 1981, **pièce PG-636**;
- Note de E. F. Litzinger à E. T. Parrack, *Social Smoking Studies*, Brown & Williamson, 19 janvier 1978, **pièce PG-637**;
- The Creative Research Group, *Project Viking Volume III: Product Issues*, Imperial, février-mars 1986, **pièce PG-638**;
- The Roper Organization Inc., *A Study of Public Attitudes Toward Cigarette Smoking and the Tobacco Industry in 1978, The Tobacco Institute*, mai 1978, **pièce PG-639**.

638. Cette perception des consommateurs perdure pendant plusieurs années comme le démontre un rapport de BAT de 1997:

«Comprehension by those who are aware

Generally, the specific meaning of Tar and Nic is not understood by consumers. However, they perceive a strong association between the numbers with "perceived health effects". Basic understanding is that "the higher the numbers, the stronger the negative health effects".»

- N. Simamane, *Business Review*, Groupe BAT, septembre 1997, **pièce PG-640**.

639. Connaissant ces perceptions des consommateurs, les fabricants n'ont qu'à indiquer sur les paquets ou dans leur publicité que leur produit est «léger» ou «doux» pour rassurer et les inciter à commencer ou à continuer à fumer:

- Illustrations de paquets et exemples de publicité, **pièce PG-641**.

640. Pourtant, ils savent que les cigarettes légères ou douces ne sont pas moins nocives et que ces qualificatifs sont de nature à induire les consommateurs en erreur.

## **2. Des produits aussi dangereux, sinon plus**

### a) Les fabricants savent que les fumeurs de cigarettes légères ou douces peuvent inhaler davantage de substances nocives

641. Dès les années 1960, les fabricants observent qu'un fumeur de cigarette légère ou douce peut inhaler autant, sinon plus, de composés nocifs qu'un fumeur de cigarette régulière, et ce, à cause du phénomène de compensation.

642. Le fumeur peut en effet adapter ou modifier sa façon de fumer pour obtenir la dose de nicotine dont il a besoin, en prenant des bouffées plus fortes ou plus longues, en bloquant les trous de ventilation ou en augmentant sa consommation quotidienne de cigarettes.

643. Une lettre du 24 mars 1972 du responsable du département de Recherche et développement d'Imperial transmise à BAT démontre que ces deux sociétés sont bien au fait du phénomène de compensation:

«Considerable evidence is accumulating to the effect that when the nicotine content of cigarette smoke is reduced, smokers appear to compensate for this change by adjusting their smoking behaviour to satisfy their nicotine requirements, and in doing so they are likely to increase their tar intake. Studies in the Research Department using a slave smoker have supported this, and we believe that further work here in this vein will contribute substantially in guiding product development.

[...]

In the light of the accumulating evidence, it seems questionable for the Department of National Health & Welfare to continue to push for the lowering of both tar and nicotine deliveries of cigarettes. Compensation for lower nicotine can be expected to maintain higher tar intakes.»

- Lettre de R.S. Wade à D.G. Felton et document joint intitulé *Compensation by Smokers for Changes in Cigarette Composition*, Imperial, 24 mars 1972, **pièce PG-642**.

Voir également:

- D.E. Creighton, *Compensation for Changed Delivery, Report No. RD-1300 Restricted*, BAT Co., 30 janvier 1976, **pièce PG-643**.

644. Quant à PM inc., elle conclut ainsi:

«Underlying all of our work in this area is the conviction that what the smoker gets in the way of smoke is independent of smoke concentration levels as delivered within the range of commercially available cigarettes. He has a variety of regulatory maneuvers at his disposal for accommodating supply to a fairly constant need. To monitor all of these maneuvers simultaneously is a major objective of our Behavioral Research program.»

- pièce PG-471.

645. En 1976, le directeur de la recherche chez RJRT fait le même constat:

«However, the amount of nicotine that one can get in the lungs from low tar cigarettes is much less. So the smoker then resorts to other means to get the nicotine he needs in the blood from low tar cigarettes, by longer puffs, by larger puffs, by more frequent puffs, and also by smoking more cigarettes each day.»

- M. Senkus, *Some Effects of Smoking*, Groupe RJR, 1976-1977, **pièce PG-644**.

Voir également:

- Note de H. Wakeham à H. Cullman, *Trends of Tar and Nicotine Deliveries Over the Last 5 Years*, Groupe PM, 1961, **pièce PG-645**;
- Note de W.L. Dunn Jr. à R.B. Seligman, *A Study of the Effect of Lip Occlusion of Air Holes on Main Stream Delivery in Air Diluted Cigarettes*, Groupe PM, 1967, **pièce PG-646**;
- W.L. Dunn, *Project 1600: Consumer Psychology*, Groupe PM, 1967, **pièce PG-647**;
- Note de G. R. Berman à P.A. Zochorn, *TPM Intake by Smokers*, Groupe PM, 30 avril 1968, **pièce PG-648**;
- pièce PG-474;
- H. Wakeham, *Presentation to the Board of Directors: Smoker Psychology Research*, Groupe PM, 26 novembre 1969, **pièce PG-649**;
- Lettre de H. Wakeham à Max Hansermann, Groupe PM, 26 novembre 1974, **pièce PG-650**;
- B. Gustafson et H. Gaisch, *PME Research, 1972-1974*, PME, **pièce PG-651**;
- pièce PG-478;
- B.L. Goodman, *Summary of Human Smoker Simulator Program*, PM inc., août 1977, **pièce PG-653**;

- Goldstein / Krall Marketing Resources, Inc., *A qualitative Exploration of Smoker Potential for a New Entry in the Ultra Low Tar Market Category*, Groupe PM, janvier 1979, **pièce PG-654**;
- F.P. Gulotta et J.A. Jones, *Behavioral Research Laboratory Annual Report – Part II; Section A – The Electroencephalography Program; Section B – The Inhalation Monitoring Program*, PM inc., 20 juillet 1981, **pièce PG-655**;
- Note de J. Jones à W.L. Dunn Jr., *Nicotine Retention Research Proposal*, PM inc., 16 octobre 1981, **pièce PG-656**;
- K. Gunst, *The Effect of Cigarette Nicotine Content on Smoker Puff Parameters and Deliveries*, PM inc., 29 novembre 1982, **pièce PG-657**;
- Note de C.E. Teague à E.A. Vassalo et M. Senkus, *A gap in present cigarette product lines and an opportunity to market a new type of product*, Groupe RJR, 28 mars 1972, **pièce PG-658**;
- M. Senkus, *Smoking Satisfaction*, RJRTI, 1974, **pièce PG-659**;
- Note de D.H. Piehl à A. Rodgman, *Significant Smoking Behaviour Publication*, Groupe RJR, 15 février 1979, **pièce PG-660**;
- Note de J.H. Robinson à A. Rodgman, *Critique of "Smokers of Low-yield Cigarettes do not Consume Less Nicotine"*, Groupe RJR, 25 juillet 1983, **pièce PG-661**;
- Note de A.B. Norman à S.B. Witt, *Smoker Compensation Review*, Groupe RJR, 15 avril 1983, **pièce PG-662**;
- T.J. Wilson, *Effect of Cigarette Smoke Concentration on Human Smoking Characteristics*, British Tobacco Company (Australia) Limited, octobre 1967, **pièce PG-663**;
- pièce PG-150;
- A.I. Kalhok et P.L. Short, *The Effect of Restrictions on Current Marketing and Marketing in the Future*, Groupe BAT, 1976, **pièce PG-664**;
- D.E. Creighton, *Smoking Behaviour (Low Delivery Cigarettes), Report No. RD 1440 Restricted*, BAT Co., 10 janvier 1977, **pièce PG-665**;

- D.E. Creighton et P.H. Lewis, *The Effects of Changing Brands on Smoking Behaviour*, BAT Co., 1977, **pièce PG-666**;
- *Nicotine Conference, Southampton 6-8 June, 1984, Summary*, Groupe BAT, 1984, **pièce PG-667**;
- Note de H.F. Dymond, *Notes on Meeting with Dr. Eicher*, Groupe BAT, 21 décembre 1987, **pièce PG-668**;
- Note de J. Parker à M. Marr, *Project VERSO*, BAT (U.K. and Export) Limited, 20 août 1990, **pièce PG-669**;
- Lettre de D.G. Felton à H.R. Bentley, *Compensation by Smokers*, Groupe BAT, 27 mars 1972, **pièce PG-670**.

b) Les fabricants savent que les teneurs en goudron et en nicotine inscrits sur les paquets sont trompeuses

646. Au surplus, les fabricants savent qu'en modifiant leur façon de fumer, les fumeurs de cigarettes à teneur réduite en goudron et en nicotine peuvent inhaler plus que les quantités qui sont mesurées mécaniquement:

«In the smoking machine the puff volume is constant so that with dilution the quantity of "equivalent undiluted smoke" delivered to the Cambridge filter is reduced. Not so with the human smoker who appears to adjust to the diluted smoke by taking a larger puff so that he still gets about the same amount of equivalent undiluted smoke.

[...]

The smoker is, thus, apparently defeating the purpose of dilution to give him less "smoke" per puff. He is certainly not performing like the standard smoking machine; and to this extent the smoking machine does appear to be erroneous and misleading. It has probably always been so for diluted smoke cigarets, whether dilution is obtained by porous paper or holes in the filter.»

- Note de H. Wakeham à P.D. Smith, *Plastic Dilution Tipped Parliament*, Groupe PM, 11 août 1967, **pièce PG-671**.

647. Les fabricants font tous le même constat:

- D. Creighton et L. M. McGillivray, *The Effect of Changed Deliveries at Constant Pressure Drop on Human Smoking Pattern*, BAT Co., 3 novembre 1971, **pièce PG-672**;
- *Some Unexpected Observations on Tar and Nicotine and Smoker Behavior*, Groupe PM, 1er mars 1974, **pièce PG-673**;
- Note de B. Goodman à L. F. Meyer, *Marlboro – Marlboro Lights Study Delivery Data*, PM inc., 17 septembre 1975, **pièce PG-674**;
- Note de Davis Polk et Wardwell, avocats, à M. Berlind, *Memorandum re: Philip Morris Website*, Groupe PM, 10 septembre 1999, **pièce PG-675**;
- Note de J.H. Robinson et J.H. Reynolds à D. Werner, *Comparative study of German Full Flavour Brands: Camel vs Marlboro*, Groupe RJR, 5 avril 1982, **pièce PG-676**;
- *B.A.T: Approach to smoking and health*, Groupe BAT, 13 juillet 1973, **pièce PG-677**;
- S.J. Green, *Ranking Cigarette Brands on Smoke Deliveries*, Groupe BAT, 1978, **pièce PG-678**;
- D.E. Creighton, *A Comparison of Smoking Surveys Separated by Four Years*, BAT Co., 29 juin 1979, **pièce PG-679**;
- pièce PG-162;
- pièce PG-416;
- Lettre de E. Pepples, Brown & Williamson, à H. Liebengood, *Tobacco Institute, FTC Tar 1 Nicotine Test Method*, Brown & Williamson, 19 mars 1984, **pièce PG-680**;
- *Proceedings of the Smoking Behaviour-Marketing conference, July 9<sup>th</sup> – 12<sup>th</sup>, session III*, Groupe BAT, 1984, **pièce PG-681**;
- Lettre de C.H. Keith à M.L. Reynolds, Brown & Williamson, 24 janvier 1985, **pièce PG-682**;



- Note de M.L. Reynolds à H.F. Dymond et H. Ibig, *Easily Achieved Tar Deliveries from Low Tar Cigarettes*, Brown & Williamson, 12 octobre 1987, **pièce PG-683**;
- pièce PG-403;
- *Notes of a meeting of the Tobacco Company Research Directors*, Imperial (U.K.), Groupe Rothmans, Groupe PM et Groupe BAT, 16 février 1983, **pièce PG-684**.

648. Sachant que les fumeurs peuvent être induits en erreur par les indications des teneurs en goudron et en nicotine mesurées mécaniquement, certaines personnes au sein de l'industrie s'interrogent sur la possibilité de tirer avantage de ces perceptions erronées:

«In a league table position should we take advantage of a system of measurement or reporting in a way which could lead to misinforming our consumers? Should we aim to develop cigarettes which give, say low TPM under machine smoking conditions but which will give high TPM to the average human smoker?»:

- pièce PG-192.

649. BAT réitère le même dilemme en 1977:

«4. Should we market cigarettes intended to re-assure the smoker that they are safer without assuring ourselves that indeed they are so or are not less safe? For example should we 'cheat' smokers by 'cheating' League Tables? If we are prepared to accept that government has created league tables to encourage lower delivery cigarette smoking and further if we make league table claims as implied health claims – or allow health claims to be so implied – should we use our superior knowledge of our products to design them so that they give low league table positions but higher deliveries on human smoking ?

Are smokers entitled to expect that cigarettes shown as lower delivery in league tables will in fact deliver less to their lungs than cigarettes shown higher ?»

- S.J. Green, *Suggested Questions for CAV III (Chairman's Advisory Conferences)*, Groupe BAT, 26 août 1977, **pièce PG-685**.

Voir également:

- Note de R. Fagan à H. Wakeham, *Biological Significance of "Tar"*, PM inc., 2 septembre 1970, **pièce PG-686**.

650. La situation est d'autant plus sérieuse que les fabricants se demandent si les cigarettes à teneur réduite en goudron et en nicotine ne sont pas plus dangereuses pour la santé que les cigarettes régulières:

- F.J.C. Roe, *Integrated League Tables*, Groupe BAT, 6 février 1978, **pièce PG-687**;
- S. Shachter, *Pharmalogical and Psychological Determinants of Smoking*, février 1977, Groupe PM, **pièce PG-688**.

651. L'industrie du tabac fait alors le choix de ne pas informer le public du phénomène de la compensation ni de la signification réelle des teneurs en goudron et en nicotine mesurées mécaniquement.

652. Les fabricants décident plutôt de continuer à profiter de la perception erronée des fumeurs et de développer et commercialiser des produits dont le goût est acceptable et qui sont en apparence meilleurs pour la santé:

«This means that a cigarette constructed with low paper porosity but with filter tip ventilation would more readily allow a smoker to take a higher delivery of smoke by increasing the velocity of puffing. Such a cigarette construction would provide a marketing opportunity to offer a LOW to LOW TO MIDDLE delivery product when smoked by machine, which could be a LOW TO MIDDLE to MIDDLE delivery product when smoked by the smoker. Such a cigarette design might be found to be more acceptable to smokers who do not find a low delivery design satisfactory.»

- D.E. Creighton, *Measurement of the Degree of Ventilation of Cigarettes at Various Flow Rates, Report N. RD1576 (Restricted)*, BAT Co., 14 avril 1978, **pièce PG-689**.

Voir également:

- pièce PG-482;
- Rosenfeld, Sirowitz & Lawson, inc., *An Evaluation of the 120mm Market and its Potential for RJR*, 17 novembre 1975, **pièce PG-690**;
- Note de E.J. Gray à H. Cullman, J. Guthrie et W. O'Connor, *High-Filtration Advertising Concept*, Groupe PM, décembre 1975, **pièce PG-691**;
- *Remarks by Second Speaker-Merit Team*, Groupe PM, 1976, **pièce PG-692**;
- pièce PG-654;
- *Philip Morris Management Corp./Worldwide Regulatory Affairs Department – 1996 Core Issues Plans*, Groupe PM, 1996, **pièce PG-693**;
- pièce PG-520;
- Consumer Diagnostics Inc. pour William Esty Company Inc., *Qualitative Consumer Evaluation – 4 Winston Lights Positionings*, Groupe RJR, avril 1974, **pièce PG-694**;
- Lettre de H. L. Scutt à E. M. Blackmer, *DORAL – Positioning*, Groupe RJR, 27 juillet 1976, **pièce PG-695**;
- Note de K. C. Smith à J. T. Winebrenner, *Project NM*, Groupe RJR, 19 avril 1978, **pièce PG-696**;
- pièce PG-378;
- *A New Product*, Groupe BAT, octobre 1971, **pièce PG-697**;
- A. D. McCormick, note à l'intention des participants à une conférence de British American Tobacco, 3 mai 1974, **pièce PG-698**;
- pièce PG-169;

- pièce PG-397;
- *Smoking & Health / Item 7: The Effect on Marketing*, Groupe BAT, avril 1977, **pièce PG-699**;
- Note de T. C. Hanby, Groupe BAT, 22 mars 1979, **pièce PG-700**;
- *B.A.T Board Strategies – Product Innovation*, Groupe BAT, janvier 1980, **pièce PG-701**;
- pièce PG-396;
- D. Creighton, *Compensatable Filters*, Structured Creativity Conference, Groupe BAT, 1984, **pièce PG-702**;
- E. Pepples, *Industry Response to Cigarette / Health Controversy*, Brown & Williamson, 4 février 1976, **pièce PG-703**;
- *Purite Filter*, Brown & Williamson, 1978, **pièce PG-704**;
- Lisher & Company Inc., *Low Delivery Cigarette Project for B&W*, 14 novembre 1978, **pièce PG-705**;
- Note de J. K. Wells à R. J. Pritchard, Brown & Williamson, 31 octobre 1989, **pièce PG-706**;
- Analytical Research (Canada) Ltd. et Analytical Research Institute – Peekskill, N.Y., *Contemporary Consumer Attitudes Toward Cigarettes, Smoking and Health, A Motivation Research Study of Developing Trends in Receptivity and Resistance*, Imperial Tobacco Company of Canada Ltd., août 1969, **pièce PG-707**;
- *Tobacco Division Chairman's Advisory Conference – Vancouver / Chairman's Address*, Groupe BAT, avril 1979, **pièce PG-708**;
- C. Brohman, C. McBride, H. Roubyek, *Project VISA*, ITL, 9 mai 1988, **pièce PG-709**;
- A. Chan, A. Porter et T. Smith, *Project DAY*, ITL, 21 juin 1988, **pièce PG-710**;
- *Marketing Strategic and Developments Plans*, ITL, février 1989, **pièce PG-711**.

653. Selon Imperial, la décision des fabricants de tirer avantage de la croyance erronée des consommateurs qu'une cigarette à teneur réduite en goudron et en nicotine est moins nocive leur est profitable:

«Pre-lights, these concerned consumers had a limited range of options open to them – essentially quit or cut down.

[...]

Fortunately for the tobacco industry, neither of these two approaches proved very successful for smokers. In 1976, although 41% had tried to quit and 26% were ready to give it another go, the actual rate of quitting "within the past 6 months" was fairly stable at a little less than 2%. Fewer than this made it to a year.

[...]

In 1974, manufacturers agreed to put tar and nicotine numbers on the sides of packages. Smokers who wished to do so could now rate brands on a scale of "danger". Lightness, instead of being an absolute, became a relative thing. Close on the heels of this key piece of information and the even more important foundation of relative mildness that it created, manufacturers began to introduce lighter brands instead of products. "Lighter" was successfully defined in language smokers could understand as "All the experience of Player's in a lighter cigarette – Player's Light"»:

➤ pièce PG-396.

654. Jusqu'à la fin des années 1990, les fabricants maintiennent:

- a) qu'ils n'ont pas représenté que les cigarettes légères sont moins nocives que les cigarettes régulières;
- b) qu'il est bien connu que les teneurs en goudron et en nicotine mesurées mécaniquement ne reflètent pas la quantité de matières réellement inhalées;

- c) que la compensation est un phénomène qui n'est pas suffisamment documenté pour justifier que le public en soit informé;
  - d) qu'ils ne connaissent aucune information concernant la perception erronée du public relative aux cigarettes légères et à leur nocivité moindre;
  - e) que les consommateurs peuvent choisir les cigarettes légères pour diverses raisons autres que les préoccupations pour la santé et que les fabricants n'ont pas eu l'intention de laisser croire que ces produits étaient moins nocifs:
- *Comments before the Federal Trade Commission of Philip Morris Incorporated, R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation and Lorillard Tobacco Company on the Proposal Entitled FTC Cigarette Testing Methodology, février 1998, pièce PG-712.*

Voir également:

- Site Internet Imperial, 1999, **pièce PG-713.**

655. Vers la fin des années 1990 et le début des années 2000, plusieurs voix s'élèvent pour dénoncer les cigarettes à teneur réduite en goudron et en nicotine:

- M. Jarvis, *Why Low Tar Cigarettes Don't Work and How the Tobacco Industry Has Fooled the Smoking Public*, 1999, **pièce PG-714;**
- World Health Organization, *World No-Tobacco Day*, 1999, **pièce PG-715;**
- "Tar", Nicotine, and Carbon Monoxide of the Smoke of 1294 Varieties of Domestic Cigarettes for the Year 1998, Federal Trade Commission, 2000, **pièce PG-716;**
- Thun et Burns, *Health impact of "reduced yield" cigarettes: A critical assessment of the epidemiological evidence*, 2001, **pièce PG-717;**

- *Monograph 13 – Risks associated with smoking cigarettes with low-machine measured yields of tar and nicotine*, US Department of Health and Human Services, 2001, **pièce PG-718**;
- *Putting and End to Deception: Proceedings of the Internal Expert Panel on Cigarette Descriptors – A Report to the Canadian Minister of Health*, Ministerial Advisory Council on Tobacco Control, 2002, **pièce PG-719**.

656. Les fabricants modifient alors leur discours public et reconnaissent que les cigarettes légères ne sont pas moins nocives pour la santé:

«A smoker should not assume that brand descriptors such as "light" or "ultra light" indicate with precision either the actual amount of tar and nicotine inhaled from any particular cigarette, or the relative amount as compared to competing cigarette brands. Some researchers report that smokers of "light" cigarettes inhale as much tar and nicotine as from full-flavor brands. The amount of tar and nicotine inhaled will be higher if, for example, a smoker blocks ventilation holes, inhales more deeply, takes more puffs or smokes more cigarettes.

Philip Morris USA does not imply in its marketing, and smokers should not assume, that lower-yielding brands are "safe" or "safer" than full-flavor brands. Health warnings are required on all of our brands, irrespective of their tar and nicotine yields. The Federal Trade Commission (FTC) has stated that "smoking 'low tar' or 'light' cigarettes does not eliminate the health risks of smoking. If you're concerned about the health risks of smoking, stop smoking... There's no such thing as a safe smoke."

Read the National Cancer Institute Monograph 13 Press Release, which includes a link to the full study: "Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine."»

- Site Internet, Philip Morris, 2003, **pièce PG-720**.

Voir également:

- Site Internet, Imperial Tobacco Limited, 1999, **pièce PG-721**;
- Site Internet, R.J. Reynolds, 2004, **pièce PG-722**;

➤ Site Internet, Brown & Williamson, 2004, **pièce PG-723**.

657. C'est dire que pendant plus de 30 ans, les défenderesses:

- a) savent que la réduction des teneurs en goudron et en nicotine dans les cigarettes ne produit pas les bénéfices espérés pour la santé;
- b) cachent aux consommateurs les informations qu'elles possèdent concernant la compensation et la signification réelle des teneurs en goudron et en nicotine mesurées mécaniquement;
- c) profitent au contraire de la perception erronée des fumeurs notamment en utilisant les descriptifs «légère» ou «douce» pour les rassurer quant aux effets du tabagisme sur la santé;
- d) induisent les consommateurs en erreur dans le but de maintenir la rentabilité de leur commerce au détriment de la santé de leurs clients.

658. Les défenderesses ont ainsi manqué aux devoirs de respecter les règles de conduite qui, suivant les circonstances, les usages ou la loi, s'imposaient à elles envers les personnes du Québec.

#### D. LES DÉFENDERESSES ONT PARTICULIÈREMENT OMIS D'INFORMER LES ENFANTS ET LES ADOLESCENTS DU QUÉBEC DE LA DANGÉROSITÉ DES PRODUITS DU TABAC

##### 1. Le double discours des défenderesses

a) Les défenderesses ont faussement prétendu, pendant près de 40 ans, que leur marketing ne visait pas les enfants et les adolescents

659. Dès 1964, les fabricants canadiens adoptent un code de publicité, pièce PG-19, qui interdit la publicité visant les personnes de moins de 18 ans.

660. Ils maintiennent ces restrictions lors de ses modifications ultérieures:



- *Cigarette Advertising Code of Canadian Tobacco Manufacturers*, Imperial Tobacco Company of Canada, Macdonald Tobacco Inc., Rothmans of Pall Mall Canada Limited, Benson & Hedges (Canada) Limited, 1<sup>er</sup> janvier 1972, **pièce PG-724**;
- pièce PG-178;
- *Code de publicité et de promotion du Conseil canadien des fabricants des produits du tabac relativement à la cigarette et au tabac à cigarette*, Benson & Hedges (Canada) Limited., Imperial Tobacco Company of Canada, Limited, Macdonald Tobacco Inc., Rothmans of Pall Mall Canada Limited, 1<sup>er</sup> janvier 1984, **pièce PG-725**;
- *Tobacco Industry Voluntary Packaging and Advertising Code*, Conseil canadien, 19 décembre 1995, **pièce PG-726**.

661. En tout temps pertinent aux présentes, les fabricants soutiennent publiquement que la publicité de leurs produits et leurs activités promotionnelles visent uniquement à augmenter leurs parts de marché respectives parmi la clientèle des fumeurs adultes et ne sont pas destinées aux enfants et aux adolescents.

662. L'industrie canadienne du tabac réitère sa position en 1985:

«Our marketing approach is directed to adults. We never target our advertising to minors because we know that it does not prompt people to engage to start. We simply do not develop marketing plans for young people, have not made, and do not intend to make efforts to bring them into our market.

We firmly believe that smoking is an adult choice and custom. We do not even do advertising research on people below 18.»

- *Advertising in General – Position Statement*, Conseil canadien, 1985, **pièce PG-727**.

Voir également:

- *Why the Proposed Government Legislation Banning Tobacco Advertising Deserves a Sensible Second Look, Even by People Who Don't Smoke*, Conseil canadien et autres, *The Gazette*, Publireportage, 9 juillet 1987, **pièce PG-728**;
- Communiqué de presse, *Imperial Tobacco Responds to Comments in Media Concerning 1200 Documents Released by Health Canada*, ITL, 22 novembre 1999, **pièce PG-729**;
- Communiqué de presse, *Statement by George V. Allen, President of the Tobacco Institute*, *Tobacco Institute*, 9 juillet 1963, **pièce PG-730**;
- Communiqué de presse, *Tobacco Institute*, 13 mai 1981, **pièce PG-731**;
- Brochure, *Smoking and Young People -- Where the Tobacco Industry Stands*, *Tobacco Institute*, 1989, **pièce PG-732**;
- *Statement of Business Conduct*, BAT Industries, 21 décembre 1993, **pièce PG-733**;
- Extrait de site internet, *Marketing Principles and Practice*, Brown & Williamson, novembre 1999, **pièce PG-734**;
- Note de The Creative Research Group Ltd., *Project Viking*, Groupe BAT, 18 décembre 1991, **pièce PG-735**;
- pièce PG-50;
- *Questions and Answers*, Groupe RJR, 17 janvier 1984, **pièce PG-736**;
- *Third Family – Public Relations Plan*, RJR-Macdonald, octobre 1985, **pièce PG-737**;
- *Industry Initiatives Backup*, Groupe PM, septembre 1996, **pièce PG-738**;
- Lettre d'un représentant de PM au directeur d'une école, PM inc., 24 février 1995, **pièce PG-739**.

b) Les défenderesses compilent une volumineuse documentation pour planifier leur marketing aux enfants et aux adolescents

663. Contrairement à ces affirmations, les fabricants planifient et organisent leur marketing de façon à inciter directement ou indirectement les enfants et les adolescents à choisir leurs produits respectifs.
664. Les fabricants savent au point de départ que les nouveaux fumeurs commencent à fumer en majorité au cours de l'adolescence et que très peu commencent à fumer après 19 ans, comme le sait bien le Conseil canadien:

«1. Statistics

[...]

By age 12, one half of Canadian school children have at least tried smoking;

Regular smoking is established in the early teens by many Canadian students;

School aged boys experiment with cigarettes earlier than girls, but girls begin regular smoking earlier than boys. From the early teens, a higher proportion of girls than boys smoke daily;

By age 14, 15% of boys and 20% of girls are daily smokers and by age 17 these figures have increased to 27% of boys and 30% of girls. No significant change occurs in the proportion of students who report daily smoking beyond this age.

These figures are remarkably similar to the studies reviewed by Russell (1971) in which it was found that of those children who smoked more than one or two casual cigarettes before the age of 19, 80% went on to become regular smokers as adults. It is only the teenager who never attempts, or who has attempted no more than once and decided that he dislikes it and will not take it up, who has much chance of being a non-smoking adult. The matter is largely settled by the age of 19; if a person still is a non-smoker at this age he is unlikely to take it up.»

- V.J. Knott, *Identifying Psychophysiological Predictors of Tobacco Use in Children: A Five-Year Prospective Longitudinal Study*, Conseil canadien, novembre 1981, **pièce PG-740**.

Voir également:

- Kwechansky Marketing Research Inc., *Project Plus/Minus*, ITL, 7 mai 1982, **pièce PG-741**;
  - Lettre de D. S. Burrows à P. E. Galyan, *Estimated Change in Industry Trend Following Federal Excise Tax Increase*, Groupe RJR, 20 septembre 1982, **pièce PG-742**;
  - Children's Research Units, *An Examination of the Factors Influencing Juvenile Smoking Initiation in Canada*, Conseil canadien, décembre 1987, **pièce PG-743**;
  - Eastman Chemical Products Inc., *Survey of Cigarette Smoking Behavior and Attitudes, v. 1*, Brown & Williamson, 1969, **pièce PG-744**;
  - Note de D. W. Tredennick à F. H. Christopher, *What Causes Smokers to Select Their First Brand of Cigarette*, Groupe RJR, 3 juillet 1974, **pièce PG-745**;
  - *A Guide to the USA Marketing Plan*, Groupe PM, mai 1975, **pièce PG-746**;
  - *Marlboro*, PM inc., 29 mars 1979, **pièce PG-747**;
  - Note de M. Johnston à J. Zoler, *The Ages which People Start Smoking*, PM inc., 19 janvier 1983, **pièce PG-748**;
  - Note de M. Johnston à J. Zoler, *Trends in Smoking Among High School Seniors*, PM inc., 15 août 1985, **pièce PG-749**;
  - Johnston & Ass., *Segmentation – Phase 1 Focus Group Research*, RBH, 1991, **pièce PG-750**.
665. Sachant que l'initiation à la cigarette se produit à un jeune âge, les fabricants s'intéressent particulièrement à ce segment de la population et compilent régulièrement des données sur la consommation de produits du tabac par les enfants, les adolescents et les jeunes adultes.
666. Ainsi, des documents d'Imperial présentent diverses statistiques concernant le marché canadien et la consommation des fumeurs de 19 ans et moins:

- *I.T.L. Cigarette Market Share – Objectives 1982-1987*, ITL, 11 juin 1981, **pièce PG-751**;
  - Note de F. Y. Caya à L. Grazely, ITL, 16 juillet 1991, **pièce PG-752**;
  - *Imperial Tobacco Limited –Neil Granitz*, ITL, 1991, **pièce PG-753**;
  - Market Research Group et Market Analysis Group, *Annual Tobacco Industry Review – 1989*, ITL, avril 1990, **pièce PG-754**.
667. Brown & Williamson, la société soeur d'Imperial dans le Groupe BAT, compile également des données sur les jeunes fumeurs, particulièrement pour la cigarette *Kool* qui vise ce marché:
- Note de R. L. Johnson à R.A. Pittman, *List of Conclusions Based on Wave XIII*, Brown & Williamson, 21 février 1973, **pièce PG-755**;
  - C. S. Muije, *Report of Conference*, Brown & Williamson, 26 septembre 1974, **pièce PG-756**;
  - *Cigarette Brand Switching Studies*, Brown & Williamson, circa 1976, **pièce PG-757**;
  - *Kool Switching History*, Brown & Williamson, 1980, **pièce PG-758**;
  - Market Facts Inc., *Additional Analysis/The National Brand Switching Studies*, Brown & Williamson, janvier 1984, **pièce PG-759**.
668. Le Groupe PM s'intéresse lui aussi aux fumeurs adolescents:
- Elmo Roper, *A study of People's Cigarette Smoking Habits and Attitudes*, Groupe PM, août 1953, **pièce PG-760**;
  - Note G. Weissman à R. M. Dupuis, Groupe PM, 7 octobre 1953, **pièce PG-761**;
  - Note de M. E. Johnston à R. B. Seligman, *Marlboro Market Penetration by Age and Sex*, Groupe PM, 23 mai 1969, **pièce PG-762**;

- Note de S. Wilkins et R. Roper à S. Fontaine, *Suggestions for Research to Answer Questions Raised on Philip Morris Benchmark Study*, Groupe PM, 12 juin 1970, **pièce PG-763**;
- Marketing Research Department, *Incidence of Smoking Cigarettes*, PM inc., 18 mai 1973, **pièce PG-764**;
- *Tobacco Marketing – Five Year Plan*, PM inc., juin 1973, **pièce PG-765**;
- Rapport de M. E. Johnston, *Economic Forecast / 1975-1980*, Groupe PM, 3 mars 1975, **pièce PG-766**;
- M. Johnston à R. B. Seligman, *The Decline in the Rate of Growth of Marlboro Red*, PM inc., 21 mai 1975, **pièce PG-767**;
- Note de F. Ryan et M. Johnston à W. L. Dunn, *Teenage Smoking*, PM inc., 8 avril 1976, **pièce PG-768**;
- Note de M. Johnston à A. Udow, *Still More on Trends in Cigarette Smoking Prevalence*, PM inc., 18 février 1983, **pièce PG-769**.

669. Le Groupe RJR suit de même l'évolution du marché des adolescents:

«Marlboro's traditional source of strength – younger smokers, though still sizable, is eroding at a rapid rate. Between April, 1974, and April, 1975, Marlboro King showed a five share point loss in the 14-17 year old age group and since 1973, Marlboro King's share of market has declined by eight share points in this segment.

[...]

From a corporate standpoint, RJR and Philip Morris exhibited general growth in most age groups. (Philip Morris did have a decline in the 14-17 group, while RJR showed a gain.) The other four companies either showed no change or declines in the age groups.»

- Note de J. M. Wallace à T. L. Ogburn, *Share of Smokers by Age Group*, Groupe RJR, 30 octobre 1975, **pièce PG-770**.

Voir également:

- William Esty Company, *Cigarette Smoking Study Among High School and College Students*, RJRT, 9 décembre 1959, **pièce PG-771**;

- William Esty Company, *National Studies of Trends in Cigarette Smoking and Brand Preference – Base Period Study – January 1964*, Groupe RJR, février 1964, **pièce PG-772**;
- Note de W. A. Sugg à W. S. Smith, Groupe RJR, 12 mars 1964, **pièce PG-773**;
- *Summary of Decisions Made in MRD-Esty Meeting on April 7, 1971 Concerning Spring 1971 NFO Tobacco Products Survey*, Groupe RJR, avril 1971, **pièce PG-774**;
- Note de J. H. Sherrill à W. S. Smith, *Share of Smokers: By Age – Top Ten Brand Items*, Groupe RJR, 26 septembre 1972, **pièce PG-775**;
- Lettre de J. F. Stuart, RJR, à S. H. Odesky, NFO, *April Screening*, Groupe RJR, 15 mars 1974, **pièce PG-776**;
- *Marketing Department Key Issue Position Paper*, RJRT, 8 octobre 1976, **pièce PG-777**;
- Note de T. Key à T. L. Ogburn, *Share of Smokers by Age Group*, Groupe RJR, 12 août 1976, **pièce PG-778**;
- Note de J. F. Durgée à T. L. Ogburn, *Share of Smokers by Age Group*, Groupe RJR, 31 octobre 1977, **pièce PG-779**;
- Note de S. R. Perry à U. Frydman, *Teenage Smokers (14-17) and New Adults Smokers and Quitters*, Groupe RJR, 1<sup>er</sup> février 1980, **pièce PG-780**;
- Note de G. H. Long à E. A. Morigan, *MDD Report on Teenage Smokers (14-17)*, RJRT, 22 juillet 1980, **pièce PG-781**;
- *R. J. Reynolds Cigarette Industry Volume Forecasting System*, Groupe RJR, 1981, **pièce PG-782**;
- Note de D. Burrows à D. Weed, *Dollar Value of YAS Over Time*, Groupe RJR, 12 octobre 1989, **pièce PG-783**;
- Lettre de T. Griscom à P. Kirk avec document intitulé *Percentage of Camel Volume Underage*, RJRT, 16 mars 1992, **pièce PG-784**.

670. Les adolescents et les jeunes adultes représentent la principale, sinon la seule, source de renouvellement de la clientèle de l'industrie.

671. Conscients de cette réalité, les fabricants mènent ou commandent des études sur les motivations qui incitent les jeunes à commencer à fumer.

672. Ainsi, en 1977, Imperial commande une étude intitulée *Project 16* dont l'objet est décrit : «... [to] learn everything there was to learn about how smoking beings (sic), how high school students feel about being smokers, and how they forsee (sic) their use of tobacco in the future»:

➤ pièce PG-170.

673. Cette préoccupation est toujours présente dans les années 1980:

«There is some information relating to quitters but an inadequate data base on starting. Since our future business depends on the size of this starter population set, it was considered important that we know why people start to smoke and this may be more important than why they continue to smoke.»

➤ pièce PG-681.

674. Vers 1985, Imperial commande par ailleurs une vaste étude, le Project Viking, dans le cadre d'un programme de promotion visant à maintenir la taille de l'ensemble du marché, à rassurer les fumeurs actuels et à rendre ses produits attirants pour les jeunes et les non-fumeurs:

➤ The Creative Research Group, *Project Viking: A Behavioural Model of Smoking*, ITL, (Volume I de III), février – mars 1986, **pièce PG-785**.

675. En 1991, une autre étude confirme l'intérêt marqué d'Imperial pour les adolescents:



«3N 1991 is the fifth of a series of research studies into the lifestyle and value systems of 13 to 24 year old Canadians. The first wave was conducted in 1987 among 15 to 24 year olds. In 1988, the sample was expanded to include 13 and 14 year olds. It has been repeated annually since then.»

- The Creative Research Group, *3N 1991/Consumer Research Library*, ITL, 1991, **pièce PG-786**.

Voir également:

- *Smoking by Children and Adolescents – Memorandum on further Research to the Tobacco Manufacturers' Standing Committee Suggested by Market Investigations Ltd.*, Groupe BAT, août 1962, **pièce PG-787**;
- Kenyon & Eckhardt Inc., *New Ventures Project*, Brown & Williamson, septembre 1974, **pièce PG-788**;
- R. L. Johnson, *Scenarios for Long Range Plan*, Brown & Williamson, septembre 1974, **pièce PG-789**;
- A. K. Comer, *Dependence on Cigarette Smoking – A Review – Report No. RD1532 Restricted*, BAT Co., 15 décembre 1977, **pièce PG-790**;
- The Creative Research Group, *Project Viking, An Attitudinal Model of Smoking*, ITL, volume II de III, février–mars 1986, **pièce PG-791**;
- The Creative Research Group, *Project Viking / "Wave 2"*, ITL, juillet–août 1988, **pièce PG-792**;
- The Creative Research Group, *Tracking Study: 1988*, ITL, 1988, **pièce PG-793**;
- *Product Development Specialists Meeting Book III – Innovation*, ITL, 1989, **pièce PG-794**;
- Market Research Group et Market Analysis Group, *Annual Tobacco Industry Review 1989*, ITL, avril 1990, **pièce PG-795**;
- Canadian Facts, *Project Image '91 – Methodology*, ITL, mars 1991, **pièce PG-796**;
- Market Analysis Group, *Switching Analysis*, Groupe BAT, août 1991, **pièce PG-797**;

- Hugh Bain Research, *The Psychology of Significant Moments and Peak Experiences in Cigarette Smoking*, BAT Co., novembre 1993, **pièce PG-798**;
- C. Porteous, *Planning Forecast Document*, ITL, 11 juin 1996, **pièce PG-799**.

676. Les facteurs qui expliquent le début du tabagisme à l'adolescence intéressent aussi le Groupe PM:

«First, we have to break the question into its two parts: 1) Why does one begin to smoke? And 2) Why does one continue to smoke?

There is general agreement on the answer to the first part. The 16 to 20-year old begins smoking for psychosocial reasons. The act of smoking is symbolic; it signifies adulthood, he smokes to enhance his image in the eyes of his peers. But the psychosocial motive is not enough to explain continued smoking. Some other motive force takes over to make smoking rewarding in its own right. Long after adolescent preoccupation with self-image has subsided, the cigarette will even pre-empt food in times of scarcity on the smoker's priority list.»

- H. Wakeham, *Smoker Psychology Research*, Groupe PM, 26 novembre 1969, **pièce PG-800**.

677. Une étude réalisée en 1981 par PM inc. porte sur les jeunes fumeurs et résume ainsi la situation:

«Summary

It is important to know as much as possible about teenage smoking patterns and attitudes. Today's teenager is tomorrow's potential regular customer, and the overwhelming majority of smokers first begin to smoke while still in their teens. In addition, the ten years following the teenage years is the period during which average daily consumption per smoker increases to the average adult level.»

- M. Johnston, *Young Smokers – Prevalence, Trends Implications and Related Demographic Trends*, PM inc., 31 mars 1981, **pièce PG-801**.

Voir également:

- Note de H. Wakeham à R. Millhiser, *Proposed FTC Requirement Regarding Tar and Nicotine Numbers*, PM inc., 26 août 1970, **pièce PG-802**;
- Note de W.L. Dunn à H. Wakeham, *Considerations Pertinent to the Proposed FTC Requirement of Published Numbers*, PM inc., 17 août 1970, **pièce PG-803**;
- *The New Competition for Marlboro's Franchise*, PM inc., Juillet 1974, **pièce PG-804**;
- Note de A. Udow à J.J. Morgan, *Why People Start to Smoke*, PM inc., 2 juin 1976, **pièce PG-805**;
- J.E. Tindall, *Cigarette Market History and Interpretation*, PM inc., 12 décembre 1984, **pièce PG-806**;
- Note de C. Levy à D. Dangoor, *Critical Consumer Research Issues*, PM inc., 28 septembre 1987, **pièce PG-807**;
- Note de C. Levy à D. Dangoor, *Critical Consumer Research Issues*, PM inc., 26 septembre 1988, **pièce PG-808**;
- Bruce Eckman Inc., *The Viability of the Marlboro Man Among the 18-24 Segment*, Groupe PM, mars 1992, **pièce PG-809**;
- *David Dangoor – Marketing Presentation Board of Directors*, Groupe PM, 23 avril 1992, **pièce PG-810**;
- Lettre de E. Franklin, Leo Burnett U.S.A., à S. Norris, PM inc., *Insight*, 1<sup>er</sup> février 1995, **pièce PG-811**;
- Note de M. Wood à N. Lund, *Female Marlboro Focus Groups*, PM inc., 23 juin 1995, **pièce PG-812**;
- *CPC New Products Speech*, Groupe PM, 22 mai 1996, **pièce PG-813**;
- *Marlboro Worldwide Creative Brief*, Groupe PM, novembre 1998, **pièce PG-814**;

- M. Cassidy, *YAM Scann II – Final Presentation Summary*, PM inc., 14 avril 2000, **pièce PG-815**.

678. Le Groupe RJR reconnaît aussi l'importance du marché des jeunes pour la survie de l'industrie:

«The present large number of people in the 18 to 35 year old age group represents the greatest opportunity for long-term cigarette sales growth. Young people will continue to become smokers at or above the present rates during the projection period. The brands which these beginning smokers accept and use will become the dominant brands in future years. Evidence is now available to indicate that the 14 to 18 year old group is an increasing segment of the smoking population. RJR-T must soon establish a successful new brand in this market if our position in the Industry is to be maintained over the long term.»

- *Planning Assumptions and Forecast for the Period 1977-1986*, RJRT, 15 mars 1976, **pièce PG-816**.

Voir également:

- Burrows, *Younger Adult Smokers: Strategies and Opportunities*, RJRT, 29 février 1984, **pièce PG-817**.

679. Macdonald commande également en 1987 une étude portant sur les jeunes au Canada:

«YOUTH TARGET 1987 is the first of a planned series of research studies into the lifestyles and value systems of young men and women in the 15 – 24 age range. As such, it represents the benchmark against which changes of trends will be identified.

The purpose of the research is to provide marketers and policymakers with an enriched understanding of the mores and motives of this important emerging adult segment which can be applied to better decision making in regard to products and programs directed at youth.

[...]

### Incidence of Smoking Factory-made Cigarettes

Slightly fewer than four in ten 15 – 24 year olds smoke factory-made cigarettes at this time. Certainly smoking increases with age, among both sexes, but younger women are taking over from younger men in entry into the market.

By region, Atlantic Canada and Ontario show less smoking than other areas. French Canadians in particular are likely to number many youthful smokers. There is some indication that larger cities contain proportionately more 15 – 24 year old smokers.»

- The Creative Research Group, *Youth 1987*, RJR-Macdonald, 1987, **pièce PG-818**.

Voir également:

- pièce PG-523;
- pièce PG-532;
- *1975 Marketing Plans Presentation/Hilton Head*, Groupe RJR, 30 septembre 1974, **pièce PG-819**;
- Note de L. W. Hall à G. H. Long, *Younger Adult Smoker Opportunity Analysis – New Brands*, Groupe RJR, 29 septembre 1980, **pièce PG-820**;
- *Export Family Strategy Document*, RJR-Macdonald, 22 mars 1982, **pièce PG-821**;
- Note de R.C. Nordine à E.J. Fockelman, *Strategies and Segments*, Groupe RJR, 13 avril 1984, **pièce PG-822**;
- Trendfacts Marketing Research, *Proposed Development and Evaluation of Young Adult Smoker Panel in One Test Market/City for On-Going Consumer Marketing/Advertising Research Utilization*, RJRT, août 1985, **pièce PG-823**;
- The Creative Research Group, *Young Adult Study*, RJR-MacDonald, juillet 1987, **pièce PG-824**;
- *Operating in a Restricted Environment / Executive Summary*, Groupe RJR, 1991, **pièce PG-825**;

- Roper Starch, *Advertising Character and Slogan Survey*, RJRT, novembre 1993, **pièce PG-826**;
- Qualitative Science Inc., *An Investigation of factors contributing to the growth of du Maurier*, RJR–Macdonald, août 1994, **pièce PG-827**;
- Qualitative Science Inc., *An Evaluation of Alternative Advertising Campaigns for Export "A"*, RJR–Macdonald, avril 1996, **pièce PG-828**.

680. Ces études des différents fabricants révèlent que les enfants et les adolescents qui commencent à fumer sont motivés par l'influence des autres jeunes, celle des parents et des autres membres de l'entourage, le besoin d'affirmation et d'indépendance ainsi que l'attrait de l'interdit.

681. Les études du Groupe BAT confirment également que les enfants et les adolescents choisissent généralement d'ignorer les avertissements concernant les effets nocifs du tabac et estiment qu'ils ne deviendront jamais dépendants de la cigarette:

« STUDY HIGHLIGHTS

[...]

Starters no longer disbelieve the dangers of smoking, but they almost universally assume these risks will not apply to themselves because they will not become addicted.

[...]

One certainly cannot say that the social environment of the 80's lacks for warnings about smoking. Public service commercials, posters, anti-smoking groups, smoking restrictions, stop-smoking organizations and programs, media articles, school lectures (which are treated with a particular disdain), even packs and ads, all say loud and clear that smoking is a serious health hazard, They no longer equivocate and say "might be " as was once the case. They say "is". Why, then, would anyone wish to start smoking, in the face of such loud, consistent and clear warnings?

Oddly enough, such hazards are literally ignored by starters. It's not that they don't believe them, but that the threat is so diffuse and long-term that it need not be worried about.

[...]

Thus we have a pattern that shows how and why the health hazards do not really enter into the decision to start. It's no longer because they are sincerely disbelieved (shows of rebellious bravado aside), but because they are assumed as not applicable to the person who won't become addicted. But addicted they do indeed become...What then?

They know they would have a tough job quitting. Also, many like smoking and hence don't truly wish to quit. Yet, it becomes impossible to accept one's status as an addicted smoker without somehow coming to grips with the health issue, and making peace with it. This ends up done by rationalizations, which take several forms.

There's the one that says smoking can cause illness, but so can many things, and one cannot live as a hermit. Another one is the "truck syndrome"; why worry about smoking when you can get hit by a truck tomorrow? And there's the one that says that the hazards won't apply because the smoker will have quit long before then.»

- pièce PG-741.

Voir également:

- Kenyon & Eckhardt Inc., *New Ventures Project*, Brown & Williamson, septembre 1974, **pièce PG-829**;
- Kenyon & Eckhardt, *Young Adult Smoker Life Styles and Attitudes*, Brown & Williamson, 1974, **pièce PG-830**;
- pièce PG-170.

## 2. Le marketing aux enfants et aux adolescents

- a) Les défenderesses conçoivent des produits à l'intention des enfants et des adolescents à qui la vente de produits de tabac est interdite

682. Toutes ces données permettent aux fabricants de comprendre les besoins des jeunes, leurs goûts, leurs attitudes et leurs aspirations afin de développer les meilleures méthodes pour les attirer et les conserver comme clients.
683. Ils peuvent alors élaborer des produits, des plans de marketing, des publicités et des activités promotionnelles qui ciblent particulièrement cette clientèle.
684. Ainsi, avec sa marque de cigarette *Player's*, Imperial s'adresse à la clientèle des jeunes, particulièrement ceux qui commencent à fumer et elle privilégie des publicités de style de vie dans des médias populaires auprès des 12 à 24 ans:

«POSITIONAL STATEMENT (Dec. 1976)

"To position Player's Filter as the brand with greatest relevant appeal to younger, modern smokers, by being part of a desirable natural lifestyle."

[...]

By younger modern smokers, we mean those people ranging from starters of the smoking habit up to and through the seeking and setting of their independent adult lifestyle. Relevant lifestyle is the key to the brand's positioning, and the youthful emphasis is a psychological not a chronological one.

[...]

A combination of TV guides, Sports/Youth Publications, Posters and Beetleboards will be utilized to support Player's Filter in 1977/78. It is judged that these vehicles offer a more youthful approach to reach the younger smokers of Export "A" and Player's Filter.»

- Spitzer, Wills & Bates, *The Player's family, a working paper*, ITL, 25 mars 1977, **pièce PG-831**.



Voir également:

- *Fiscal '80 Media Plans / Phase I*, ITL, 1979, **pièce PG-832**;
- *Player's Trademark*, ITL, 1980, **pièce PG-833**;
- *Fiscal '81 National Media Plans*, ITL, 1980, **pièce PG-834**;
- *Player's Sports Advertising*, ITL, 21 novembre 1980, **pièce PG-835**;
- *Player's Family Advertising Fiscal 1984*, ITL, 1983, **pièce PG-836**;
- pièce PG-626;
- *ITL's Marketing Planning and Activities*, ITL, 1988, **pièce PG-837**;
- *The Industry*, ITL, 1988, **pièce PG-838**;
- Marketing and Research Counselors Inc. pour Ted Bates Advertising, *What Have We Learned From People?*, Brown & Williamson, 26 mai 1975, **pièce PG-839**;
- Marketing Innovations Inc., *Youth Cigarette – New Concepts*, Brown & Williamson, septembre 1972, **pièce PG-840**;
- *Marketing Planning Projects Specifications Sampling*, Brown & Williamson, 11 décembre 1974, **pièce PG-841**;
- *Viceroy Agency Orientation Outline*, Brown & Williamson, 1976, **pièce PG-842**;
- Zimmer-McClaskey-Lewis, *Brand Promotion Plan – 1977*, Brown & Williamson, 4 août 1976, **pièce PG-843**;
- Note de R. G. Yiyar à F. E. McKeown, *Pontiac KOOL Jazz Festival*, Brown & Williamson, 10 août 1976, **pièce PG-844**;
- *Situation Analysis*, Brown & Williamson, vers 1977, **pièce PG-845**;
- *KOOL Family Utopian Objectives / 1979 – 1985*, Brown & Williamson, août 1978, **pièce PG-846**;
- *Belair Target Audience Rev Weights*, Brown & Williamson, 14 septembre 1983, **pièce PG-847**;

- *KOOL 1985 / 1986 Issues*, Brown & Williamson, 6 mars 1985, **pièce PG-848**;
- Note de D. V. Cantrell à I. D. Macdonald, *KOOL Isn't Getting the Starters/236*, Brown & Williamson, 17 février 1987, **pièce PG-849**.

685. Le Groupe PM est également conscient de l'importance de la clientèle des jeunes et des efforts de promotion qui doivent être consentis pour la conserver:

- *R & D Strategic Plan/1971-1975*, PM inc., 15 juillet 1970, **pièce PG-850**.

Voir également:

- *Strategic Plan 1997 / 98 Sales & Marketing*, RBH, 1997, **pièce PG-851**;
- Metacorp Inc., *1984 Marlboro Spring Resort Field Marketing Opportunities*, Groupe PM, 1984, **pièce PG-852**;
- Prism Communications LTd., *Presentation to: Benson & Hedges (Canada) Inc./Re : Project Magic*, 19 août 1985, **pièce PG- 853**;
- Note de N. E. Brennan à D. Dangoor, *Key Marlboro Issues*, PM inc., 19 août 1987, **pièce PG-854**;
- *Executive Summary / Total Parliament Lights*, Groupe PM, 1988, **pièce PG-855**;
- Gibbons, Voyer & Associates, *New Brand Opportunities in the Cigarette Industry*, PM inc., 7 août 1990, **pièce PG-856**;
- *Chesterfield*, Groupe PM, 24 mars 1994, **pièce PG-857**.

686. Pour faire concurrence à Imperial et à sa marque *Player's* auprès des jeunes, le Groupe RJR repositionne sa marque *Export "A"*:

- *Macdonald Tobacco Inc. – Major Brands Review*, 21 avril 1975, **pièce PG-858**.

b) Publicité style de vie

687. Pour ce faire, Macdonald exploite également la publicité de style de vie:

«4. Respondents believed certain executions were more likely than others to appeal to the younger set, i.e. those under the age of 19. Generally speaking, ads that identified with "adventure or sex" were said to more likely appeal to the teen and even pre-teen segment. Specific executions mentioned were: Exciting, Extra-curricular, Explicit and Ex-rated.»

- Camelford Graham, *Project Print Ads – Topline Report*, RJR-MacDonald, 21 mai 1996, **pièce PG-859**.

Voir également:

- Lettre de J. H. McCain, William Esty Company à J. O. Watson, RJRT, *NFO Preference Share Data "Youth" Market*, 8 mars 1973, **pièce PG-860**;
- William Esty Company, *Winston Box Marketing Plan*, RJRT, novembre 1973, **pièce PG-861**;
- Note de F. G. Colby à R. A. Blevins, *Cigarette Concept to Assure RJR a Larger Segment of the Youth Market*, Groupe RJR, 4 décembre 1973, **pièce PG-862**;
- *Domestic Operating Goals*, RJRT, 1974, **pièce PG-863**;
- Note de D. Blackmar à R. McReynolds, *French Camel Filter Ad*, Groupe RJR, 2 juillet 1974, **pièce PG-864**;
- pièce PG-821;
- Note de P. S. Cohen à M. E. Sheehan, *Project XG Qualitative Exploratory III MDD Topline Perspective*, RJRT, 14 juin 1984, **pièce PG-865**;
- Note de C. A. Martin à J. T. Winebrenner, *Younger Adult Smoker Perceptions of Camel*, Groupe RJR, 18 octobre 1984, **pièce PG-866**;

- Note de A. N. Mitchell à R. T. Caufield, *Camel Younger Adult Smoker Focus Groups*, RJRT, 1<sup>er</sup> février 1985, **pièce PG-867**;
- Note de J. S. Carpenter à J. T. Winebrenner, *"Funny" French Camel Design*, RJRT, 5 mars 1985, **pièce PG-868**;
- Note de J. H. Miller à E. C. Etzel, *Project LF Potential Year 1 Marketing Strategy*, Groupe RJR, 15 octobre 1987, **pièce PG-869**;
- *Younger Adult Opportunity*, Groupe RJR, 1988, **pièce PG-870**;
- C. S. Hunter, *Soundwaves Program Awareness and Perception Study*, Groupe RJR, 2 février 1989, **pièce PG-871**;
- *Permanent Younger Adult OOH Plan*, Groupe RJR, 1990, **pièce PG-872**;
- J. P. McMahon, *Young Adult Market*, RJR Sales Company, 10 janvier 1990, **pièce PG-873**;
- Harrod & Merlin, *Export "A" – 1997 Communications Plan*, RJR-Macdonald Inc., 9 septembre 1996, **pièce PG-874**.

688. Afin d'augmenter ou de maintenir son marché auprès des jeunes, l'industrie a donc recours à des publicités et des activités promotionnelles qui présentent une image attrayante et stimulante de la cigarette et minimisent la portée des avertissements de santé:

- Diverses publicités de cigarettes, années 1970, 1980 et 1990, **pièce PG-875**;
- Publicités *Player's*, 1988 à 1997, Imperial, **pièce PG-876**;
- Publicités de différentes marques, 1997 à 2000-2001, **pièce PG-877**;
- Cahier de compilation de publicités, années 1950 à 2001, **pièce PG-878**;
- *Belvedere – An Eye on the Past – History of the Cigarette Trade-mark 1957 to 1996*, RBH, janvier 1997, **pièce PG-879**;
- *RBH – Matinée Trademark 1957 – 1997*, RBH, 16 avril 1996, **pièce PG-880**;

- *Rothmans Trade-mark 1957-1997*, RBH, février 1997, **pièce PG-881**;
- *du Maurier Advertising/1988-1997*, ITL, **pièce PG-882**.

689. Dans un jugement du 13 décembre 2002 concluant à la validité de la *Loi sur le tabac (J.T.I Macdonald Corporation c. La Procureure générale du Canada*, [2003] R.J.Q. 181), la Cour supérieure du Québec, s'appuyant sur les enseignements de la Cour suprême du Canada, tire de la preuve les conclusions de fait suivantes:

- a) Les fabricants sont conscients de la nécessité d'attirer les jeunes pour garder le marché des produits du tabac à sa taille actuelle;
- b) La publicité des cigarettes s'adresse autant aux nouveaux fumeurs qu'aux consommateurs volages ("switchers");
- c) La publicité des fabricants ne s'adresse pas qu'aux fumeurs de plus de 19 ans. Toutes les campagnes de publicité contiennent des éléments séduisants pour les adolescents qui sont l'avenir de l'industrie;
- d) L'industrie sait que l'on commence à fumer entre 12 et 18 ans et vise systématiquement ce public vulnérable dans sa publicité et sa mise en marché.

690. En 2007, en confirmant la décision de première instance, la Cour Suprême du Canada énonce les conclusions de fait suivantes (*Canada (Procureur général) c. J.T.I.-Macdonald Corp.*, [2007] 2 R.C.S. 610):

«12. Les conclusions de fait du juge de première instance méritent d'être examinées en détail; les éléments essentiels sont les suivants.

[...]

14. La plupart des fumeurs commencent à fumer à l'adolescence, entre l'âge de 13 et de 16 ans. La publicité

des produits du tabac sert à recruter de nouveaux fumeurs, particulièrement des adolescents. Il est tout à fait irréaliste de prétendre qu'elle ne vise pas les gens de moins de 19 ans. La publicité récente des produits du tabac vise trois objectifs: atteindre les jeunes, rassurer les fumeurs (pour les dissuader de cesser de fumer) et atteindre les femmes.»

691. La Cour tire également ses propres conclusions:

«61. [...] La créativité dont font preuve les fabricants pour transmettre des messages positifs au sujet d'un produit largement reconnu pour sa nocivité est impressionnante. Au cours des dernières années, par exemple, les fabricants ont employé des étiquettes mentionnant que leur produit ne comporte aucun additif et qu'il est composé de tabac canadien seulement, afin de donner l'impression qu'il est sain. Techniquement, l'information figurant sur ces étiquettes peut être véridique, toutefois, celles-ci ont pour but et pour effet d'amener les consommateurs à croire faussement, lorsqu'ils demandent le paquet rangé derrière le comptoir, que le produit qu'ils consommeront ne leur causera aucun tort, ou que, de toute façon, il leur fera moins de tort que les autres produits du tabac, même s'il est prouvé que les produits sur lesquels sont apposées ces étiquettes ne sont pas moins dangereux pour la santé que les autres produits du tabac.

[...]

114. [...] Le dossier regorge d'exemples de publicité de style de vie faisant la promotion de produits du tabac. Il démontre amplement que cette forme de publicité a le pouvoir d'inciter les non-fumeurs à commencer à fumer et d'accroître l'usage du tabac chez les personnes qui ont développé une dépendance au tabac.»

692. Les fabricants ont commis une faute à l'endroit des enfants et des adolescents du Québec, notamment un manquement à leur devoir d'information envers eux quant aux risques et dangers que comportent les produits du tabac.

693. Les défenderesses ont ainsi manqué au devoir de respecter les règles de conduite qui, suivant les circonstances, les usages et la loi, s'imposaient à

elles envers les enfants et les adolescents du Québec qui ont été exposés aux produits du tabac ou pourraient y être exposés.

#### E. LES DÉFENDERESSES SE CONCERTENT ET CONSPIRENT POUR NIER LA DANGÉROSITÉ DES PRODUITS DU TABAC ET LEUR CARACTÈRE ADDICTIF

694. Les défenderesses ont collectivement participé aux manquements commis à l'égard de la population du Québec, de sorte que ces manquements leur sont communs.

695. Ces manquements communs sont commis par l'intermédiaire d'organismes nationaux puis internationaux dont la finalité est de présenter au public et aux autorités gouvernementales le discours trompeur de l'industrie sur les enjeux de santé liés au tabagisme.

696. Ces manquements communs résultent également de l'action concertée des sociétés au sein de chaque Groupe ou encore du contrôle des sociétés étrangères sur les fabricants canadiens.

#### **1. La concertation ou conspiration nord-américaine**

697. Dès le début des années 1950, les fabricants américains se concertent et conspirent pour élaborer une position commune de l'industrie sur les questions relatives au tabagisme et à la santé.

##### a) Émergence et organisation aux États-Unis

698. En décembre 1953, à la suite de la publicité donnée par le *Reader's Digest* à l'article de E. Wynder qui associe tabagisme et cancer du poumon, pièce PG-12, les fabricants américains, dont PM inc., RJRT et Brown &

Williamson, à l'époque un membre du groupe BAT, décide d'élaborer une réplique de l'industrie:

- Télégramme de Paul Hahn, 10 décembre 1953, **pièce PG-883**;
- Procès-verbal d'une rencontre des fabricants américains, 14 décembre 1953, **pièce PG-884**.

699. Les fabricants retiennent dès lors les services de la firme de relations publiques Hill & Knowlton.

700. Tel que déjà allégué, le 4 janvier 1954, les fabricants américains font paraître une publicité d'une page entière dans plus de 400 publications aux États-Unis, sous le titre *A Frank Statement To Cigarette Smokers*, pièce PG-16, qu'elles signent sous le nom de *Tobacco Industry Research Committee*.

- Déclaration de Paul M. Hahn, ratifiée et adoptée par le *Tobacco Industry Research Committee* jointe aux *By-Laws of the Tobacco Industry Research Committee*, 1er janvier 1954, **pièce PG-891**.

701. Cette déclaration résume à elle seule la stratégie de toutes les défenderesses pour les cinquante prochaines années, à savoir que leurs produits ne sont pas dangereux pour la santé, que le lien entre le cancer et le tabagisme n'est pas établi et qu'il existe une controverse au sein de la communauté scientifique sur les causes possibles du cancer, alors que les défenderesses savent que la vérité est tout autre.

702. Les fabricants américains établissent aussi formellement le *Tobacco Industry Research Committee* en prétendant vouloir contribuer, par leur financement, à des recherches dites objectives portant sur «*all phases of tobacco use and health*», mais ils reconnaissent eux-mêmes rapidement que les recherches effectivement menées sont biaisées :



- Lettre de W.S. Cutchins, Brown & Williamson, à Bowman Gray, RJRT, 16 octobre 1962, pièce **PG-885**;
  - Note de W. Kloepfer, Jr., à E.C. Clements, *Tobacco Institute*, adressée en copie conforme entre autres aux présidents des fabricants américains, 15 avril 1968, **pièce PG-886**;
  - pièce PG-296;
  - pièce PG-297;
  - Lettre d'A. Yeaman, Brown & Williamson, à H. Ramm, RJRT, 1<sup>er</sup> juin 1970, **pièce PG-887**;
  - Note et pièce jointe de H. Wakeham à J. F. Cullman, III, PM inc., 8 juillet 1970, **pièce PG-888**.
703. La déclaration des fabricants américains connaît des échos au Québec où sont publiés des articles qui rendent compte de l'essentiel du message américain:
- *La Presse*, «Explication aux fumeurs», 4 janvier 1954, **pièce PG-889**;
  - *Montreal Star*, «U.S. Tobacco firms study cancer theory», 4 janvier 1954, **pièce PG-890**.
704. Le règlement d'organisation du *Tobacco Industry Research Committee* réitère que l'organisme est créé pour aider à la recherche sur la santé et le tabac, mais ratifie du même coup une déclaration de son président selon laquelle le lien causal n'a pas été établi entre le tabagisme et le cancer et qu'il existe une controverse à ce sujet:
- [...] pièce PG-891.

705. En 1964, le *Tobacco Industry Research Committee* devient le CTR et, en 1971, il s'incorpore sous le nom de *The Council for Tobacco Research – U.S.A., Inc.*
706. Dans la présente section, l'acronyme CTR vise indifféremment le *Tobacco Industry Research Council* et le CTR.
707. En janvier 1958, les fabricants américains incorporent aussi une entité à but non lucratif, le *Tobacco Institute*, pour promouvoir les intérêts de l'industrie, notamment en colligeant et diffusant des publications scientifiques et médicales reliées au tabagisme:
- *Certificate of Incorporation of The Tobacco Institute, Inc.*, 28 janvier 1958, **pièce PG-892**.
708. Les objectifs du *Tobacco Institute*, comme ceux du CTR, ont comme prémisses que le lien entre le tabagisme et le cancer du poumon n'est pas établi et qu'il existe une controverse scientifique:
- Hill & Knowlton, *Public Relations Proposals for the Tobacco Institute, Inc.*, 18 mars 1958, **pièce PG-893**.
709. Tant le CTR que le *Tobacco Institute* jouent un rôle primordial dans la création et le maintien artificiel d'une controverse scientifique, et ce, jusqu'à la fin des années 1990, non seulement aux États-Unis, mais également au Canada et en Europe.
710. Les présidents des fabricants américains dirigent les conseils d'administration du CTR et du *Tobacco Institute*, alors que leurs représentants actifs ou à la retraite s'occupent des affaires courantes, de sorte que ces deux organismes ne sont que le prolongement de leurs membres, situation qui perdurera jusqu'à la dissolution de ces organismes à la fin des années 1990:

- *Plan of Corporate Dissolution and Distribution of Assets of The Council for Tobacco Research – U.S.A., Inc.*, 19 octobre 1998, **pièce PG-894**;
  - *Certificate of Dissolution of the Tobacco Institute, Inc.*, 7 septembre 2000, **pièce PG-895**;
  - pièce PG-39.
711. Dès leur création, et en dépit des connaissances des fabricants américains au sujet de la dangerosité du tabac, le CTR et le *Tobacco Institute* entreprennent une vaste campagne de relations publiques à l'intention des médias, du public et des gouvernements afin de nier le lien causal entre le tabagisme, le cancer ou d'autres maladies et d'entretenir une controverse à cet égard.
712. Le 12 décembre 1958, le CTR fait publier un message intitulé *Another Frank Statement to Cigarette Smokers*, **pièce PG-896**, dans lequel il se dit fermement convaincu que le lien causal entre le tabagisme et les maladies n'est pas établi et que la cause du cancer demeure un « mystère » qu'il faut résoudre par la recherche.
713. Le message négateur des fabricants américains est relaté par les journaux québécois:
- *La Presse*, « Aucune preuve de cancer du poumon par le tabac », 14 avril 1954, **pièce PG-897**;
  - *Le Soleil*, « Études plus approfondies requises pour juger des risques du fumeur », 23 juin 1954, **pièce PG-898**;
  - *La Presse*, « Preuves que l'abus de la cigarette provoque le cancer du poumon », 12 juillet 1957, **pièce PG-899**;
  - *Le Soleil*, « Le Tobacco Institute proteste », 17 février 1959, **pièce PG-900**;

- *Le Soleil*, «Les Américains ont fumé 455 milliards de cigarettes», 23 décembre 1959, **pièce PG-901**.
714. Les rapports d'activités et les budgets du CTR et du *Tobacco Institute* montrent l'ampleur de la campagne, l'importance attachée aux questions liées au tabagisme et à la santé et l'intention d'agir conjointement pour créer et maintenir de toutes pièces une controverse scientifique:
- Note et Rapport d'activités de C. Thompson, Hill & Knowlton, à T. V. Hartnett, CTR, 17 août 1954, **pièce PG-902**;
  - Hill & Knowlton, *Public Relations Programme and Budget Proposal for 1963*, 1<sup>er</sup> novembre 1962, **pièce PG-903**.
715. Dès l'année 1963, le CTR et le *Tobacco Institute* surveillent étroitement les délibérations et rapports du *Surgeon General* [...], du US Public Health Service et de l'American Cancer Society et dénoncent les conclusions qui leur sont défavorables, alors qu'ils savent pourtant qu'elles sont fondées:
- Onze communiqués du CTR ou du *Tobacco Institute*, pièce PG-579 et **pièce PG-904**;
  - Allocution de T. Frankovic, *Tobacco Institute*, 25 janvier 1979, **pièce PG-905**.
  - Treize (13) communiqués du CTR, pièce PG-916
716. Malgré l'état des connaissances scientifiques des fabricants américains, le CTR et le *Tobacco Institute* mettent en circulation divers documents qui, tous, insistent sur l'absence de lien causal entre le tabagisme et diverses maladies et sur l'existence d'une controverse qui doit ultimement être résolue par des recherches scientifiques additionnelles:
- pièce PG-188;
  - *Tobacco and Health*, huit numéros, **pièce PG-906**;

- *Current Knowledge of Tobacco and Health*, **pièce PG-907**;
- *On Matters Concerning Tobacco and Health*, **pièce PG-908**;
- *The cigarette controversy eight questions and answers*, **pièce PG-909**;
- *Fact or Fancy?*, **pièce PG-910**, et le Rapport de distribution, **pièce PG-911**;
- *Smoking and Health 1964-1979 The Continuing Controversy*, **pièce PG-912**;
- *Cigarette Smoking and Cancer: A Scientific Perspective*, **pièce PG-913**;
- *Cigarette Smoking and Chronic Obstructive Lung Diseases: The Major Gaps in Knowledge*, **pièce PG-914**.

717. Les fabricants, par leur présence continue aux réunions des conseils d'administration du CTR et du *Tobacco Institute*, donnent leur accord à ces publications:

- pièce PG-902;
- pièce PG-905;
- pièce PG-915.

718. Les articles retenus pour insertion dans la publication *Tobacco and Health* du *Tobacco Institute*, pièce PG-906, sont sélectionnés afin d'alimenter la controverse scientifique:

«Headlines: These should be very carefully written on the premise that doctors and scientists, like other readers, often grab information from the headlines and nothing more. Thus, the headline should strongly call out the point – Controversy! Contradiction! Other factors! Unknowns.»

- Note de Hill & Knowlton à W. Kloefer, Jr., *Tobacco Institute*, 18 octobre 1968, **pièce PG-915**.

719. La publication *Fact or Fancy?* du *Tobacco Institute*, pièce PG-910, dont la première parution en 1978 comprend l'envoi de 4 500 copies à des personnes ciblées, vise les femmes et envoie le même message faussement rassurant qu'il n'existe aucun lien établi entre le tabagisme et douze questions de santé féminine qu'il aborde, dont la grossesse:

«Causality has not been proved in any of the diseases and conditions linked statistically with cigarette smoking – in women or men. The controversy must be resolved by scientific research.»

720. Pourtant, le *Surgeon General* dénonce depuis 1969 les effets délétères du tabagisme sur le fœtus et conclura en 1979 au lien entre le tabagisme de la mère, les naissances prématurées et les problèmes de croissance intra-utérine:

➤ pièce PG-29.

721. De 1954 jusqu'au début des années 1990, le discours trompeur de l'industrie est également soutenu par de nombreux communiqués de presse du CTR et du *Tobacco Institute*, qui nient le lien causal entre le tabagisme et le cancer ou les maladies cardiovasculaires, l'effet de dépendance de la nicotine [...] :

➤ Treize communiqués du CTR, **pièce PG-916**;

➤ Dix-huit communiqués du *Tobacco Institute*, pièce PG-731 et **pièce PG-917**.

722. Plusieurs de ces publications ou déclarations aux contenus trompeurs ou erronés sont portées à la connaissance de la population du Québec:

➤ Articles dans les journaux québécois parus en 1954, 1955, 1957, 1959, pièces PG-897 à 901 et **pièces PG-918, PG-919 et PG-920**.

b) Harmonisation du discours nord-américain

723. Dès 1962 et 1963, les fabricants canadiens prennent le relais et font des déclarations publiques calquées sur les déclarations des fabricants américains:

- Articles publiés dans *La Presse*, *Le Devoir*, le *Montreal Gazette* et dans la *Revue de l'industrie canadienne*, pièces PG-219, PG-233, PG-235, PG-236, PG-237, PG-239 et **pièce PG-921**.

724. Les défenderesses canadiennes, ou les sociétés à qui elles succèdent, forment le Conseil canadien lors de la Conférence de 1963 «pour [se] donner une voix efficace et unie afin de répondre aux groupes anti-tabac de plus en plus présents» et être représentées «dans [leurs] échanges avec les gouvernements sur les questions relatives au tabac et à la santé»:

- pièce PG-50.

725. Les membres du Conseil canadien y sont représentés par leurs plus hauts dirigeants qui, seuls, détiennent le droit de vote lors des séances:

- Discours de John Keith lors de la Conférence de 1963, Conseil canadien, 25 novembre 1963, **pièce PG-922**;
- Communiqué du Conseil canadien, 16 février 1971, **pièce PG-923**;
- Lettre de P. Paré, Imasco, à R.C. Shropshire, Macdonald, 31 mars 1978, **pièce PG-924**;
- Conseil canadien, Règlement constitutif numéro 2, 2 mars 1982, **pièce PG-925**.

Voir également:

- pièce PG-22;
- pièce PG-224;

- Lettre de G.C. Hargrove, BAT Co., à H. Widdup, 22 février 1973, accompagnée du document *Canada – Progress and Status of Tobacco Industry-Government Relations to 1973*, **pièce PG-926**;
- Note de L.W. Pullen, Macdonald, 26 septembre 1980, **pièce PG-927**;
- Industrie Canada, Formule 3, Sommaire annuel au 31 mars 2011 pour le Conseil canadien, **pièce PG-928**.

726. Les objets du Conseil canadien comprennent:

- a) la promotion de la coopération entre les membres sur les sujets d'intérêt commun pour l'industrie, notamment sur la recherche et le développement;
- b) la collecte et la diffusion d'information au sujet du tabac et des produits du tabac;
- c) la représentation des membres en ce qui a trait aux législations touchant à l'industrie; et
- d) la promotion de la recherche sur le tabac et son usage, la tenue de conférences, de réunions et d'expositions sur le sujet:

- Conseil canadien, *Demande d'incorporation*, 26 février 1982, **pièce PG-929**.

727. Le Conseil canadien prend ainsi en charge, pour les défenderesses canadiennes, la gestion des enjeux de santé liés au tabagisme :

- note de F.G. Colby à E.A. Vassallo, RJRT, 26 mars 1973, **pièce PG-930**;
- pièce PG-251;
- pièce PG-924.



728. Tel que déjà allégué, à compter de 1963, il fait ainsi, au nom de ses membres, de nombreuses déclarations publiques calquées sur la position américaine qui nie l'existence d'un lien de causalité entre le tabagisme et diverses maladies.
729. Ses représentations lors de la Conférence de 1963 ne sont que la répétition des informations à tout le moins tendancieuses, sinon erronées, que l'on retrouve dans les publications du CTR ou du *Tobacco Institute*:
- pièce PG-50;
  - pièce PG-926;
  - Note de A.J. Bass, Jr., à M.J. Cramer, P. Lorillard & Co., 1963, **pièce PG-931**.
730. À cette époque, les défenderesses canadiennes sont en contact direct avec le CTR, le *Tobacco Institute* et Hill & Knowlton et s'en remettent à leur «expertise» pour développer la position de l'industrie canadienne qui est aussi de nier tout lien entre le tabagisme et les maladies.
731. Le Conseil canadien, tout comme l'industrie américaine, remet en cause les conclusions du *Surgeon General* de 1964 qu'il sait pourtant être justes:
- pièce PG-314.
732. Dans le cadre de la préparation du mémoire qu'il dépose devant le Comité Isabelle en 1969, pièce PG-23, le Conseil canadien s'en remet à Hill & Knowlton, à Shook, Hardy & Bacon, les avocats de l'industrie américaine, et à A. Holtzman, avocat interne de la défenderesse PM inc., sur les questions non seulement de contenu, mais aussi de stratégie:

- Lettre et pièces jointes de C. Thompson, Hill & Knowlton, à L.C. Laporte, Imperial Tobacco Company of Canada, 5 juillet 1968, **pièce PG-932**;
- Lettre et pièces jointes de C. Thompson, Hill & Knowlton, à A. Holtzman, PM inc., 20 février 1969, **pièce PG-933**;
- Note de C. C. Batten, Public & Industrial Relations Limited, au Conseil canadien, 22 avril 1969, **pièce PG-934**;
- Déclaration du Conseil canadien, 5 juin 1969, **pièce PG-935**;
- Lettre de P. D. Smith, PM inc., à P. Paré, Imperial Tobacco Company of Canada, 9 juin 1969, **pièce PG-936**;
- Lettre de P. Paré, Imperial Tobacco Company of Canada, à J. E. Bennett, Lorillard Corporation, 19 juin 1969, **pièce PG-937**;
- Lettre d'A. H. Duffin, *Tobacco Institute*, à A. Holtzman, PM inc., 9 décembre 1969, **pièce PG-938**;
- Lettre d'A. Holtzman, PM inc., à A. H. Duffin, *Tobacco Institute*, 12 décembre 1969, **pièce PG-939**.

733. Le Conseil canadien retient aussi les services de la firme de relations publiques Public & Industrial Relations Limited, qui est associée à Hill & Knowlton:

- Hill & Knowlton, *Script of Presentation of T.I.R.C. and T.I. for "Inside H&K"*, 26 février 1962, **pièce PG-940**.

734. En 1969, le Conseil canadien élabore plusieurs énoncés de principe («*Position Papers*») qui non seulement sont inspirés de la documentation fournie par les fabricants américains, mais reprennent fidèlement les grands thèmes du discours négateur:

- a) il n'existe aucune preuve que le tabagisme cause des maladies;
- b) d'autres facteurs n'ont pas été suffisamment étudiés;
- c) un lien statistique ne démontre pas une relation de cause à effet;

d) fumer comporte un effet bénéfique significatif reconnu:

- Conseil canadien, *Position Papers*, **pièce PG-941**;
- Lettre d'A. Yeaman, Brown & Williamson, à P. Paré, Imperial Tobacco Company of Canada, Limited, 21 janvier 1969, **pièce PG-942**;
- Lettre d'A. Yeaman, Brown & Williamson, à P. Paré, Imperial Tobacco Company of Canada, Limited, 24 janvier 1969, **pièce PG-943**.

735. Le Conseil canadien est d'ailleurs considéré par ses membres comme l'organe établissant les politiques de l'industrie canadienne [«policy setting body»], ou encore comme un véhicule formel pour prendre action en fonction des consensus de l'industrie, notamment en ce qui concerne les questions de santé liées au tabagisme:

- Note de G.C. Hargrove, BAT Co., 28 août 1969, **pièce PG-944**;
- pièce PG-926.

736. Pour maintenir la fausse controverse scientifique au Canada, comme le font les fabricants américains aux États-Unis, le Conseil canadien a également recours aux conférences et communiqués de presse et publiés, à diverses périodes, des bulletins, infolettres et autres outils de communication qu'il adresse à des publics déterminés, comme la *Revue du Tabac* [...], *Tabacum* et le *Tobacco File/Dossier Tabac*, qui reprennent le discours négateur américain:

a) Conférences:

- pièce PG-223;
- pièce PG-224;
- pièce PG-244;

b) Communiqués de presse:

- pièce PG-238;
- pièce PG-245;
- pièce PG-922;
- pièce PG-935;

c) Bulletins, infolettres:

- pièce PG-251;
- pièce PG-252;
- pièce PG-253;
- pièce PG-588;

d) Autres outils de communication:

- pièce PG-23;
- pièce PG-189;
- pièce PG-225;
- pièce PG-575;
- pièce PG-941.

737. Les avocats internes et externes des fabricants américains travaillent également, à l'occasion, pour les défenderesses canadiennes.

738. Ces avocats sont omniprésents dans les affaires du CTR et du *Tobacco Institute* par leur présence aux réunions et leur implication constante dans les dossiers concernant le tabagisme et la santé.

739. Leur objectif est de s'assurer qu'aucune communication ne porte préjudice aux recours judiciaires en nombre croissant contre les fabricants américains de produits du tabac qui se défendent en niant encore et toujours le lien entre tabagisme et maladie:
- Pièce PG-997;
  - Lettre de D. R. Hardy (Shook, Hardy, Ottman, Mitchell & Bacon) à W. J. Kloepfer (*Tobacco Institute*), 13 septembre 1968, **pièce PG-1389.**
740. Aussi, dès la fin des années 1960, conseillé en cela par les procureurs des fabricants américains, le CTR finance de plus en plus de recherches commandées par l'industrie (appelées *Special Projects*), faisant ainsi fi de sa promesse contenue au *Frank Statement to Cigarette Smokers*, pièce PG-16, de financer des recherches dites objectives.
- Note de E. Pepples à R. J. Pritchard (Brown & Williamson), 1 juin 1992, **pièce PG-1390;**
  - Liste « CTR Special Projects » pour les projets approuvés entre 1974 et 1984, **pièce PG-1391.**
741. Ces recherches commandées par l'industrie sont aussi l'occasion pour elle d'instaurer un *Witness Development Program* afin de trouver des scientifiques sympathisants à sa cause:
- Trois (3) lettres de Shook, Hardy & Bacon respectivement du 13 octobre 1966, du 9 février 1978 et du 31 mai 1983, **pièce PG-945;**
  - Procès-verbal du *Meeting of Company Counsel and Ad Hoc Committee Members*, 10 septembre 1981, **pièce PG-946.**
742. D'ailleurs, tous les témoins présentés par le Conseil canadien lors des audiences du Comité Isabelle en 1969 pour soutenir l'existence d'une controverse scientifique ont un lien avec le CTR.

743. Au cours des années 1970, 1980 et 1990, les échanges entre le Conseil canadien et le *Tobacco Institute* sont constants, portent sur des questions de politiques et de stratégies, surtout en matière de publicité et de fumée de tabac secondaire, et visent à harmoniser les positions américaine et canadienne puisque «it has become current truth that a fire that starts in one country quickly spreads to the other», comme le remarque W. H. Neville du Conseil canadien dans une lettre du 6 juillet 1990 au président du *Tobacco Institute*, **pièce PG-947**.

Voir également :

- Lettre de L. C. Laporte, Conseil canadien, à A. Barr, *Tobacco Institute*, 3 janvier 1973, **pièce PG-948**;
- Note et pièce jointe de W. Kloepfer, Jr. notamment à H.R. Kornegay, *Tobacco Institute*, 25 octobre 1974, **pièce PG-949**;
- Lettre de L. Zimmerman, Shook, Hardy & Bacon, à J. LaRiviere, Conseil canadien, 3 juin 1980, **pièce PG-950**;
- Note et pièce jointe de M. H. Crohn, Groupe RJR, à W. W. Shinn, E. J. Jacob, H. R. Kornegay et S. L. Temko (Committee of Counsel), 9 mars 1981, **pièce PG-951**;
- Note interne de W. Kloepfer, Jr., à B. Lewis et al., *Tobacco Institute*, 5 septembre 1985, **pièce PG-952**;
- Note et pièce jointe de S. D. Chilcote, Jr., *Tobacco Institute*, aux membres du Comité exécutif, 1<sup>er</sup> mai 1986, **pièce PG-953**;
- Lettre de N. J. McDonald, Conseil canadien, à S. D. Chilcote, Jr., *Tobacco Institute*, 27 février 1987, **pièce PG-954**;
- Note et pièce jointe de S. Stuntz à P. Sparber, *Tobacco Institute*, 3 avril 1987, **pièce PG-955**;
- Lettre de N. J. McDonald, Conseil canadien, à S. D. Chilcote, Jr., *Tobacco Institute*, 4 mai 1987, **pièce PG-956**;

- Lettre de S. D. Chilcote, Jr., *Tobacco Institute*, à N. J. McDonald, Conseil canadien, 12 mai 1987, **pièce PG-957**;
- Note et pièce jointe de S. Stuntz au personnel du *Tobacco Institute*, 9 septembre 1988, **pièce PG-958**;
- Lettre de J. LaRivière, Conseil canadien, à C. H. Powers, *Tobacco Institute*, 7 juin 1990, **pièce PG-959**;
- *Meeting with Canadian Tobacco Manufacturer's President, Draft agenda*, 27 juin 1990, **pièce PG-960**;
- Note de W. H. Neville, Conseil canadien, à C. Power, *Tobacco Institute*, 10 juillet 1990 et lettre de W. H. Neville, Conseil canadien, à S. D. Chilcote, Jr., *Tobacco Institute*, 10 juillet 1990, **pièce PG-961**;
- Lettre de J. LaRivière, Conseil canadien, à C. H. Powers, *Tobacco Institute*, 23 août 1990, **pièce PG-962**;
- Lettre de S. M. Stuntz, *Tobacco Institute*, à W. H. Neville, Conseil canadien, 29 juillet 1991, **pièce PG-963**;
- Lettre de W. H. Neville, Conseil canadien, à S. D. Chilcote, Jr., *Tobacco Institute*, 8 avril 1992, **pièce PG-964**;
- Télécopie et pièce jointe de P. Gordon, Conseil canadien, à K. (X), Groupe PM, 24 mars 1994, **pièce PG-965**;
- Télécopie et pièce jointe de P. Gordon, Conseil canadien, à C. Yoe, *Tobacco Institute*, 24 mars 1994, **pièce PG-966**;
- Télécopie de M.-J. Lapointe, Conseil canadien, à D. Thomas, *Tobacco Institute*, 4 août 1994, **pièce PG-967**.

744. De ce qui précède, il appert clairement que les fabricants américains et canadiens, directement et par le biais d'organismes qu'ils contrôlent, se sont concertés ou ont conspiré pour nier publiquement les méfaits du tabagisme et protéger leurs intérêts financiers, au détriment notamment des personnes du Québec.

## 2. La concertation ou conspiration internationale

745. En marge des actions concertées que les fabricants américains et canadiens développent, les multinationales en viennent à considérer le besoin de créer une alliance internationale pour endiguer les attaques des groupes anti-tabac et freiner les interventions gouvernementales basées sur une association entre le tabagisme et la maladie.

### a) Opération Berkshire et organisation au plan international

746. L'origine de cette stratégie internationale remonte à décembre 1976 lorsque le président d'Imperial Tobacco Ltd. (U.K.) propose que les industries européenne et américaine adoptent une stratégie commune afin d'éviter que les mesures prises contre les fabricants de tabac dans un pays produisent un effet domino sur les autres:

- Lettre de R. A. Garrett, Imperial Tobacco Ltd. (U.K.), à H. Cullman, PMI, 3 décembre 1976, **pièce PG-968**;
- Lettre de R. A. Garrett, Imperial Tobacco Ltd. (U.K.), à A. Holtzman, PM inc., 7 mars 1977, **pièce PG-969**;
- Lettre de R. A. Garrett, Imperial Tobacco Ltd. (U.K.), à W. D. Hobbs, RJRT, 24 mars 1977, **pièce PG-970**.

747. Nommée *Operation Berkshire*, cette initiative donne lieu à une rencontre secrète en juin 1977 entre plusieurs fabricants de tabac, dont des membres de la haute direction des sociétés mères des Groupes BAT, PM, RJR et Rothmans.

748. Lors de cette rencontre, les participants, parlant au nom de l'industrie, adoptent un énoncé de principe fondé, sans grande surprise, sur:



- a) l'existence d'une (fausse) controverse au sujet du lien entre le tabagisme et diverses maladies;
- b) la nécessité de résister vigoureusement, « with all means at their disposal », aux mises en garde :

- *Position Paper*, reproduit dans *The Second ICOSI Meeting*, 11 et 12 novembre 1977, et lettre de transmission R. W. Murray, PMI, à R. A. Garrett, Imperial Tobacco Ltd. (U.K.), 28 novembre 1977, **pièce PG-971**.

749. Ainsi, de 1976 à au moins 1992, les fabricants de produits du tabac, dont les défenderesses BAT Co., PM inc. et RJRT (les «**défenderesses membres d'INFOTAB**»), de même que Rothmans International Limited, mettent sur pied des organismes internationaux qui ont essentiellement les mêmes statuts, mais changent de nom au fil du temps : ICOSI (1977-1981), INFOTAB (1981-1992) et TDC (à compter de 1992).

- ICOSI, *Statuts*, **pièce PG-972**;
- Communiqué intitulé *International Body for Tobacco Industry*, 25 octobre 1978, **pièce PG-973**;
- Procès-verbal du *Third Meeting of the International Committee on Smoking Issues*, 9 et 10 mars 1978, **pièce PG-974**;
- pièce PG-83;
- Réquisition au registre du commerce de Genève, 3 mai 1979, **pièce PG-975**;
- ICOSI, Procès-verbal de l'assemblée générale extraordinaire et liste des présences, 8 décembre 1980, **pièce PG-976**;
- INFOTAB, Association Charter (As amended effective September 2, 1981), **pièce PG-977**;
- Lettre de T. Wood, Rothmans International Tobacco Limited, à D. Bacon, Groupe BAT, 8 novembre 1991 et copie d'une résolution du conseil d'administration d'INFOTAB, **pièce PG-978**;

- TDC, Draft Revised Association Charter, 28 novembre 1991, **pièce PG-979**;
- TDC, *Information Pack*, sans date, **pièce PG-980**.

750. Ces organismes internationaux, financés par les membres fondateurs, ont pour principaux objectifs d'entretenir la fausse controverse scientifique au sujet du lien entre le tabagisme et diverses maladies, [...], de résister le plus longtemps possible aux législations en matière de mises en garde et de neutraliser, sinon discréditer, le travail des organismes anti-tabac et celui de l'Organisation mondiale de la santé.

751. Les conseils d'administration et les assemblées de tous ces organismes sont dirigés par des représentants hauts placés de chaque membre.

752. La raison d'être de ces organismes est d'encadrer la concertation internationale vue comme la seule manière de protéger les intérêts économiques de l'industrie devant la montée de l'anti-tabagisme, comme en témoigneront les propos de J. Hartog du Groupe PM, dans une présentation faite au conseil d'administration d'ICOSI le 28 mai 1980, **pièce PG-981**:

«If we are to stay in the game against what we know to be the plans and future organisation of our opponents through the next decades we – as an industry – must really develop a worldwide strategy with related actions. We must stop talking to ourselves and government bodies only (slowing down legislative actions is the only major item on the credit side in the ledger of concerted industry activity). We should start finding solutions to the problem how to reach the public in a credible manner with credible messages.»

753. Dès juin 1977, les sociétés du Groupe BAT sont informées de la création d'ICOSI et de la position qu'elle a adoptée sur différents sujets liés aux enjeux de santé, avec directive de s'y référer «*as a working paper from*

*which strategies and action plans can be developed relevant to local situations.»:*

- Copie d'une lettre de R. Haddon, adressée aux dirigeants des sociétés du Groupe, 13 juin 1977, **pièce PG-982**.

754. En juillet 1977, RJRT transmet à son tour l'énoncé de principe à sa filiale canadienne Macdonald, en précisant qu'il s'agit non seulement de la position d'ICOSI, mais également de celle du Groupe RJR:

- pièce PG-352.

755. Afin de maintenir la controverse et combattre l'adoption de mesures législatives qui imposeraient, notamment, des mises en garde sur la santé, l'énoncé de principe, pièce PG-971, reconnaît le rôle primordial que doivent jouer les associations nationales de fabricants :

«Moreover, we believe it is better to speak as an industry with one voice on such matters and that this can often best be accomplished by national associations of manufacturers. In this connection we believe it important that the industry assure that all appropriate members are kept advised of pertinent scientific, political, social and other developments.

[...]

We believe that the Industry's activities in the smoking and health field should be carried out by or through the Associations, whenever this is appropriate.»

756. Lors d'une réunion des membres d'ICOSI en mars 1978, le Groupe RJR se voit assigner la responsabilité d'informer le Conseil canadien de l'existence et des objectifs d'ICOSI, ce qui est fait dès le mois d'avril 1978:

- pièce PG-974;
- Note de J.T. Wilson, RJRT, entre autres à R. Shropshire, Macdonald, 6 avril 1978, **pièce PG-983**.

b) Harmonisation du discours international et canadien

757. Dès 1978, le Conseil canadien établit la position de l'industrie canadienne qui reprend pour l'essentiel, presque textuellement, l'énoncé de principe d'ICOSI, pièce PG-971, sur l'existence d'une controverse scientifique, sur l'absence de preuve d'un lien entre le tabagisme et les maladies et sur le droit de choisir de fumer dans une société libre:

- Note et pièce jointe de N.J. Macdonald, Conseil canadien, à P. Paré, W.H. Webb, E. Ricard, R. Shropshire et R.H. Hawkes, 13 juin 1978, **pièce PG-984**.

758. Au cours de l'année 1982, le Conseil canadien, en tant qu'association nationale de fabricants, se joint à INFOTAB à titre de membre associé, sans droit de vote:

- Procès-verbal du *Meeting of the Board of Directors*, INFOTAB, 1<sup>er</sup> et 2 novembre 1982, **pièce PG-985**.

759. De 1982 à 1989, le Conseil canadien participe pleinement aux activités d'INFOTAB, en ce que des représentants des défenderesses canadiennes, au nom du Conseil canadien, donnent des conférences, agissent comme modérateur ou participent simplement aux séminaires annuels organisés par INFOTAB à l'intention des associations nationales de fabricants.

760. À l'occasion des séminaires annuels d'ICOSI et d'INFOTAB organisés dès 1979, jusqu'au moins 1990, à l'intention des associations nationales, comme le Conseil canadien, on distribue de la documentation de référence (Background Briefing Papers) qui alimente artificiellement la controverse sur le lien entre le tabac et diverses maladies:

- pièce PG-576;
- pièce PG-577;
- pièce PG-979;
- pièce PG-993;
- pièce PG-995;
- International Committee on Smoking Issues (ICOSI), vers octobre 1978, pièce PG-1392;
- Lettre de D. K. Hoel (Shook, Hardy & Bacon) à E. Pepples (Brown & Williamson) et autres, 4 juin 1979, pièce PG-1393;
- A General Briefing on INFOTAB, 15 avril 1985, pièce PG-1394.

761. Aussi, INFOTAB publie plusieurs documents de référence qui reprennent l'essence du message trompeur véhiculé depuis près de 30 ans par l'industrie du tabac, à savoir qu'il existe une controverse scientifique relativement au lien entre le tabagisme et le cancer du poumon, les maladies cardiaques et les MPOC:

- *Smoking and Health – A Perspective*, 1<sup>er</sup> mai 1980, **pièce PG-986;**
- *Lung Cancer*, 1<sup>er</sup> mai 1980, **pièce PG-987;**
- *Heart Disease*, 1<sup>er</sup> mai 1980, **pièce PG-988;**
- *Chronic Obstructive Pulmonary Disease*, 1<sup>er</sup> mai 1980, **pièce PG-989.**

762. L'utilisation qui doit être faite de ces documents de référence est décrite en ces termes: «ICOSI position papers are intended to provide a foundation for both associations and companies in presenting and arguing the case for the industry»:

- Notes pour une présentation de C. H. Stewart-Lockhart, Groupe BAT, devant les associations nationales européennes à Copenhague, 13 octobre 1978, **pièce PG-990**.
763. ICOSI et INFOTAB ont également pour objectif de ralentir le plus possible l'adoption de mesures contraignantes en matière de mises en garde ou de publicité:
- pièce PG-971.
764. Aussi, le document de référence du 1er mai 1980 intitulé *Effect of Warning Labels on Cigarette Use is Questionable*, **pièce PG-991**, se veut un guide pour contrer les arguments de ceux qui veulent davantage de mises en garde des dangers.
765. Le Conseil canadien adopte une ligne de conduite en tout point conforme à celle d'ICOSI et d'INFOTAB, en ce qu'il s'oppose également à publier des avertissements relatifs à la santé susceptibles d'informer adéquatement les personnes du Québec sur les liens entre le tabagisme et diverses maladies.
766. À partir de 1984, les documents de référence, dont les pièces PG-986 à PG-989 et PG-991, sont répertoriés dans un recueil (*Issues Binder*), préparé pour les membres d'INFOTAB, et qui se veut «[...] a reference guide to assist in the development of argumentation to counter allegations about smoking and endeavours to restrict the industry's marketing freedom»:
- A. Corti, « Introduction of "Issues Binders" » dans *Answering the Critics*, INFOTAB, 8, 9 et 10 octobre 1984, **pièce PG-992**.
767. Le recueil couvre neuf sujets: «*Addiction*», «*Advertising & Sponsorship*», «*Developing Countries*», «*Environmental Tobacco Smoke*», «*Legislation*»,

«*Smoking and Health*», «*Social Costs*», «*Taxation*» et «*Warning & Constituents Labelling*», et explique comment répondre aux arguments des groupes anti-tabac.

768. Ce recueil devient le *Spokespersons' Guide* en 1987 et est distribué aux membres d'INFOTAB, dont le Conseil canadien, jusqu'au début des années 1990 au moins:

➤ pièce PG-576.

769. Le discours véhiculé est toujours le même: il existe une controverse et l'industrie doit tout faire pour la maintenir d'actualité.

770. En octobre 1988, lors d'un séminaire international auquel assistent des représentants du Conseil canadien, le responsable des relations publiques de RJRTI rappelle qu'il revient aux sociétés membres d'INFOTAB de déterminer d'abord la stratégie globale de l'industrie qui doit par la suite être implantée par les associations nationales dans leurs propres programmes:

➤ Présentation de R. Marcotullio, RJRTI, 18 octobre 1988, **pièce PG-993**.

771. En octobre 1989, INFOTAB produit et distribue un document intitulé *World Action - A Guide for Dealing with Anti-Tobacco Pressure Groups*, **pièce PG-994**, afin d'aider ses membres, dont les défenderesses membres d'INFOTAB et le Conseil canadien, à anticiper les actions des groupes anti-tabac et à y répondre de manière efficace.

772. Lors du séminaire international tenu à Paris en octobre 1990, W.H. Neville, au nom du Conseil canadien, banalise la dangerosité du tabac en réitérant la position voulant que «[the] so-called scientific proof [is], in fact, driven by personal prejudice»:

- Présentation de W. H. Neville, **pièce PG-995**.
773. À compter de 1990, des représentants des défenderesses membres d'INFOTAB, de Shook, Hardy & Bacon et du *Tobacco Institute* élaborent un *Global Argumentation Project*, en réponse aux groupes anti-tabac:
- Résumé du projet et procès-verbal d'une réunion du 30 janvier 1990, **pièce PG-996**.
774. Toute la documentation produite par INFOTAB à l'intention des associations nationales, dont le Conseil canadien, est revue, sinon rédigée, par les avocats Shook, Hardy & Bacon:
- Note de D. Hoel, Shook, Hardy & Bacon, à T. Sollis, Groupe PM, 28 juin 1988, **pièce PG-997**.
775. Elle est mise à jour et utilisée ponctuellement pour présenter une réponse à un événement particulier, qu'il s'agisse de la sortie du rapport du *Surgeon General*, d'une activité d'un groupe anti-tabac ou du dépôt d'un projet de loi.
776. Dès janvier 1979 et jusqu'au moins le milieu des années 1990, les conférences internationales de l'Organisation mondiale de la santé sont suivies par les fabricants dont un groupe constitué de représentants d'ICOSI et d'INFOTAB afin d'en neutraliser l'impact sur le public, sinon de discréditer les organismes et personnes qui y participent:
- pièce PG-83;
  - pièce PG-577;
  - pièce PG-1001;
  - pièce PG-1002;



- pièce PG-1392;
- pièce PG-1393;
- *Action Plan, ICOSI Task Force 4th World Conference on Smoking and Health, Stockholm, June 18-22, 1979, ICOSI, 29 janvier 1979, pièce PG-1395;*
- *Tobacco Company Strategies to Undermine Tobacco Control Activities at the World Health Organization, Report of the Committee of Experts on Tobacco Industry Documents, juillet 2000, pièce PG-1396.*

777. Un rôle primordial à cet égard est joué par le Conseil canadien lors de la Conférence qui se tient à Winnipeg en 1983:

- *First Meeting of Winnipeg Project Team, 23 novembre 1982, pièce PG-998;*
- Note et pièce jointe de H. Verkerk, INFOTAB, à J. LaRivière, Conseil canadien, 20 décembre 1982 et pièce jointe, **pièce PG-999;**
- Lettre de H.Verkerk, INFOTAB, à J. LaRivière, Conseil canadien, 19 janvier 1983, **pièce PG-1000;**
- Procès-verbal de la rencontre du *Winnipeg Project Team*, 16 et 17 février 1983, **pièce PG-1001;**
- Procès-verbal de la rencontre du *Winnipeg Project Team*, 2 juin 1983, **pièce PG-1002;**
- Note de M. Descôteaux à J.-L. Mercier, ITL, 19 juillet 1983, **pièce PG-1003;**
- Lettre et pièce jointe de H. Verkerk, INFOTAB, 9 août 1983 et pièce jointe, **pièce PG-1004;**
- Note et pièces jointes de M. Cain, Conseil canadien, 12 août 1983, **pièce PG-1005.**

778. Pendant toute la période pertinente au présent litige, les défenderesses membres d'ICOSI puis d'INFOTAB et le Conseil canadien se concertent ou

conspirent pour véhiculer les politiques et positions établies par ICOSI et INFOTAB et continuer à nier le lien entre le tabagisme et diverses maladies.

779. Ce faisant, elles ont manqué au devoir de respecter les règles de conduite qui, suivant les circonstances, les usages ou la loi, s'imposaient à elles envers les personnes du Québec qui ont été exposées aux produits du tabac ou pourraient y être exposées.

### **3. La concertation ou conspiration au sein du Groupe BAT**

780. BAT Co. et BAT Industries sont responsables envers la population du Québec pour les actes fautifs commis en concertation avec Imperial et pour ceux qu'Imperial a commis sous leur contrôle.

781. Aux fins de la présente section, le nom Imperial désigne indifféremment les sociétés Imperial Tobacco Company, Limited, ITL et Imasco.

#### a) La propriété, la direction et le contrôle d'Imperial

782. Avant 1970, les actions d'Imperial Tobacco Co. of Canada puis d'Imperial Tobacco Company of Canada, Limited sont détenues en majorité par les sociétés du Groupe BAT.

783. De 1970 à 2000, les actions d'ITL sont détenues par Imasco, société membre du Groupe BAT.

784. De 1970 à 1980, BAT Co. et BAT Industries possèdent successivement, directement ou indirectement, la majorité des actions d'Imasco.

785. De 1981 à 1999, BAT Industries possède entre 40% et 49% des actions d'Imasco.
786. Depuis 2000, BAT plc possède la totalité des actions d'Imperial.
787. Les sociétés mères du Groupe BAT dirigent et contrôlent successivement leur filiale canadienne.
788. Ainsi, en ce qui concerne BAT Co.:
- a) elle exerce ses droits d'actionnaire majoritaire en émettant des procurations à des membres du conseil d'administration d'Imperial:
    - Lettre d'A.D. McCormick, BAT Co., à H.E. Jackson, Imperial Tobacco Company of Canada, Limited, 27 février 1953, **pièce PG-1006**;
    - Lettre d'A.D. McCormick, BAT Co., à H.E. Jackson, Imperial Tobacco Company of Canada, Limited, 13 mars 1953, **pièce PG-1007**;
    - Lettre de H.E. Jackson, Imperial Tobacco Company of Canada, Limited, à A.D. McCormick, BAT Co., 18 mars 1953, **pièce PG-1008**;
  - b) elle approuve la rémunération, les bonus et les conditions de retraite des dirigeants d'Imperial:
    - Procès-verbal de la réunion du Chairman's Meeting de BAT Co., 29 mars 1951, **pièce PG-1009**;
    - Procès-verbal de la réunion du Chairman's Committee de BAT Co., 11 décembre 1956, **pièce PG-1010**;
    - Lettre de P. Paré, Imasco, à P. Macadam, BAT Co., 7 février 1972, **pièce PG-1011**;
  - c) elle requiert qu'Imperial lui communique les procès-verbaux des réunions de son conseil:
    - Lettre d'A.D. McCormick, BAT Co., au secrétaire d'Imperial Tobacco Company of Canada, Limited, 11 juin 1952, **pièce PG-1012**;

- Lettre de H.E. Jackson, Imperial Tobacco Company of Canada Limited, à A. D. McCormick, BAT Co., 18 juin 1952, **pièce PG-1013**;
- d) elle requiert qu'Imperial lui communique ses rapports financiers et ceux des filiales canadiennes du Groupe:
- Lettre de J.A. Calder, Imperial Tobacco Company of Canada, Limited, à A.D. McCormick, BAT Co., 16 mars 1962, **pièce PG-1014**;
- e) elle approuve le calendrier de versement des dividendes:
- Lettre de H. E. Jackson, Imperial Tobacco Company of Canada Limited, à E. G. Langford, BAT Co., 11 août 1955, **pièce PG-1015**;
  - Lettre de E. G. Langford, BAT Co., au secrétaire d'Imperial Tobacco Company of Canada Limited, 17 août 1955, **pièce PG-1016**.
789. De plus, Imperial relève d'un membre de la direction de BAT Co. qui vient au Canada afin d'y exercer ses attributions:
- Procès-verbal de la réunion du *Committee of Directors* de BAT Co., 5 décembre 1961, **pièce PG-1017**;
  - Lettre de R. P. Dobson, BAT Co, à E. C. Wood, Imperial Tobacco Company of Canada, Limited, 4 juin 1962, **pièce PG-1018**;
  - Procès-verbal de la réunion du *Chairman's Meeting* de BAT Co., 9 août 1962, **pièce PG-1019**.
790. À partir de la seconde moitié des années 1970, la filiale canadienne du Groupe, alors Imasco, relève de P. Sheehy, président de BAT Co. et membre, puis président, du conseil d'administration de BAT Industries, et de T.J. Walker, responsable territorial pour le Canada et les États-Unis:
- Série d'organigrammes de BAT Co., **pièce PG-1020**;
  - *The Expanding Group*, BAT Co., publié vers 1974, **pièce PG-1021**;
  - Lettre de I. G. Hacking à N.A. Oppenheim, Brown & Williamson, 6 septembre 1979, **pièce PG-1022**;

- Organigramme de BAT Industries, à jour au 3 mai 1991, **pièce PG-1023**.
- 791. L'un des objectifs de cette réorganisation est d'assurer la conformité des diverses activités de l'entreprise avec les politiques globales du Groupe:
  - pièce PG-1021.
- 792. BAT Co. assume également, pour l'ensemble du Groupe, la responsabilité des enjeux de santé liés au tabagisme.
- 793. À ce titre, elle conçoit, coordonne et uniformise le discours commun du Groupe, tant à l'époque où elle est la société mère du groupe (jusqu'en 1976), qu'à partir du moment où BAT Industries lui délègue ces fonctions (de 1976 à 1998).
- 794. La directive donnée au Groupe BAT de nier publiquement l'existence d'une preuve de causalité entre le tabagisme et la maladie émane des plus hautes instances de BAT Co. et est communiquée à Imperial qui doit s'y conformer:

«[...] Policies are, in the main, constraints on freedom of action (they also include specific directions, which by implication preclude other courses of action)».

- pièce PG-429.

Voir également:

- pièce PG-187;
- Lettre d'A. D. McCormick, BAT Co., 28 novembre 1963, **pièce PG-1024**;
- pièce PG-148;
- Procès-verbal de la réunion du *Committee of Directors* de BAT Co., 6 janvier 1970, **pièce PG-1025**;

- pièce PG-191;
- pièce PG-168;
- Ordre du jour de la réunion du *Tobacco Division Board of Management* de BAT Co., 25 juin 1974, et documents de travail associés, **pièce PG-1026**;
- Procès-verbal de la réunion du *Tobacco Division Board of Management* de BAT Co., 25 juin 1974, **pièce PG-1027**;
- pièce PG-430;
- pièce PG-194;
- pièce PG-416;
- pièce PG-205;
- pièce PG-208.

795. En 1976, BAT Industries devient la société mère du Groupe.

796. Les activités du Groupe dans le secteur du tabac sont dès lors dirigées par le *Tobacco Division Board of Management* de BAT Industries, sur lequel siègent les administrateurs de BAT Co. dont son président, P. Sheehy:

- BAT Co., *Annual Reports and Accounts 1977*, **pièce PG-1028**;
- BAT Industries, *Annual Reports and Accounts 1977*, **pièce PG-1029**.

797. Le *Tobacco Division Board of Management* approuve la politique de relations publiques du Groupe sur les enjeux de santé liés au tabagisme et en assure la diffusion au sein du Groupe:

- pièce PG-436;

- Procès-verbal de la réunion du *Tobacco Division Board of Management* de BAT Industries, 27 et 28 octobre 1977, **pièce PG-1030**;
  - Note de P. Macadam, BAT Industries, 12 septembre 1977, **pièce PG-1031**;
  - Note de R. L. O. Ely, BAT Co., 31 mars 1982, **pièce PG-1032**;
  - pièce PG-209.
798. À compter de 1993, BAT Industries conçoit, à l'intention de tout son personnel, plus particulièrement des dirigeants des sociétés du Groupe, un code d'éthique (*Statement of Business Conduct*), qui spécifie qu'il n'existe pas de preuve de causalité entre le tabagisme et les maladies:
- pièce PG-733.
799. De 1987 à 1993, BAT Industries transmet à Imasco des lignes directrices qui lui indiquent de soutenir le lobby de l'industrie canadienne sur les enjeux entourant le tabagisme (*smoking issues*) et de s'opposer activement au lobby anti-tabac:
- *Guidelines*, BAT Industries, 23 juillet 1987, **pièce PG-1033**;
  - *Guidelines for Imasco*, BAT Industries, 10 octobre 1989, **pièce PG-1034**;
  - *Guidelines for Imasco*, BAT Industries, 30 juin 1993, **pièce PG-1035**.
800. À la suite de la restructuration de 1998, BAT plc reprend le rôle joué traditionnellement par BAT Co. et BAT Industries et élabore les politiques et stratégies pour le Groupe:
- *Listing Particulars*, BAT plc, 18 mai 1998, **pièce PG-1036**.

b) La participation d'Imperial à l'élaboration des politiques et stratégies du Groupe

801. Les délibérations d'une conférence tenue à Montréal, à laquelle participent des membres du conseil d'administration de BAT Co. ainsi que les présidents d'Imasco et d'ITL, servent à réviser la politique du Groupe sur les enjeux de santé liés au tabagisme:

- pièce PG-431;
- Procès-verbal de la réunion du *Comittee of Directors* de BAT Co., 27 mars 1973, **pièce PG-1037**;
- pièce PG-168.

802. De plus, à partir de 1976, Imasco participe au *Chairman's Advisory Conference* de BAT Industries et collabore ainsi à l'élaboration des politiques du Groupe, notamment sur les enjeux de santé liés au tabagisme:

- *Smoking & Health Items for Hot Springs*, Groupe BAT, 12 avril 1976, **pièce PG-1038**;
- *Chairman's Advisory Conference Hot Springs, Topic A, Smoking and Health*, Groupe BAT, 10 juin 1976, **pièce PG-1039**;
- G. C. Hargrove, *Chairman's Advisory Conference Hot Springs, Action Points from the Smoking and Health Minutes*, BAT Co., 15 juin 1976, **pièce PG-1040**;
- R. Haddon, *Hot Spring Papers on the Social Unacceptability Issue*, Groupe BAT, 8 septembre 1976, **pièce PG-1041**;
- Procès-verbal de la conférence de Leeds Castle de 1978, Groupe BAT, **pièce PG-1042**;
- Procès-verbal de la conférence de Guaruja de 1979, Groupe BAT, **pièce PG-1043**;
- Procès-verbal de la conférence de Victoria de 1980, Groupe BAT, **pièce PG-1044**;
- Procès-verbal de la conférence de Leeds Castle de 1981, Groupe BAT, **pièce PG-1045**;



- Procès-verbal de la conférence de Hayman Island de 1982, Groupe BAT, **pièce PG-1046**;
- Procès-verbal de la conférence de Friedrichsruhe de 1983, Groupe BAT, **pièce PG-1047**;
- Procès-verbal de la conférence de Phoenix de 1985, Groupe BAT, **pièce PG-1048**.

803. Les *Chairman's Advisory Conferences* sont de véritables instances décisionnelles:

- Note de P. Macadam, BAT Industries, à P. Paré, Imasco, 5 septembre 1977, **pièce PG-1049**.

804. Le *Tobacco Strategy Review Team*, créé en décembre 1984, a pour mission d'assurer une cohérence stratégique au sein du Groupe BAT ainsi qu'une approche unifiée des enjeux touchant le tabagisme, mission dont il s'acquitte entre autres en publiant des recueils présentant la position du Groupe sur la relation entre le tabagisme et la santé:

- H. C. Barton, *Tobacco Strategy Group: Terms of Reference*, Groupe BAT, 31 août 1994, **pièce PG-1050**;
- *Guidelines for BAT Co.*, BAT Industries, 21 juillet 1989, **pièce PG-1051**.

805. À compter de 1989, Imasco et ITL participent au *Tobacco Strategy Review Team* qui approuve la diffusion de documents cherchant à démontrer l'existence de controverses scientifiques touchant à la nocivité du tabac et à son caractère addictif:

- pièce PG-1050;
- Procès-verbal de la réunion du *Tobacco Strategy Review Team*, Groupe BAT, 20 mars 1989, **pièce PG-1052**;

- Note de S. Boyse, BAT Co., 2 novembre 1989, **pièce PG-1053**;
- pièce PG-212;
- Procès-verbal de la réunion du *Tobacco Strategy Review Team*, Groupe BAT, 10 novembre 1989, **pièce PG-1054**;
- pièce PG-443;
- pièce PG-210;
- pièce PG-444;
- Note de S. Boyse, BAT Co., 17 avril 1990, **pièce PG-1055**;
- Note de R. Thornton, BAT Co., 14 février 1991, **pièce PG-1056**;
- Note de R. Thornton, BAT Co., 3 mai 1991, **pièce PG-1057**;
- Note d'A. Heard, BAT Co., 11 novembre 1991, **pièce PG-1058**;
- pièce PG-215.

### c) Partage et dissimulation des connaissances

806. Les membres du Groupe BAT, dont Imperial, agissent de concert afin de dissimuler leurs connaissances scientifiques sur la dangerosité et le caractère addictif des produits du tabac.
807. Au sein du Groupe BAT, le travail de recherche scientifique est effectué dans un esprit de collaboration et d'échange d'informations:
- S. Semenk, «Une université des sciences du tabac chez BAT», *Le Feuillet*, novembre/décembre 1981, page 7, **pièce PG-1059**;
  - pièce PG-50.
808. Ainsi, depuis 1956, BAT Co. et Imperial s'échangent des rapports de recherche traitant de sujets très divers, tels la dangerosité des composés de

la fumée de tabac, leur caractère cancérigène, les techniques d'augmentation de la livraison de nicotine, le phénomène de compensation et la dangerosité de la fumée secondaire:

- *Tar and Nicotine Contents of Smoke from Cigarettes Made with Different Types of Myria Filter Tips*, Imperial Tobacco Company of Canada, Limited, 12 août 1958, **pièce PG-1060**;
- C. I Ayres, *Filtration efficiency of cellulose acetate 5/100,000 Filter Plugs: Effect of Changing the Tobacco Used as the Source of Smoke (Laboratory Report No. L.71-F.)*, BAT Co., 7 novembre 1962, **pièce PG-1061**;
- pièce PG-410;
- pièce PG-672;
- *Progress Report: July – December, 1976*, ITL, 14 mars 1977, **pièce PG-1062**;
- pièce PG-79;
- Lettre de R. S. Wade, ITL, à D. G. Felton, BAT Co., 16 janvier 1979, **pièce PG-1063**;
- Lettre de R. S. Wade, ITL, à C. I Ayres, BAT Co., 14 octobre 1981, **pièce PG-1064**;
- Lettre de R.S. Wade, ITL, à R. E. Thornton, BAT Co., 9 mars 1982, **pièce PG-1065**;
- Lettre de R. E. Thornton, BAT Co., à P. J. Dunn, ITL, 24 novembre 1982, **pièce PG-1066**;
- Lettre de M. H. Bilimoria, ITL, à E. D. Massey, BAT Co., 16 février 1983, **pièce PG-1067**;
- Lettre de S. R. Massey, ITL, à R. E. Thornton, BAT Co., 23 mars 1983, **pièce PG-1068**;
- M.H. Bilimoria, *Ames Mutagenicity of Mainstream and Sidestream Smoke Condensates. Project No. T-7708*, ITL, 13 mai 1981, **pièce PG-1069**.

809. Les résultats de ces recherches sont portés à la connaissance des plus hauts dirigeants d'Imperial, de BAT Co. et de BAT Industries, notamment par l'intermédiaires des documents suivants:

- a) le bulletin mensuel *Smoking and Health*, produit par Imperial Tobacco (U.K.), alors actionnaire de BAT Co., afin de tenir les dirigeants du Groupe informés des études en cours et des derniers résultats obtenus;
- b) les *Quarterly Reports on Smoking and Health*;
- c) des critiques d'articles scientifiques rédigées par D.G. Felton, conseiller scientifique de BAT Co.:
  - Procès-verbal de la réunion du *Chairman's Committee* de BAT Co., 15 mai 1956, **pièce PG-1070**;
  - Procès-verbal de la *Smoking and Health Conference* de Chewton Glen, Groupe BAT, 5 juin 1975, **pièce PG-1071**;
  - Note de D. G. Felton à P. Sheehy, BAT Co., 30 mai 1977, **pièce PG-1072**;
  - Lettre de L. C. F. Blackman, BAT Co., à R. M. Gibb, ITL, 20 avril 1979, **pièce PG-1073**;
  - D.G. Felton, *Research Conference 1980, Sea Island, Ga., Project Status Report*, BAT Co., août 1980, **pièce PG-1074**;
  - Lettre de R. S. Wade, ITL, à L. C. F. Blackman, BAT Co., 20 décembre 1982, **pièce PG-1075**.

810. De plus, les informations détenues par le Groupe BAT sur la relation entre le tabagisme et la santé sont centralisées dans un système informatique nommé Interbat, système auquel contribue Imperial:

- Note de F. S. Marsh, BAT Co., 28 mars 1983, **pièce PG-1076**.

811. Finalement, de 1954 à 1989, Imperial participe aux conférences des scientifiques du Groupe, de même qu'aux conférences portant spécifiquement sur les enjeux de santé liés au tabagisme:

- Procès-verbal de la Conférence de Bristol de 1954, Groupe BAT, **pièce PG-1077**;
- pièce PG-51;
- pièce PG-56;
- pièce PG-378;
- pièce PG-150;
- pièce PG-159;
- Procès-verbal de la Conférence de Chelwood de 1972, Groupe BAT, **pièce PG-1078**;
- pièce PG-431;
- Procès-verbal de la Conférence de Rottach-Egern de 1974, Groupe BAT, **pièce PG-1079**;
- Procès-verbal de la Conférence de Chewton Glen de 1975, Groupe BAT, **pièce PG-1080**;
- Procès-verbal de la Conférence de Montréal de 1976, Groupe BAT, **pièce PG-1081**;
- Procès-verbal de la Conférence de Sydney de 1978, Groupe BAT, **pièce PG-1082**;
- pièce PG-200;
- pièce PG-113;
- Compte-rendu de la Conférence «*Marketing Low Delivery Products*» de 1982, Groupe BAT, **pièce PG-1084**;
- pièce PG-383;

- Procès-verbal de la Conférence de Rio de 1983, Groupe BAT, **pièce PG-1085**;
  - pièce PG-667;
  - pièce PG-681;
  - Procès-verbal de la Conférence de Marlow de 1984, Groupe BAT, **pièce PG-1086**;
  - pièce PG-126.
812. Chacune des sociétés du Groupe BAT possède ainsi une connaissance approfondie de la nocivité du tabac et de son caractère addictif.
813. Or, agissant en concertation, les sociétés du Groupe dissimulent cette connaissance au public et aux autorités gouvernementales.
814. Dès 1968, la haute direction de BAT Co. prend conscience des risques associés à l'échange d'informations écrites sur les enjeux de santé liés au tabagisme et privilégie en conséquence des rencontres personnelles:
- Lettre d'E. P. Finch, Brown & Williamson, à R. P. Dobson, BAT Co., 11 décembre 1968, **pièce PG-1087**.
815. La directive qui consiste à nier en public la validité de la preuve contre le tabagisme est justifiée par la crainte de poursuites judiciaires:
- « Nothing can be said publicly and nothing can be held in company files which could be construed in any way, as an admission that smoking is a primary or contributory cause of disease.»
- Texte d'une allocution de D. G. Felton, BAT Co., lors de la conférence *Smoking and Health Issues* de Chelwood de 1979, **pièce PG-1088**;
  - pièce PG-429;

- Note de H. A. Morini à L.C.F. Blackman, BAT Co., 15 juin 1982, **pièce PG-1089**;
- Note de J. K. Wells, Brown & Williamson, 12 juin 1984, **pièce PG-1090**.

816. Alors que certains scientifiques de BAT Co. et d'Imperial proposent l'idée que le Groupe puisse se doter d'un document privé qui établirait la vérité («*the truth as we see it*»), Imperial est informée, par le directeur de la recherche et membre du conseil d'administration de BAT Co., qu'il serait préférable de ne pas savoir («*its (sic) better not to know*») et surtout de ne pas mettre par écrit ce que l'on sait:

- Lettre de S. J. Green, BAT, à R. M. Gibb, Imperial, 10 mars 1977, **pièce PG-1091**.

Voir également:

- pièce PG-1078;
- pièce PG-192;
- pièce PG-171;
- pièce PG-172 ;
- pièce PG-173 ;
- pièce PG-204.

817. Il est également convenu, lors de la conférence de Montebello, que les résultats des études portant sur l'activité de la fumée secondaire sur les animaux devraient être conservés à l'intérieur du Groupe:

- pièce PG-383.

818. Puis, en 1985, le centre de recherche du Groupe cesse presque toutes ses recherches dans le domaine de la biologie et envisage la possibilité de faire effectuer ces recherches à l'externe:
- Procès-verbal de la réunion du *Chairman's Advisory Conference*, Groupe BAT, 7 et 8 mars 1985, **pièce PG-1092**.
819. Les scientifiques d'Imperial sont dissuadés de rendre publics les résultats de certaines de leurs études:
- Lettre de S. R. Massey, ITL, à A. L. Heard, BAT Co., 29 mai 1985, **pièce PG-1093**;
  - Téléx d'A. L. Heard, BAT Co., à S. R. Massey, ITL, 5 juin 1985, **pièce PG-1094**.
820. Vers la fin des années 1980, les mesures de contrôle de l'information se resserrent au sein du Groupe BAT.
821. Ainsi, le nombre de rapports de recherche envoyés de BAT Co. vers les sociétés du Groupe est limité, la correspondance envoyée de BAT Co. à Imperial est vérifiée, et un programme d'éducation est mis en place afin d'éviter que les scientifiques n'emploient des formulations « malheureuses » («*poor*») qui pourraient être utilisées contre l'industrie dans les recours entrepris aux États-Unis:
- Note de N. B. Cannar, BAT Co., à S.P. Chalfen, BAT Industries, 4 janvier 1990, **pièce PG-1095**.
822. Le 16 octobre 1989, R.S. Ackman, conseiller juridique d'Imperial, transmet à S. Chalfen, son homologue de BAT Industries, la décision du juge Jean-Jude Chabot rejetant une demande du Procureur général du Canada pour obtenir certains documents d'Imperial dans le cadre de la contestation constitutionnelle de la *Loi réglementant les produits du tabac*:



- Télécopie de R. S. Ackman, ITL, à S. Chalfen, BAT Industries, 16 octobre 1989, **pièce PG-1096**.

823. Dans les mois qui suivent, BAT Industries, BAT Co. et Brown & Williamson incitent Imperial à adopter une politique de « rétention » de documents qui prévoit notamment la destruction d'un nombre important de rapports de recherche:

- Lettre de R. S. Ackman, ITL, à N. B. Cannar, BAT Co., 4 janvier 1990, **pièce PG-1097**;
- Note de S. P. Chalfen à P. Sheehy, BAT Industries, 19 février 1990, **pièce PG-1098**;
- Note d'A. L. Heard, *Co-ordination of Group R&D : Visit to Imperial Tobacco Canada, 21st-22nd June, 1990*, BAT Co., **pièce PG-1099**;
- Note de N. B. Cannar, BAT Co., à S. P. Chalfen, BAT Industries, 2 août 1990, **pièce PG-1100**;
- Télécopie de S. P. Chalfen, BAT Industries, à J.L. Mercier, ITL, 23 août 1990, **pièce PG-1101**;
- Note d'A.L. Heard, ITL, à P. Sheehy, BAT Industries, 20 août 1991, **pièce PG-1102**;
- *Document Retention Policy*, ITL, **pièce PG-1103**;
- Note de P. Dunn, ITL, 19 janvier 1994, **pièce PG-1104**.

824. Au cours de l'été 1992, plusieurs documents de recherche sont ainsi détruits afin qu'Imperial se conforme à cette politique «de rétention» de documents:

- Télécopie de S. V. Potter, conseiller juridique externe d'ITL, à S. P. Chalfen, BAT Industries, 5 juin 1992, **pièce PG-1105**;
- Télécopie de J. Meltzer à S.P. Chalfen, BAT Industries, 5 juin 1992, **pièce PG-1106**;

- Télécopie de S. V. Potter, conseiller juridique externe d'ITL, à S. P. Chalfen, BAT Industries, 30 juillet 1992, **pièce PG-1107**;
- Télécopie de S. V. Potter, conseiller juridique externe d'ITL, à S. P. Chalfen, BAT Industries, 7 août 1992, **pièce PG-1108**.

825. BAT Industries maintient son discours négateur vu l'importance des montants en litige dans les poursuites américaines:

«The Tobacco industry does not accept that the scientific case is proven which purports to link cigarette smoking with causality of various diseases. The potential size of litigation settlements particularly in the US is such that it is economically justified to fight every case to the final appeal.»

- *Tobacco Strategy Group, B.A.T. Industries Tobacco Strategy*, 12 mai 1993, **pièce PG-1109**;
- pièce PG-1050.

d) L'influence de BAT Co. sur les activités du Conseil canadien

826. BAT Co. influence le vote d'Imperial lors du choix des programmes de recherche à être subventionnés par le Conseil canadien.

827. Ses scientifiques commentent ainsi les projets de recherche soumis par des chercheurs canadiens et transmettent leurs recommandations à Imperial:

- Lettre de L. C. Laporte, ITL, à D. G. Felton, BAT Co., 14 décembre 1970, **pièce PG-1110**;
- Lettre de D. G. Felton, BAT Co., à L. C. Laporte, Conseil canadien, 23 février 1971, **pièce PG-1111**;
- Lettre de D. G. Felton, BAT Co., à L. C. Laporte, Conseil canadien, 8 mai 1972, **pièce PG-1112**;
- Lettre de D. G. Felton, BAT Co., à L. C. Laporte, Conseil canadien, 23 novembre 1973, **pièce PG-1113**;

- Lettre de R. E. Thornton, BAT Co., à R. S. Wade, ITL, 2 septembre 1982, **pièce PG-1114**;
- Lettre de R.S. Wade, ITL, à R. E. Thornton, BAT Co., 27 avril 1983, **pièce PG-1115**;
- Note de R. E. Thornton, BAT Co., 6 mai 1983, **pièce PG-1116**;
- Lettre de D. G. Felton, BAT Co., à R. S. Wade, ITL, 28 juin 1983, **pièce PG-1117**.

828. Ils rencontrent également les chercheurs subventionnés par le Conseil canadien afin de connaître leurs objectifs de recherche, leur méthodologie et leur position à l'égard du tabagisme:

- D. G. Felton, *Visit to Canada 23<sup>rd</sup> October to 18<sup>th</sup> November 1970*, BAT Co., 13 novembre 1970, **pièce PG-1118**;
- D. G. Felton, *Visit to the Royal Victoria Hospital, McGill University*, BAT Co., 13 novembre 1970, **pièce PG-1119**;
- Lettre de J. C. Hogg, Pathology Institute, à D. G. Felton, BAT Co., 20 janvier 1971, **pièce PG-1120**;
- *Visit to B-A.T. Group R. & D Centre by Dr. J. C. Hogg, Associate Professor of Pathology, McGill University, 7th May 1973*, BAT Co., 15 mai 1973, **pièce PG-1121**;
- pièce PG-82;
- D. G. Felton, *Meeting with Professor J.C. Hogg (University of British Columbia, Vancouver, Canada)*, BAT Co., 4 juin 1982, **pièce PG-1122**;
- *Visit to Canada, June 12-18th, 1983*, BAT Co., juin 1983, **pièce PG-1123**;
- R. E. Thornton, *Note to A.L.Heard, Esq, Visit to Imperial, Canada*, BAT Co., 20 février 1987, **pièce PG-1124**.

829. Compte tenu de ce qui précède, il appert clairement qu'Imperial a agi en concertation avec BAT Co. et BAT Industries ou sous leur contrôle.

830. Les actes fautifs commis par ces trois sociétés constituent donc des manquements communs qui les rendent solidairement responsables du coût des soins de santé liés au tabac.

#### **4. La concertation ou la conspiration au sein du Groupe Rothmans**

831. Carreras Rothmans est responsable envers la population du Québec pour les actes fautifs commis en concertation avec Rothmans of Pall Mall Canada Limited.

##### a) La propriété, la direction et le contrôle de la filiale canadienne

832. De 1950 à 1985, Rothmans of Pall Mall Canada Limited est détenue à 50% ou plus par des sociétés du Groupe Rothmans.

833. À la suite de la fusion de 1986 qui donne naissance à RBH, les sociétés mères successives du Groupe Rothmans détiennent une majorité des actions de la filiale canadienne Rothmans Inc., qui détient elle-même une majorité des actions de RBH.

834. Des représentants des sociétés du Groupe Rothmans siègent au conseil d'administration des filiales canadiennes ou occupent des postes au sein de leur haute direction:

- N. Bouchard et R. Lemoine, *L'usine de Rothmans, Benson & Hedges: depuis cent ans au coeur du Québec*, 1999, **pièce PG-1125**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1962*, **pièce PG-1126**;

- Rothmans of Pall Mall Canada Limited, *Annual Report 1967*, **pièce PG-1127**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1968*, **pièce PG-1128**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1977*, **pièce PG-1129**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1978*, **pièce PG-1130**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1979*, **pièce PG-1131**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1981*, **pièce PG-1132**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1982*, **pièce PG-1133**;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1984*, **pièce PG-1134**;
- Rothmans International, *Annual Report and Accounts 1977*, **pièce PG-1135**;
- Rothmans International, *Annual Report and Accounts 1978*, **pièce PG-1136**;
- Rothmans Inc., *Annual Report 1987*, **pièce PG-1137**;
- Rothmans Inc., *Annual Report 1993*, **pièce PG-1138**;
- Rothmans Inc., *Annual Report 1999*, **pièce PG-1139**.

835. À compter de 1987, Rothmans inc. gère la nouvelle entité au quotidien:

"Day to day management of the merged company will rest with Rothmans, but PM will have 40 per cent of the Board seats, first refusal rights on the majority interest, and a veto right over certain major actions."

- Note de R. W. Murray, PMI, à J. A. Murphy, Altria, 23 septembre 1986, **pièce PG-1140**.
836. Des dirigeants des sociétés du Groupe Rothmans participent, sur une base trimestrielle, au développement des plans d'affaires de RBH:
- Note de J. Heffernan, RBH, 8 septembre 1992, **pièce PG-1141** et document accompagnant cette note, *Briefing Note for RBH Shareholders*, 27 août 1992, **pièce PG-1142**.
837. La société mère du Groupe est également impliquée dans l'élaboration du programme de motivation du personnel de direction de RBH:
- Note d'E. R. Dangoor, PMI, à L. Pollak, Groupe PM, 9 juin 1993, **pièce PG-1143**.
838. RBH doit requérir l'autorisation de la société mère du Groupe avant d'implanter une nouvelle usine aux États-Unis:
- Télécopie de J. Heffernan, RBH, à B. Ryan, Rothmans International, 14 avril 1992, **pièce PG-1144**.
839. La société mère du Groupe requiert que RBH lui rende des comptes directement:
- *RBH President's Report, mid January for December 1991*, **pièce PG-1145**;
  - *RBH President's Report*, février 1993, **pièce PG-1146**;
  - *RBH President's Report for February 1994*, **pièce PG-1147**.
840. Cette reddition de compte s'étend aux enjeux législatifs et réglementaires entourant le contrôle et la publicité des produits du tabac au Canada:
- Télécopie de J. McDonald, RBH, à T. Wood, Rothmans International, 24 janvier 1990, **pièce PG-1148**;

- Télécopie de J. Heffernan, RBH, à W. Ryan, Rothmans International, 1<sup>er</sup> avril 1992, **pièce PG-1149**;
- Télécopie de J. Heffernan, RBH, à W. Ryan, Rothmans International, 19 décembre 1995, **pièce PG-1150** accompagnée du document *Selected Media Commentary on Tobacco Control Proposals*, **pièce PG-1151**;
- Télécopie de J. Heffernan, RBH, à W. Ryan, Rothmans International, 20 décembre 1995, **pièce PG-1152**;
- Télécopie de J. Heffernan, RBH, à W. Ryan, Rothmans International, 29 mars 1996, **pièce PG-1153**;
- Télécopie de J. Heffernan, RBH, à W. Ryan, Rothmans International, 15 novembre 1996, **pièce PG-1154**;
- Télécopie de J. Heffernan, RBH, à W. Ryan, Rothmans International, 21 novembre 1996, **pièce PG-1155**;
- Télécopie de J. Heffernan, RBH, à W. Ryan et J. du Plessis, Rothmans International, 14 mars 1997, **pièce PG-1156**;
- Télécopie de J. McDonald, RBH, à J. Smithson, Rothmans International, 18 janvier 1999, **pièce PG-1157**.

841. Enfin, les états financiers de Rothmans of Pall Mall Canada Limited, et ensuite de RBH, sont consolidés avec ceux de la société mère du Groupe:

- Rothmans International, *Annual Report and Accounts 1979*, **pièce PG-1158**;
- Rothmans International, *Annual Report and Accounts 1980*, **pièce PG-1159**;
- Rothmans International, *Annual Report and Accounts 1987*, **pièce PG-1160**;
- Rothmans Inc., *Annual Report 1988*, **pièce PG-1161**;
- Compagnie Financière Richemont AG, Rapport annuel 1990, **pièce PG-1162**.

b) L'action concertée entre Rothmans of Pall Mall Canada Limited, Carreras Rothmans et les autres sociétés du Groupe

842. Relativement aux enjeux de santé liés au tabagisme, les sociétés du Groupe Rothmans travaillent en concertation.

843. Les dirigeants de Rothmans of Pall Mall Canada Limited siègent au conseil d'administration de Ryeseckks p.l.c., alors Rothmans International Limited, lequel constitue l'organe central de coordination et d'établissement des politiques du Groupe:

«We are thus assured of the direct influence of the heads of the principal operating companies on central policy-making and supervision, as well as group co-ordination of the group's affairs on the basis of mutual interest, collaboration and joint responsibility.»

- Rothmans International, *Annual Report and Accounts 1976*, **pièce PG-1163**;
- pièce PG-1131.

844. De 1987 à 1993, le président de Rothmans inc. siège sur l'*International Advisory Board*, un organe créé par Ryeseckks p.l.c., alors Rothmans International p.l.c., et destiné à l'élaboration concertée («*concerted development*») de politiques et de stratégies pour le bénéfice du Groupe:

- Rothmans International, *Annual Report and Accounts 1985*, **pièce PG-1164**;
- pièce PG-1160;
- Rothmans International, *Annual Report and Accounts 1993*, **pièce PG-1165**.



845. Au sein du Groupe Rothmans, les scientifiques travaillent en collaboration, s'échangent les résultats de leurs recherches et conseillent les dirigeants par l'intermédiaire de comités:

- Rothmans of Pall Mall Canada Limited, *Annual Report 1961*, **pièce PG-1166**;
- pièce PG-1126;
- Rothmans of Pall Mall Canada Limited, *Annual Report 1965*, **pièce PG-1167**;
- Carreras Group, *Annual Report and Accounts 1968*, **pièce PG-1168**;
- pièce PG-1163.

846. De 1978 à 1986, Carreras Rothmans et sa *Research Division* sont désignées pour assumer la responsabilité des questions relatives aux enjeux de santé liés au tabagisme et la coordination de la stratégie de recherche du Groupe:

- Lettre de R. W. J. Williams, Carreras Rothmans, à A. Rodgman, RJRT, 15 août 1978, **pièce PG-1169**;
- *Visit of Dr R, W. J Williams of Carreras Rothmans to Southampton 7/8 September 1981*, BAT Co., **pièce PG-1170**.

847. La filiale canadienne du Groupe s'en remet donc à l'expertise développée par Carreras Rothmans:

- Lettre de N. Cohen, Rothmans of Pall Mall Canada Limited, à C. Seymor, Conseil canadien, 26 juillet 1982, **pièce PG-1171**;
- Télécopie de W. D. Rowland, Carreras Rothmans, à R. W. Allan, Rothmans of Pall Mall Canada Limited, 5 novembre 1984, **pièce PG-1172**.

848. De plus, Carreras Rothmans exerce une influence significative sur le choix des recherches subventionnées par le Conseil canadien et suit les travaux effectués par les chercheurs subventionnés:

- Note de D. A. Crawford à G. P. Massicotte, Macdonald, 6 décembre 1979, **pièce PG-1173**;
- Note interne de T. A. Smith, ITL, 12 septembre 1980, **pièce PG-1174**;
- Compte-rendu de la réunion du *Technical Sub-Committee of the CTMC*, 2 décembre 1980, **pièce PG-1175**;
- Lettre de P. W. Brown, Carreras Rothmans, à S. Renaud, 20 janvier 1982, **pièce PG-1176**;
- Lettre de D.A. Crawford, Macdonald, à F.C. Colby, RJRT, 31 mai 1982, **pièce PG-1177**;
- pièce PG-1171;
- Lettre de R.S. Wade, ITL, à D.G. Felton, BAT Co., 30 juillet 1982, **pièce PG-1178**;
- Lettre de D. J. Ecobichon et M. H. Bilimoria, ITL, à C. Seymor, Conseil canadien, 15 septembre 1982, **pièce PG-1179**;
- pièce PG-1123.

849. À la recherche d'appuis scientifiques lui permettant de nier que la nicotine crée la dépendance, Carreras Rothmans rencontre des scientifiques nord-américains:

- pièce PG-516.

850. Compte tenu de ce qui précède, il appert clairement que Rothmans of Pall Mall Canada Limited a agi en concertation avec Carreras Rothmans et les autres sociétés du Groupe Rothmans.

851. Les actes fautifs commis par ces sociétés constituent donc des manquements communs qui les rendent solidairement responsables du coût des soins de santé liés au tabac.

## **5. La concertation ou conspiration au sein du Groupe PM**

852. PM inc. et PMI sont responsables envers la population du Québec pour les actes fautifs commis en concertation avec Benson & Hedges, puis RBH, et pour ceux que Benson & Hedges, puis RBH, ont commis sous leur contrôle.

### a) La propriété, la direction et le contrôle de la filiale canadienne

853. De 1958 à 1986, Benson & Hedges est une filiale entièrement détenue par PM inc.

854. RBH est constituée en 1986 par la fusion de Benson & Hedges et de Rothmans of Pall Mall Limited, une société du Groupe Rothmans, et elle assume les obligations de ces deux sociétés.

855. De 1987 à 2007, Altria, la société mère du Groupe PM, possède, par l'intermédiaire de PMI, sa filiale à part entière, entre 40% et 51% de la juste valeur marchande de RBH.

856. En 2008, PMI devient une société publique et elle acquiert la totalité des actions de la défenderesse Rothmans, Benson & Hedges inc. l'année suivante.

857. PM inc., PMI et Altria exercent conjointement la direction et le contrôle de la société canadienne.

***i) La direction et le contrôle de Benson & Hedges (1958 à 1986)***

858. Dès 1958, les dirigeants de Benson & Hedges sont nommés par PM inc. et certains d'entre eux sont membres du conseil de la division PMI:
- Procès-verbal de la réunion du conseil d'administration de PM inc., 25 juin 1958, **pièce PG-1180**;
  - PM inc., *Annual Report 1961*, **pièce PG-1181**;
  - PM inc., *Annual Report 1965*, **pièce PG-1182**;
  - PM inc., *Annual Report 1967*, **pièce PG-1183**;
  - Note de G. Weissman à J. F. Cullman III, PM inc., 23 juillet 1971, **pièce PG-1184**;
  - Note de H. Maxwell à Hugh Cullman, Groupe PM, 26 novembre 1975, **pièce PG-1185**;
  - Communiqué de presse du 2 février 1976, Groupe PM, **pièce PG-1186**.
859. Benson & Hedges relève de PMI, dont le président est membre du conseil d'administration de PM inc.:
- Organigramme du 29 septembre 1976, Groupe PM, **pièce PG-1187**;
  - Organigramme du 20 mars 1984, Groupe PM, **pièce PG-1188**.
860. Le dirigeant de PMI désigné comme responsable de Benson & Hedges siège au conseil d'administration de celle-ci:
- Procès-verbal de la réunion du conseil d'administration de Benson & Hedges, 10 octobre 1984, **pièce PG-1189**.
861. En fait, les décisions concernant la filiale canadienne sont souvent prises par le conseil d'administration de PM inc., à la suite de recommandations qui lui sont soumises par PMI:

- Procès-verbal de la réunion du conseil d'administration de PM inc., 25 avril 1967, **pièce PG-1190**.
862. Les investissements de la filiale canadienne, qu'ils soient prévus aux fins d'améliorer les immeubles ou les équipements, ou aux fins d'acquérir d'autres sociétés, doivent également être autorisés par PM inc.:
- Procès-verbal de la réunion du conseil d'administration de PM inc., 26 octobre 1960, **pièce PG-1191**;
  - Procès-verbal de la réunion du conseil d'administration de PM inc., 27 octobre 1965, **pièce PG-1192**;
  - Procès-verbal de la réunion du conseil d'administration de PM inc., 25 mars 1970, **pièce PG-1193**;
  - Procès-verbal de la réunion du conseil d'administration de PM inc., 23 septembre 1970, **pièce PG-1194**;
  - Note de G. Weissman à J. F. Cullman III, PM inc., 20 janvier 1971, **pièce PG-1195**.
863. Par ailleurs, la filiale canadienne est prise en considération dans la planification financière de PM inc. et ses objectifs de croissance sont fixés par la société mère:
- *Five Year Plan 1971-1976, Summary Book*, PM inc., 1<sup>er</sup> septembre 1971, **pièce PG-1196**;
  - pièce PG-280.
864. Les résultats financiers de la filiale canadienne sont consolidés dans les états financiers de PM inc.:
- PM inc., *Annual Report 1960*, **pièce PG-1197**;
  - Lettre de F. H. Poole, Groupe PM, à J. Herrmann, Lehman Brothers, 11 août 1964, **pièce PG-1198**.

**ii) La direction et le contrôle de RBH (1986 à 2009)**

865. PM inc. et Altria décident conjointement de la fusion de 1986:

- *Discussion Paper – Zurich, Sept. 30 – Oct. 1 '84*, Groupe PM, 1984, **pièce PG-1199**;
- pièce PG-1140;
- Note de J.A. Murphy à H. Maxwell, Groupe PM, 23 septembre 1986, **pièce PG-1200**;
- Procès-verbal de la réunion du conseil d'administration d'Altria, 24 septembre 1986, **pièce PG-1201**.

866. À la suite de cette fusion, PM inc. possède un droit de veto sur certaines décisions importantes:

- pièce PG-1140 ;
- pièce PG-1144.

867. Dans les faits, la gestion de RBH s'effectue en fonction des intérêts de ses deux actionnaires, dont PMI, et ses dirigeants recherchent le consensus au conseil d'administration:

- pièce PG-1141;
- pièce PG-1142.

868. Les dirigeants de PMI participent, sur une base trimestrielle, au développement des plans d'affaires de la société canadienne:

- pièce PG-1142.

869. Les sociétés du Groupe PM continuent de nommer des administrateurs et des dirigeants de RBH, approuvent leur rémunération et élaborent à leur intention un programme de motivation:

- *Amalgamation Agreement Dated as of the 18th Day of December, 1986 between Benson & Hedges Canada Inc. and Rothmans of Pall Mall Limited, pièce PG-1202;*
- *Philip Morris Employees who are Serving as Directors or Officers of Affiliated Companies, Groupe PM, 27 février 1987, pièce PG-1203;*
- pièce PG-1143.

870. RBH doit rendre compte à ses sociétés mères qui, entre autres, suivent de près l'évolution du contexte législatif et réglementaire canadien touchant au tabac:

- pièces PG-1145 à PG-1157.

871. Altria s'implique également dans les affaires de la société canadienne, notamment par l'intermédiaire de son *Corporate Products Committee*, dont sont membres les plus hauts dirigeants d'Altria, de PM inc. et de PMI:

- Procès-verbal d'une réunion du *Corporate Products Committee*, 22 avril 1986, Groupe PM, **pièce PG-1204;**

872. Les dirigeants de PMI responsables de la supervision de RBH relèvent ultimement d'un vice-président d'Altria:

- *Organization Announcement*, 12 janvier 1990, Groupe PM, **pièce PG-1205.**

b) L'action concertée entre les sociétés du Groupe

873. RBH, PMI et PM inc. adhèrent conjointement au discours public niant l'existence d'une preuve de causalité entre le tabagisme et les maladies, et elles se concertent afin de dissimuler au public les connaissances scientifiques qui démontrent ce lien, connaissances qu'elles se partagent pourtant entre elles.

***i) L'élaboration du discours public***

874. Les sociétés du Groupe PM participent à l'élaboration du discours public de leur société canadienne, de même qu'à ses campagnes de relations publiques.

875. Quelques semaines avant la Conférence de 1963, le président de Benson & Hedges vérifie auprès du vice-président de PMI que le mémoire du Conseil canadien est conforme à la politique de relations publiques du Groupe:

➤ Lettre de R. J. Leahy, Benson & Hedges, à G. Weissman, PMI, 1<sup>er</sup> octobre 1963, **pièce PG-1206**.

876. En 1969, les conseillers juridiques de PM inc. participent à la rédaction du mémoire du Conseil canadien, qui est présenté devant le Comité Isabelle, et fournissent certains témoins experts:

➤ pièce PG-943.

➤ Lettre d'A. Holtzman, PM inc., à L. Laporte, Conseil canadien, 19 janvier 1971, **pièce PG-1207**;

➤ Lettre d'A. Holtzman, PM inc., à E. J. Jacob, Lauterstein & Lauterstein, 2 février 1971, **pièce PG-1208**.

877. Lors des audiences de ce Comité, Benson & Hedges est représentée par son président, qui est également vice-président de PMI:



- pièce PG-23;
  - PM inc., *Annual Report 1968*, **pièce PG-1209**.
878. Au cours des années 1970, PMI coordonne les relations publiques des sociétés du Groupe à l'extérieur des États-Unis en ce qui concerne les enjeux de santé liés au tabagisme:
- *Five Year Management Plan 1971-1975*, PMI, avril 1971, **pièce PG-1210**.
879. Au Canada, la stratégie de PMI consiste à développer de nouveaux moyens promotionnels afin de contrer la publicité négative et les groupes anti-tabac:
- *Five Year Management Plan 1972-1976*, PMI, juillet 1972, **pièce PG-1211**.
880. Les dirigeants et les conseillers juridiques de PMI et de PM inc. s'impliquent dans les négociations entre l'industrie canadienne et le gouvernement fédéral, notamment en ce qui a trait à l'adoption et à la modification du code volontaire de publicité:
- *Smoking and Health Research Proposals*, Conseil canadien, juillet 1973, **pièce PG-1212**;
  - Note d'A. Holtzman à H. Cullman, Groupe PM, 24 juillet 1973, **pièce PG-1213**;
  - Lettre de R. W. Murray, Benson & Hedges, à A. Holtzman, PM inc., 10 mars 1975, **pièce PG-1214**;
  - pièce PG-607;
  - *Cigarette Advertising and Promotion Code of the Canadian Tobacco Manufacturers Council*, 1975, version annotée transmise à A. Holtzman, PMI, **pièce PG-1215**;

- Note de J.E. Broen, Benson & Hedges, à A. Holtzman, PM inc., 22 août 1977, **pièce PG-1216**;
- Note de F. E. Resnik à H. Maxwell, PM inc., 21 juillet 1978, **pièce PG-1217**;
- Note de W. H. Webb, Benson & Hedges, à A. Whist, PMI, 27 février 1981, **pièce PG-1218**.

881. Ainsi, Benson & Hedges demande à PMI d'approuver la réponse que l'industrie canadienne se prépare à fournir au ministre fédéral de la Santé:

«Should you have any views on any of the points raised, I would appreciate hearing from you. The final Industry response will be sent to yourself for review before approval by Benson & Hedges, the C.T.M.C. and submission to the Government.»

- Lettre de J. E. Broen, Benson & Hedges, à H. Maxwell, PMI, 22 avril 1977, **pièce PG-1219**.

882. À cette époque, PMI participe directement à l'élaboration de la politique de relations publiques et du plan d'action de Benson & Hedges et du Conseil canadien:

- Note de S. Ward à N. Janelle, Benson & Hedges, 2 avril 1975, **pièce PG-1220**;
- Note de W. H. Webb, Benson & Hedges, à H. Maxwell, PMI, 21 juin 1978, **pièce PG-1221**;
- Lettre de D. Leckie, Benson & Hedges, à M. Covington, Groupe PM, 6 juillet 1978, **pièce PG-1222**;
- A. A. Napier, *Communications Policy for Canada, an Alternative Approach*, Groupe PM, 8 novembre 1979, **pièce PG-1223**.

883. Entre 1976 et 1980, Benson & Hedges prend part à plusieurs conférences ou réunions du Groupe PM portant sur la relation entre le tabagisme et la santé:

- Note de H. Maxwell à R.W. Murray, Groupe PM, 23 février 1976, **pièce PG-1224**;
- Lettre d'A. Holtzman, PM inc., à W.I. Campbell, Benson & Hedges, 27 mai 1976, **pièce PG-1225**;
- Note de M.W. Covington à H. Cullman, Groupe PM, 9 mai 1978, **pièce PG-1226**;
- *Sir James Wilson's Visit to Philip Morris, New-York - June 30, 1978*, Groupe PM, **pièce PG-1227**;
- Procès-verbal de la *Corporate Marketing Conference*, Groupe PM, 29 mai au 1er juin 1979, **pièce PG-1228**;
- *Philip Morris International Public Affairs Conference Agenda*, Groupe PM, 18 et 19 novembre 1980, **pièce PG-1229**.

884. Au cours des années 1980, Benson & Hedges est incitée à suivre la politique du Groupe et à entreprendre des campagnes de relations publiques dont l'objectif est d'empêcher ou de retarder toute réglementation qui imposerait des restrictions à la publicité, à la vente ou à la consommation de tabac:

- *Corporate Affairs Status Report*, PMI, 1981, **pièce PG-1230**;
- Note de C. Heide, Benson & Hedges, à A. Whist, PMI, 22 octobre 1981, **pièce PG-1231**;
- Note de H. Imam, Benson & Hedges, à L. Greher, PMI, 12 avril 1983, **pièce PG-1232**;
- *Corporate Affairs Status Report*, Groupe PM, 1983, **pièce PG-1233**;
- Note d'A. Whist, PMI, 9 février 1984, **pièce PG-1234**.

885. À la suite de la fusion de 1986, la concertation entre les sociétés du Groupe PM et RBH se poursuit, notamment en ce qui concerne les relations publiques.

886. En effet, la vice-présidente des affaires corporatives de RBH, C. von Maerestetten, est en fait une employée du Groupe PM:

- pièce PG-1203.

887. Aussi, le Groupe PM fournit à RBH de la documentation juridique et du matériel de relations publiques pour s'opposer à l'adoption de nouveaux avertissements de santé sur les paquets de cigarettes, ainsi qu'à d'autres réglementations en matière de santé publique:

- *Marketing, Management and Technical Services Agreement between Philip Morris Incorporated and Rothmans, Benson & Hedges Inc.*, 1<sup>er</sup> janvier 1987, **pièce PG-1235**;
- *Spokesperson's Guide*, PMI, avril 1990, **pièce PG-1236**;
- Note de C. R. Wall, PM inc., 28 octobre 1991, **pièce PG-1237**;
- Note de L. Pollak à M.H. Bring, PMI, 14 mars 1994, **pièce PG-1238**;
- Texte d'une présentation donnée par P. Oliver, président de l'Association des restaurateurs ontariens, 20 juin 1996, **pièce PG-1239**;
- Lettre d'A. Okoniewski, Groupe PM, à R. Wood, directrice des affaires publiques de l'Association des restaurateurs ontariens, 21 août 1996, **pièce PG-1240**;
- Note de L. Pollak à S. Parrish, PMI, 25 février 1997, **pièce PG-1241**.

888. Par ailleurs, PMI et PM inc. connaissent et approuvent la position publique défendue par RBH:

- Texte d'un discours public prononcé par J. Heffernan, RBH, 3 janvier 1995, **pièce PG-1242**.

## ***ii) Le partage des connaissances***

889. Il existe au sein du Groupe PM une collaboration constante entre les scientifiques, de même qu'un partage de l'information sur la dangerosité des produits du tabac, mais cette connaissance interne est, de façon concertée, dissimulée à la population québécoise et aux autorités publiques.
890. Depuis les années 1960, les scientifiques du Groupe PM collaborent entre eux, partagent l'information scientifique, et le centre de recherche de PM inc. offre son support technique aux filiales:
- Lettre de S. Bach, Benson & Hedges, à L. S. Harrow, PM inc., 15 février 1960, **pièce PG-1243**;
  - Lettre de J. Y. Mason, PM inc., à E. Sholte Ubing et R. J. Leahy, Benson & Hedges, 20 mars 1964, **pièce PG-1244**;
  - Lettre d'E. Sholte Ubing, Benson & Hedges, à J.Y. Mason, PM inc., 22 novembre 1965, **pièce PG-1245**;
  - *Philip Morris Research Center*, Groupe PM, 1972, **pièce PG-1246**;
  - Note de F. E. Resnik à H. Wakeham, PM inc., 3 mars 1975, **pièce PG-1247**;
  - Note de T. S. Osdene, PM inc., à C. von Maerestetten, Benson & Hedges, 12 juillet 1984, **pièce PG-1248**.
891. PM inc. et PMI collaborent au développement et à la promotion de cigarettes à faible teneur en goudron et en nicotine, alors qu'elles savent que ce type de cigarette constitue un leurre pour les consommateurs:
- Lettre de P. B. Gurvich, Benson & Hedges, à H. Maxwell, PMI, 22 novembre 1965, **pièce PG-1249**;
  - Lettre de H. Wakeham, Groupe PM, à P. B. Gurvich, Benson & Hedges, 10 décembre 1965, **pièce PG-1250**;
  - Lettre de H. Wakeham, Groupe PM, à P. B. Gurvich, Benson & Hedges, 16 décembre 1965, **pièce PG-1251**;

- Lettre de E. Sholte Ubing, Benson & Hedges, à R. Seligman, PM inc., 30 octobre 1967, **pièce PG-1252**;
  - Note de R. B. Seligman, PM inc., 31 octobre 1967, **pièce PG-1253**;
  - Lettre de R. Seligman, PM inc., à E. Sholte Ubing, Benson & Hedges, 17 novembre 1967, **pièce PG-1254**;
  - Note d'A. C. Britton, Groupe PM, 17 novembre 1967, **pièce PG-1255**;
  - Lettre de W. G. Lloyd, PM inc., à J. Pritchard, Benson & Hedges, 21 mars 1968, **pièce PG-1256**;
  - W. L. Dunn, *Project 1600, Consumer Psychology*, Groupe PM, 27 mai 1968, **pièce PG-1257**;
  - Note de W. L. Dunn à P. A. Eichorn, Groupe PM, 2 juillet 1968, **pièce PG-1258**;
  - Note de R. N. Thomson à J. S. Osmalov, 9 avril 1968, **pièce PG-1259**;
  - pièce PG-691.
892. Benson & Hedges bénéficie également de l'opinion des scientifiques du Groupe PM:
- Lettre de H. Maxwell à R. W. Murray, Groupe PM, 30 janvier 1975, **pièce PG-1260**.
893. En 1976, le vice-président *Science & Technology* de PM inc. présente aux membres du conseil d'administration de Benson & Hedges les derniers développements scientifiques dans le domaine des maladies associées au tabagisme:
- pièce PG-494.
894. Au cours des années 1980, les scientifiques de Benson & Hedges et des autres sociétés du Groupe assistent à des réunions du *Tobacco Technology*

*Group*, qui est impliqué dans la conception des cigarettes de la filiale canadienne:

- *Final Prospectus, Philip Morris World Leaf Technology Conference*, 18 au 22 octobre 1981, **pièce PG-1261**;
- Procès-verbal de la réunion du *Tobacco Technology Group*, Groupe PM, 10 juin 1982, **pièce PG-1262**;
- Procès-verbal de la réunion du *Tobacco Technology Group*, Groupe PM, 22 juin 1982, **pièce PG-1263**;
- Note de L. W. Cooper à U. Westphal, PM inc., 31 janvier 1984, **pièce PG-1264**;
- Procès-verbal de la réunion du *Tobacco Technology Group*, Groupe PM, 10 avril 1986, **pièce PG-1265**.

895. En 1984, le *Tobacco Technology Group* recommande à la filiale canadienne:

- a) de créer une nouvelle cigarette qui serait qualifiée de cigarette légère, mais qui contiendrait néanmoins un niveau considérable de goudron, étant entendu que le consommateur canadien n'a pas conscience des niveaux de goudron imprimés sur le paquet, mais qu'il choisit plutôt la cigarette légère la plus satisfaisante;
- b) de cibler, pour la cigarette "king size", les jeunes de 10 et 35 ans:
  - Note de L. Suwarna à U.R. Westphal, Benson & Hedges, 30 août 1984, **pièce PG-1266**;
  - Note de G. Black à L. Suwarna, Benson & Hedges, 30 août 1984, **pièce PG-1267**;
  - Note de J.G. Pritchard à U. Westphal, PM inc., 11 septembre 1984, **pièce PG-1268**.

896. Cette collaboration des scientifiques se poursuit après la fusion de 1986, alors que PM Inc. fournit à RBH:

- a) des services techniques, soit la technologie, l'information et la connaissance en lien avec la fabrication de cigarettes;
- b) des procédés comprenant, entre autres, la sélection de tabac afin d'obtenir les teneurs en nicotine et en goudron désirées, l'analyse des sols afin d'augmenter les teneurs, l'analyse des plantes et de leur contenu en nicotine, ainsi que l'analyse des composants chimiques de la fumée de cigarette;
- c) des conseillers:
  - pièce PG-1235;
  - pièce PG-1241;
  - pièce PG-1242;
  - Lettre de A. McClughan, RBH, à L. Cooper, PM inc., 29 mars 1990, **pièce PG-1269**;
  - Note de T. Sanders à K. Houghton, PM inc., 9 mai 1990, **pièce PG-1270**;
  - Note de C.L. Irving à D.B. Knudson, PM inc., 21 avril 1993, **pièce PG-1271**;
  - Lettre de L. Bowen, RBH, à S. Roberts, PM inc., 6 octobre 1995, pièce **pièce PG-1272**;
  - Lettre de L. Bowen, RBH, à R. Snow, PM inc., 12 octobre 1995, **pièce PG-1273**;
  - Note de C. Goodwin à L. Peuckert, Groupe PM, 28 novembre 1995, **pièce PG-1274**.

c) L'intervention directe de PM inc. au Canada



897. PM inc. produit des cigarettes vendues au Canada:

- Allocution prononcée par J. F. Cullman III, PM inc., 10 avril 1962, **pièce PG-1275**;
- Lettre de L. Suwarna, Benson & Hedges, à L. Cooper, PM inc., 1<sup>er</sup> mars 1983, **pièce PG-1276**;
- Lettre de J. Heffernan, RBH, à M. Goldberg, PMI, 25 août 1989, **pièce PG-1277**;
- M. Strauss, «Philip Morris to Withdraw Seven Cigarette Brands», *Globe & Mail*, 4 avril 1989, **pièce PG-1278**;
- Note de M. Z. DeBardleben à E. B. Sanders, PM inc., 10 août 1990, **pièce PG-1279**;
- Note de D. Assante à R. H. Cox, 15 septembre 1998, **pièce PG-1280**.

898. Par ailleurs, PM inc. octroie du financement aux scientifiques canadiens dont les travaux paraissent favorables à l'industrie, rencontre certains d'entre eux et conseille sa filiale quant au choix des recherches subventionnées par le Conseil canadien:

- pièce PG-273;
- Note de T. S. Osdene à H. Wakeham, Groupe PM, 7 novembre 1967, **pièce PG-1281**;
- pièce PG-563;
- pièce PG-565;
- pièce PG-1175.

899. Compte tenu de ce qui précède, il appert clairement que Benson & Hedges et RBH ont agi en concertation avec PM inc. et PMI ou sous leur contrôle.

900. Les actes fautifs commis par ces trois sociétés constituent donc des manquements communs qui les rendent solidairement responsables du coût des soins de santé liés au tabac.

## **6. La concertation ou conspiration au sein du Groupe RJR**

901. R.J. Reynolds Tobacco Company est responsable envers la population du Québec pour les actes fautifs commis par les sociétés auxquelles elle succède en concertation avec les sociétés auxquelles succède JTI-Macdonald Corp. et pour ceux que ces dernières ont commis sous leur contrôle.

902. RJRTI est responsable envers la population du Québec pour les actes fautifs commis en concertation avec les sociétés auxquelles succède JTI-Macdonald Corp. et pour ceux que ces sociétés ont commis sous son contrôle.

### a) La propriété, la direction et le contrôle de la filiale canadienne

903. De 1858 à 1973, Macdonald est une compagnie privée canadienne et n'est liée à aucune multinationale du tabac.

904. De 1974 à 1999, Macdonald fait partie du Groupe RJR.

905. En 1999, Macdonald est vendue à Japan Tobacco inc.

906. Dès 1974, certains dirigeants de Macdonald sont nommés par RJRT et sont choisis parmi la haute direction de RJRT, RJRTI ou RJR Industries alors la société mère du Groupe:

- «Reynolds Adds Macdonald of Canada», *RJR World*, numéro de mars-avril 1974, RJR Industries, **pièce PG-1282**;
- *RJR News*, numéro du 5 janvier 1982, Groupe RJR, **pièce PG-1283**;
- «RJR at Home», *Tobacco International*, numéro du 5 mars 1982, **pièce PG-1284**;
- Procès-verbal de la réunion du conseil d'administration de Macdonald, 18 octobre 1983, communiqué par G. S. Kishner, Macdonald, à E. A. Horrigan, RJRT, le 7 novembre 1983, **pièce PG-1285**.

907. Malgré que RJRT soit l'actionnaire unique de Macdonald, les opérations de cette dernière sont en fait dirigées par RJRTI, de qui relève le chef de la direction de la filiale canadienne:

- RJR Industries, *Annual Report 1976*, **pièce PG-1286**;
- *R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc.: Subsidiaries of R.J. Reynolds Industries, Inc.*, publié vers 1982, **pièce PG-1287**;
- RJR Nabisco, *United States Securities and Exchange Commission Form 10-K*, pour l'année se terminant le 31 décembre 1987, **pièce PG-1288**;
- RJR-Nabisco, *Annual Report 1993*, **pièce PG-1289**.

908. RJRTI élabore ainsi des plans financiers et des plans stratégiques pour Macdonald:

«Management of RJR-MI's mission depends upon a close working partnership with RJRTI who will provide global strategic leadership.»

- *RJR-Macdonald Inc. 1984 Operating Plan*, 21 septembre 1983, **pièce PG-1290**;
- Description d'emploi de R. E. Harrison, analyste à la planification financière de RJRTI, **pièce PG-1291**;

- *R.J. Reynolds International - The Americas Region - Strategic Plan (1997-2000)*, 24 avril 1997, **pièce PG-1292**;
- Lettre de H. Dancey, Macdonald, à C. Gatti, RJRTI, 15 avril 1997, **pièce PG-1293**.

909. Enfin, les résultats de Macdonald sont consolidés aux états financiers de RJR Industries:

- RJR Industries, *Annual Report 1973*, **pièce PG-1294**;
- RJR Industries, *United States Securities and Exchange Commission Form 10-K*, pour l'année se terminant le 31 décembre 1974, **pièce PG-1295**;
- RJR-Nabisco, *Annual Report 1986*, **pièce PG-1296**.

#### b) L'action concertée entre les sociétés du Groupe

910. Macdonald, RJRT et RJRTI se concertent afin de nier publiquement l'existence d'une preuve de causalité entre le tabagisme et les maladies.

911. Elles s'entendent également afin de dissimuler au public les connaissances scientifiques qu'elles se partagent entre elles et qui prouvent la dangerosité de leurs produits.

#### ***i) L'élaboration du discours public***

912. Dès l'acquisition de sa filiale Macdonald, RJRT se préoccupe de la situation, au Canada, des enjeux de santé liés au tabagisme:

- Lettre de G. D. Smith, Macdonald, à W. S. Smith, RJRT, 30 juillet 1974, **pièce PG-1297**;

- Lettre de W. S. Smith, RJRT, à G.D. Smith, Macdonald, 2 août 1974, **pièce PG-1298**;
  - pièce PG-354.
913. À compter de 1976, c'est RJRTI qui assume, pour l'extérieur des États-Unis, la coordination mondiale de la stratégie du Groupe RJR en matière de tabagisme et de santé:
- pièce PG-48.49;
  - pièce PG-340;
  - pièce PG-352.
914. En 1977, le président et chef de la direction de RJRTI et vice-président de RJR Industries précise que RJRTI doit être consultée par ses filiales pour la rédaction du code volontaire de publicité, l'élaboration des programmes de recherche et les négociations avec les autorités gouvernementales relativement aux restrictions à la publicité et aux avertissements de santé:
- pièce PG-352.
915. Il transmet par la même occasion un énoncé de principe d'ICOSI, pièce PG-352, en indiquant qu'il constitue la politique de RJRTI.
916. À cette époque, RJRT crée la *Science Information Division*, chargée de transmettre de l'information en matière de tabagisme et de santé à tout le personnel du Groupe RJR, dont celui des relations publiques:
- *The Functions and Functioning of the Science Information Division*, RJRT, **pièce PG-1299**.

917. Les employés désignés dans chaque région doivent effectuer une veille des publications à paraître afin de permettre au Groupe d'y répondre en temps opportun:

- F.G. Colby, *Functions of Smoking and Health Designees*, RJRT, **pièce PG-1300**.

918. La collaboration entre la *Science Information Division* et les personnes désignées chez Macdonald donne lieu à une abondante correspondance:

- pièce PG-1299;
- Lettre de F. Colby, RJRT, à D. Crawford, Macdonald, 3 décembre 1976, **pièce PG-1301**;
- Lettre de D. Crawford, Macdonald, à F. Colby, RJRT, 31 mars 1977, **pièce PG-1302**;
- Note de F. Colby à D. H. Piehl, RJRT, 15 septembre 1977, **pièce PG-1303**;
- Lettre de D. Crawford, Macdonald, à F. Colby, RJRT, 8 juin 1978, **pièce PG-1304**;
- Lettre de D. Crawford, Macdonald, à R. Johnson, 12 juillet 1978, **pièce PG-1305**;
- Lettre de D. Crawford, Macdonald, à F. Colby, RJRT, 22 novembre 1978, **pièce PG-1306**;
- Note de S. B. Witt, RJRT, 28 novembre 1978, **pièce PG-1307**;
- Lettre de D. Crawford, Macdonald, à F. Colby, RJRT, 4 juillet 1979, **pièce PG-1308**;
- Lettre de F. Colby, RJRT, à D. Crawford, Macdonald, 10 décembre 1979, **pièce PG-1309**.

919. Cette note, pièce PG-340, confirme que RJRTI entend assumer un rôle de leader au sein d'ICOSI et des associations nationales de fabricants de produits du tabac, dont le Conseil canadien, pour s'assurer que leurs politiques soient conformes à ses propres objectifs.

920. Elle décrit également les résultats d'une campagne menée au Québec:

«In Quebec, proposals were defeated that would have imposed a province-wide ban on public smoking, apply a differential tax based on tar levels, drastically reduce T&N content and increase taxation to finance anti-smoking education campaigns.»

921. Conformément à ce programme, la collaboration se poursuit entre RJRTI et Macdonald durant les années 1980:

- Note de F.A. Leclerc, Macdonald, à R.J. Marcotullio, RJRTI, 7 janvier 1981, **pièce PG-1310**;
- Note de F.A. Leclerc, Macdonald, à F. Colby, RJRT, 9 février 1981, **pièce PG-1311**;
- Note de F. Colby à S.B. Witt, RJRT, 21 janvier 1981, **pièce PG-1312**;
- Note de F. Colby à G.R. Di Marco, RJRT, 22 décembre 1982, **pièce PG-1313**;
- Note de R.J. Marcotullio, RJRTI, 16 mai 1985, **pièce PG-1314**.

922. D'ailleurs, les conseillers juridiques du Groupe RJR sont impliqués dans les relations publiques de Macdonald, de même que dans les affaires du Conseil canadien, notamment quant aux prises de position de l'industrie:

- Télécopie de G. P. Massicotte, Macdonald, à S. B. Witt, RJRT, 29 juin 1978, **pièce PG-1315**;
- Note de R. J. Marcotullio à S. B. Witt, RJRT, 25 juillet 1980, **pièce PG-1316**;

- pièce PG-356;
  - Note de R. J. Marcotullio à S. B. Witt, RJRT, 5 février 1981, **pièce PG-1317**;
  - Lettre de D. A. Crawford, Macdonald, à C. M. Seymor, Conseil canadien, 18 octobre 1983, **pièce PG-1318**.
923. Un programme d'éducation et d'information sur le tabagisme et la santé, élaboré par RJRTI et destiné aux employés du Groupe, est également implanté chez Macdonald:
- Lettre de R. J. Marcotullio, RJRTI, à L. W. Pullen, Macdonald, 17 juin 1981, **pièce PG-1319**.
924. En 1987, alors que le gouvernement fédéral dépose le projet de loi C-51 visant à interdire la publicité des produits du tabac, les ressources de RJRTI et de RJRT sont mises à contribution afin d'empêcher ou de retarder l'adoption de la loi:
- Note de T. G. Grivakes à P. J. Hault, Macdonald, *Preliminary Outline of Action Plan*, 27 avril 1987, **pièce PG-1320**;
  - *An Action Programme to Combat the Proposed Canadian Anti-Smoking Legislation*, Macdonald, 27 avril 1987, **pièce PG-1321**;
  - Résumé des notes prises par S. B. Witt lors de la réunion des 19 et 20 mai 1987, RJRT, **pièce PG-1322**;
  - Note de R. J. Marcotullio à P. C. Bergson et L. W. Pullen, RJRTI, 26 juin 1987, **pièce PG-1323**.
925. Le 30 novembre 1987, les développements législatifs au Canada sont à l'ordre du jour d'une réunion de RJRTI même si les représentants de Macdonald sont absents:



- Notes manuscrites prises lors de la réunion du 30 novembre 1987, Groupe RJR, **pièce PG-1324**.

926. Le 22 août 1995, RJRTI prépare la réponse à donner à la publication prochaine, au Canada, d'un rapport de Labstat portant sur les composés du tabac et de la fumée de cigarette:

- Courriel de J. F. Smith, RJRTI, 11 août 1995, **pièce PG-1325**;
- Note de J. A. Seckar à R. L. Suber, RJRT, 21 août 1996, **pièce PG-1326**.

***ii) Le partage des connaissances sur la dangerosité des produits du tabac***

927. Dès 1974, les scientifiques de RJRT et de Macdonald collaborent et partagent de l'information scientifique.

928. En mars 1974, le responsable de la recherche chez Macdonald visite le personnel et les installations de RJRT et reçoit l'information concernant les services qui pourraient lui être rendus par cette dernière:

- Rapport de G. I. Clover, RJRT, 1er avril 1974, **pièce PG-1327**.

929. RJRT participe activement au développement et à la conception des cigarettes de Macdonald.

930. Elle fournit ainsi à Macdonald les tabacs ou les additifs (*top dressings*) entrant dans la fabrication de cigarettes de marques américaines destinées au marché canadien, dont les *Winston*, les *Camel*, les *Salem* et les *Vantage*:

- Rapport mensuel de la *Tobacco Products Development Division*, RJRT, février 1974, **pièce PG-1328**.

Voir également:

- *Monthly Report Blends Development*, RJRT, 30 juin 1970, **pièce PG-1329**;
  - Note de R. H. Cundiff à S. O. Jones, RJRT, 27 mars 1974, **pièce PG-1330**;
  - Lettre de L. W. Hall, RJRT, à J. Affrick, Macdonald, 17 avril 1974, **pièce PG-1331**;
  - Note de R. H. Cundiff à S. O. Jones, RJRT, 29 mai 1974, **pièce PG-1332**;
  - Note de T. H. Eskew à R. H. Cundiff, RJRT, 19 juin 1974, **pièce PG-1333**;
  - Procès-verbal de la réunion du *Tobacco Development Status Meeting*, RJRT, 20 août 1974, **pièce PG-1334**;
  - Note de S. O. Jones à C. G. Tompson, RJRT, 28 août 1975, **pièce PG-1335**;
  - Note de T. H. Eskew à R. H. Cundiff, RJRT, 21 novembre 1975, **pièce PG-1336**;
  - Note de T. H. Eskew à R. H. Cundiff, RJRT, 23 décembre 1975, **pièce PG-1337**.
931. RJRT analyse en outre les additifs et la composition de la fumée de tabac des cigarettes produites par Macdonald, et propose à celle-ci des «saveurs» pouvant être employées dans le développement de cigarettes légères:
- *Appendix – MBO Report – June, 1974*, RJRT, **pièce PG-1338**;
  - Lettre de R. E. Gardiner à M. Mitchell, RJRT, 18 mars 1975, **pièce PG-1339**;
  - Lettre de K. W. Swicegood, RJRT, à D. Crawford, Macdonald, 11 mars 1976, **pièce PG-1340**;

- Rapport d'évaluation de la performance de D. P. Johnson, gestionnaire de la division *Tobacco Products Development*, pour l'année 1978, RJRT, **pièce PG-1341**;
  - Note de D. L. Roberts à D. H. Piehl, RJRT, 12 février 1981, **pièce PG-1342**;
  - Note de D. L. Roberts, RJRT, 2 avril 1981, **pièce PG-1343**.
932. RJRT instruit également Macdonald sur divers procédés techniques servant à augmenter le transfert de nicotine:
- Rapport d'évaluation de la performance de D. H. Piehl, gestionnaire de la division *Chemical Research*, pour l'année 1978, RJRT, **pièce PG-1344**;
  - D. E. Townsend, *The Effects of Cigarette Paper Burn Additives on Smoke Deliveries*, RJRT, 7 août 1980, **pièce PG-1345**.
933. L'information scientifique partagée concerne également l'association entre le tabagisme et le cancer du poumon:
- Note de F. Colby, RJRT, 22 juin 1978, **pièce PG-1346**.
934. Les connaissances scientifiques de RJRT sont aussi mises à contribution dans le processus d'évaluation et de sélection des recherches subventionnées par le Conseil canadien afin d'éviter que celles-ci ne soient préjudiciables à l'industrie:
- Lettre de D. A. Crawford, Macdonald, à M. Senkus, RJRT, 6 janvier 1976, **pièce PG-1347**;
  - Note de F. Colby à A. Rodgman, RJRT, 30 novembre 1978, **pièce PG-1348**;
  - Lettre de D. A. Crawford, Macdonald, à F. Colby, RJRT, 21 décembre 1978, **pièce PG-1349**;
  - Note de F. Colby à A. Rodgman, RJRT, 21 décembre 1978, **pièce PG-1350**;

- Lettre de D. A. Crawford, Macdonald, à F. Colby, RJRT, 6 avril 1979, **pièce PG-1351**;
- Lettre de D. A. Crawford, Macdonald, à F. Colby, RJRT, 23 octobre 1979, **pièce PG-1352**;
- Lettre de F. Colby, RJRT, à D.A. Crawford, Macdonald, 16 novembre 1979, **pièce PG-1353**;
- Note de F. Colby à A. Rodgman, RJRT, 11 janvier 1979, **pièce PG-1354**;
- Lettre de F. Colby, RJRT, à E.J. Jacob, 25 janvier 1979, **pièce PG-1355**;
- pièce PG-1173;
- pièce PG-1309;
- Lettre de F. Colby, RJRT, à D.A. Crawford, Macdonald, 12 février 1980, **pièce PG-1356**;
- Lettre de D. A. Crawford, Macdonald, à F. Colby, RJRT, 9 janvier 1980, **pièce PG-1357**;
- Lettre de D. A. Crawford, Macdonald, à F. Colby, RJRT, 26 mars 1980, **pièce PG-1358**;
- Note de F. Colby à S.B. Witt, RJRT, 29 septembre 1980, **pièce PG-1359**;
- Lettre de F. Colby, RJRT, à D.A. Crawford, Macdonald, 14 octobre 1980, **pièce PG-1360**;
- Lettre de D. A. Crawford, Macdonald, à F. Colby, RJRT, 3 novembre 1980, **pièce PG-1361**;
- Note de F. Colby à J. A. Giles, RJRT, 26 novembre 1980, **pièce PG-1362**;
- Note de F. Colby, RJRT, à S. B. Witt, RJRTI, 21 janvier 1981, **pièce PG-1363**;

- Lettre de D. A. Crawford, Macdonald, à F. Colby, RJRT, 27 novembre 1981, **pièce PG-1364**;
  - Lettre de D. A. Crawford, Macdonald, à F. Colby, RJRT, 8 février 1982, **pièce PG-1365**;
  - pièce PG-1177;
  - Note de F. Colby à J. A. Giles, RJRT, 30 juin 1982, **pièce PG-1366**;
  - Lettre de F. Colby, RJRT, à D. A. Crawford, Macdonald, 4 août 1982, **pièce PG-1367**;
  - Lettre de D. A. Crawford, Macdonald, à F. Colby, RJRT, 19 novembre 1982, **pièce PG-1368**.
935. RJRT insiste d'ailleurs pour que chaque membre du Conseil canadien conserve un droit de veto sur le choix des subventions octroyées:
- Lettre de R.J. Marcotullio, RJRTI, à D. A. Crawford, Macdonald, 31 mars 1983, **pièce PG-1369**.
936. Au cours de la décennie 1980, RJRT effectue pour Macdonald l'analyse de la mutagénicité des additifs qu'elle utilise et de la fumée de ses cigarettes:
- pièce PG-1343;
  - Note d'A. Rodgman à G. R. Di Marco, RJRT, 12 janvier 1983, **pièce PG-1370**;
  - Note de G. R. Di Marco à G. H. Long, RJRT, 14 janvier 1983, **pièce PG-1371**;
  - Note d'A.W. Hayes à G. R. Di Marco, RJRT, 7 août 1984, **pièce PG-1372**;
  - Note d'A.W. Hayes à G. R. Di Marco, RJRT, 24 avril 1985, **pièce PG-1373**.
937. En 1983, deux des additifs testés se révèlent être mutagènes :

- pièce PG-1370;
  - pièce PG-1371;
  - Lettre de F. N. Lane à D. L. Roberts, RJRT, 7 mars 1983, **pièce PG-1374**;
  - Rapport de la *Flavor Technology Division* de RJRT pour le second trimestre de 1984, **pièce PG-1375**.
938. RJRT transmet également à Macdonald de l'information sur la dangerosité de certains composés, tel le formaldéhyde, un cancérigène:
- Note d'A. W. Hayes à G.R. Di Marco, RJRT, 3 mai 1985, **pièce PG-1376**.
939. Par ailleurs, Macdonald a accès aux études et recherches réalisées par les scientifiques de RJRT:
- Lettre de C. Goslin, Macdonald, à D. Wilcox, RJRT, 18 avril 1984, **pièce PG-1377**.

c) L'intervention directe des compagnies du Groupe RJR au Canada

940. Des cigarettes produites par RJRT sont vendues au Canada :
- RJR Industries, *Annual Report 1970*, **pièce PG-1378**;
  - pièce PG-1287;
  - *Strategic Business Unit RJR-Macdonald Inc., Canada, 1985 Operating Plan*, 19 septembre 1984, **pièce PG-1379**;
  - *RJR-Macdonald Inc. 1989-1991 Strategic Plan*, 25 mars 1988, **pièce PG-1380**;
  - Témoignage de P. Hoult, alors vice-président de Macdonald, devant la Cour supérieure du Québec, 25 septembre 1989, **pièce PG-1381**;

- RJR-Macdonald Inc., *Company Profile and Philosophies*, vers 1997, **pièce PG-1382**.

Voir également:

- Procès verbal de la réunion du conseil d'administration de RJRT, 14 octobre 1970, **pièce PG-1383**;
- *Competitive MKTG Activities Monthly Report 1970*, RJRT, **pièce PG-1384**;
- pièce PG-1294;
- pièce PG-1278;
- A. Harman, «Canadian Market: Sweeping New Regulations», *Tobacco Reporter*, May 1989, page 35, **pièce PG-1385**.

941. Des cigarettes produites par Brown & Williamson sont vendues au Canada:

- *A Historical Survey of Levels of Selected Pesticides in Canadian Cigarette Tobaccos, Final Report*, Labstat, October 1995, **pièce PG-1386**.

942. La publicité américaine des produits de RJRT traverse la frontière et atteint le public canadien:

«There is a very significant exposure of U.S. Vantage advertising in newspapers and magazines that spills over the canadian border; therefore, many consumers are presently subjected to the Vantage campaign.»

- pièce PG-354;
- pièce PG-1286;
- Note de T. H. Eskew à R. H. Cundiff, RJRT, 27 août 1976, **pièce PG-1387**;
- *Canada, R.J. Reynolds International 1978 Annual Business Plans, Vantage*, RJRTI, **pièce PG-1388**.

943. Compte tenu de ce qui précède, il appert clairement que Macdonald a agi en concertation avec RJRT et RJRTI ou sous leur contrôle.
944. Les actes fautifs commis par ces trois sociétés constituent donc des manquements communs qui les rendent solidairement responsables du coût des soins de santé liés au tabac.

## **V. LE RECOUVREMENT DU COÛT DES SOINS DE SANTÉ**

945. Tel que déjà mentionné, la Loi prévoit que le coût des soins de santé correspond à la valeur actualisée de toutes les dépenses passées et futures, liées au tabac, assumées par le gouvernement ou l'un de ses organismes pour les services médicaux, les services hospitaliers et autres services de santé et services sociaux, y compris les services pharmaceutiques et les médicaments.
946. Ce coût des soins de santé inclut également le coût des programmes ou services, quelle qu'en soit la nature, établis ou assumés par le gouvernement ou l'un de ses organismes relativement à la maladie ou à la détérioration générale de l'état de santé associées au tabac, y compris ceux destinés à informer des risques et dangers ou à lutter contre le tabagisme.
947. Comme point de départ du calcul des dépenses passées, le gouvernement retient l'année financière 1970-1971, année d'instauration du régime universel d'assurance maladie.
948. Comme date ultime du calcul des dépenses futures, le gouvernement retient l'année financière 2029-2030 et considère les personnes qui ont commencé à fumer avant le 1<sup>er</sup> janvier 2000 en tenant compte de l'attrition de cette population.



## A. LE COÛT DES SOINS DE SANTÉ EXCLUANT LES PROGRAMMES

### 1. Les sources des dépenses en santé

#### a) Le coût assumé par le réseau de la santé et des services sociaux

949. En vertu de la *Loi sur le ministère de la Santé et des Services sociaux* (L.R.Q., c. M-19.2), le ministre de la Santé et des Services sociaux (le «**Ministre**») est chargé de la direction et de l'administration du ministère de la Santé et des Services sociaux (le «**MSSS**»), ainsi que de l'application des lois et règlements relatifs à la santé et aux services sociaux.
950. Le Ministre remplit ses fonctions en partageant ses responsabilités avec les autorités régionales créées en vertu de la *Loi sur les services de santé et les services sociaux* (L.R.Q., c. S-4.2, la «**LSSSS**») et de la *Loi sur les services de santé et les services sociaux pour les autochtones cris* (L.R.Q., c. S-5).
951. La *Loi sur l'assurance-hospitalisation* (L.R.Q., c. A-28) garantit aux résidents du Québec, depuis le 1<sup>er</sup> janvier 1961, la gratuité des services hospitaliers, tels que définis par règlement.
952. Elle fait également obligation au Ministre d'attribuer les sommes nécessaires au financement du coût de ces services, lequel est fait conformément aux dispositions de la LSSSS et de la *Loi sur les services de santé et les services sociaux pour les autochtones cris*.
953. Les établissements du réseau de la santé et des services sociaux, lesquels ont pour tâche de fournir des services de santé et des services sociaux à la

population du Québec, se répartissent en cinq grandes missions d'établissements, soit :

- a) les centres locaux de services communautaires (les «**CLSC**»);
- b) les centres hospitaliers (les «**CH**»);
- c) les centres d'hébergement et de soins de longue durée (les «**CHSLD**»);
- d) les centres de réadaptation (les «**CR**»); et
- e) les centres de protection de l'enfance et de la jeunesse (les «**CPEJ**»).

954. Pour les fins de la présente requête, seules les dépenses des CLSC et des CH sont considérées dans le calcul du coût des soins de santé au sens de la Loi.

955. La mission d'un CLSC est notamment d'offrir en première ligne des services de santé et des services sociaux courants et, à la population du territoire qu'il dessert, des services de santé et des services sociaux de nature préventive ou curative.

956. La mission d'un CH est notamment d'offrir des services diagnostiques et des soins médicaux généraux et spécialisés.

957. Dans la perspective d'améliorer les services, des Centres de santé et de services sociaux (les «**CSSS**»), nés de la fusion de CLSC, de CHSLD et, dans la majorité des cas, d'un CH, ont été mis en place et agissent, notamment, en assurant l'accessibilité, la continuité et la qualité des services destinés à la population de leur territoire.

958. Pour les CSSS, seules les dépenses associées aux missions CLSC et CH sont considérées dans le calcul du coût des soins de santé au sens de la Loi.
959. Les dépenses des établissements retenus pour les fins de la présente requête (CLSC et CH) comprennent notamment le coût des hospitalisations, des chirurgies d'un jour, des visites à l'urgence, des soins prodigués en cliniques externes (service ambulatoire), de certains services de laboratoire, ainsi que le coût des services dispensés par les CLSC, à l'exclusion des services médicaux rendus par un professionnel de la santé.
960. Les dépenses de gestion et de fonctionnement du MSSS, des autorités régionales et des établissements retenus sont prises en compte dans le calcul du coût des soins de santé au sens de la Loi.
961. La plus grande part de ces dépenses, voire même la quasi-totalité dans certains cas, sont payées à même les allocations financières qui découlent des sommes mises à la disposition des différents ministres, par l'adoption des diverses lois sur les crédits par l'Assemblée nationale, lesquelles précisent les crédits disponibles selon les ministères et les programmes visés.

b) Le coût assumé en vertu de la *Loi sur l'assurance maladie*

962. L'organisme connu sous le nom de Régie de l'assurance maladie du Québec (la «**RAMQ**») a pour fonction d'administrer et d'appliquer les programmes du régime d'assurance maladie institué par la *Loi sur l'assurance maladie* (L.R.Q., c. A-29, la «**LAM**») ainsi que tout autre programme que la loi ou le gouvernement lui confie.

963. Toute personne qui réside ou séjourne au Québec et qui est dûment inscrite à la RAMQ est assurée au sens de la LAM.
964. Sauf exceptions, la RAMQ assume le coût de tous les services que rendent les médecins participant au régime public et qui sont requis par l'état de santé d'une personne assurée.
965. La RAMQ assume aussi le coût des services dentaires et optométriques pour des clientèles déterminées, à certaines conditions, de même que le coût de certains appareils, équipements et aides notamment pour suppléer à une déficience physique.
966. Avant l'instauration du régime général d'assurance médicaments prévu à la *Loi sur l'assurance médicaments* (L.R.Q., c. 29.01), la RAMQ a en outre assumé le coût des médicaments pour certaines clientèles.
967. Finalement, en vertu de la LAM, la RAMQ doit assumer, à certaines conditions, le remboursement du coût des services assurés qui ont été fournis en dehors du Québec.
968. Pour les fins de la présente requête, l'ensemble de ces dépenses assumées par la RAMQ, qu'elles soient pour des services assurés ou pour la gestion et le fonctionnement du régime d'assurance maladie, sont prises en compte dans le calcul du coût des soins de santé au sens de la Loi.
969. Toutes ces dépenses sont payées à même les allocations financières provenant du financement public.

c) Le coût assumé en vertu de la *Loi sur l'assurance médicaments*

970. La *Loi sur l'assurance médicaments* institue, depuis 1<sup>er</sup> janvier 1997, un régime général d'assurance médicaments dont la protection est assumée notamment par la RAMQ.
971. Les personnes admissibles à la protection assumée par la RAMQ sont déterminées par la loi: il s'agit des personnes âgées de plus de 65 ans, des personnes ou familles admissibles à un programme d'aide financière de dernier recours, des personnes qui détiennent un carnet de réclamation délivré par le ministre de l'Emploi et de la Solidarité sociale et de toute autre personne qui n'est pas tenue d'adhérer à un contrat d'assurance collective.
972. La *Loi sur l'assurance médicaments* prévoit que les personnes admissibles doivent payer une franchise et assumer une proportion des coûts selon une formule prescrite.
973. Dans l'établissement du coût des soins de santé liés au tabac, la part de la RAMQ est prise en compte.
974. Toutes les dépenses assumées par la RAMQ au titre de l'assurance médicaments, qu'elles soient liées aux médicaments proprement dits ou à la gestion et au fonctionnement de ce régime, sont payées à même les allocations financières provenant du financement public.

## **2. Le calcul du coût des soins de santé excluant le coût des programmes.**

975. La réclamation du gouvernement comporte deux volets:
- a) le coût des soins de santé encouru par le gouvernement pour les fumeurs;

- b) le coût des soins de santé encouru par le gouvernement pour les nouveau-nés exposés au tabagisme de la mère pendant la grossesse.

a) Calcul pour les soins de santé des fumeurs

976. En ce qui concerne les fumeurs, anciens ou actuels, l'approche consiste à établir le coût des soins de santé liés au tabac à partir de la différence entre les coûts des fumeurs et les coûts que le gouvernement aurait encourus si ces fumeurs n'avaient jamais fumé.
977. Pour ce faire, un fichier a été constitué en combinant des données provenant d'enquêtes populationnelles, qui comprennent des questions sur les habitudes de vie, y compris les habitudes tabagiques, et des données des banques administratives du MSSS et de la RAMQ qui contiennent des informations sur les personnes assurées et leur consommation de services de santé et de services sociaux.
978. D'autres informations ont été ajoutées relativement aux visites à l'urgence, aux chirurgies d'un jour, aux services en cliniques externes (service ambulatoire), à certains services de laboratoire et d'autres services dispensés par les CLSC.
979. Les enquêtes populationnelles considérées sont les suivantes:

<b>Enquête</b>	<b>Acronyme</b>	<b>Organisme responsable</b>	<b>Description</b>
Enquête nationale sur la santé de la population	ENSP	Statistique Canada	Enquête longitudinale canadienne dont la cohorte québécoise a été sélectionnée en 1994 et dont le suivi est fait aux deux ans jusqu'en 2008 (8 cycles d'enquête se rapportant tous à la population de 1994).

Enquête sur la santé dans les collectivités canadiennes	ESCC	Statistique Canada	Enquête transversale canadienne dont le premier cycle a été réalisé en 2000-2001. Réalisée aux deux ans, la collecte est toutefois effectuée en continu depuis le cycle 2007-2008. Il y a 5 cycles d'enquête, chacun d'eux représentant le portrait de la population du Québec pour la ou les années couvertes par le cycle.
Enquête sociale et de santé	ESS	Institut de la statistique du Québec	Enquête transversale dont deux éditions ont eu lieu (1992-1993 et 1998), chacune étant le portrait de la population du Québec pour ces deux périodes.

980. Les banques administratives retenues du MSSS et de la RAMQ sont les suivantes:

Banque de données	Acronyme	Organisme responsable	Description
Maintenance et exploitation des données pour l'étude de la clientèle hospitalière	MED-ÉCHO	MSSS	Contient des renseignements personnels clinico-administratifs relatifs aux soins et aux services rendus à une personne, admise ou inscrite en chirurgie d'un jour, dans un centre hospitalier du Québec.
All Patients Refined Diagnosis Related Groups (Diagnostics Regroupés pour la Gestion, Applicables à tous les patients, Précisés et Revus)	APR-DRG	MSSS	Contient des renseignements personnels clinico-administratifs relatifs aux soins et aux services rendus à une personne, admise ou inscrite en chirurgie d'un jour, dans un centre hospitalier du Québec (extraits de MED-ÉCHO) auxquels sont ajoutés d'autres renseignements relatifs aux regroupements attribués par le

			logiciel APR-DRG, au calcul du niveau d'intensité relative des ressources utilisées (NIRRU) et autres indicateurs de gestion.
Registre des événements démographiques/ Fichier des décès	RED	MSSS	Contient des renseignements personnels sociosanitaires sur les décès de la population du Québec.
Système d'information sur la clientèle et les services des CSSS – mission CLSC	I-CLSC	MSSS	Contient des renseignements personnels et fournit des données sur les demandes de services, les usagers et les interventions concernant les services dispensés en CSSS (mission CLSC).
Programme d'exonération financière pour les services d'aide domestique	PEFSAD	MSSS	Contient des renseignements relatifs à l'aide financière accordée aux personnes admissibles pour certains services domestiques (par exemple, entretien ménager et entretien des vêtements).
Services rémunérés à l'acte (services de médecine, optométriques et dentaires)	S-MOD	RAMQ	Contient des données clinico-administratives de la RAMQ sur les services rémunérés à l'acte rendus par les médecins, les optométristes, les dentistes et chirurgiens buccaux dans le cadre du régime général d'assurance maladie.
Services pharmaceutiques	S-MED	RAMQ	Contient des données clinico-administratives de la RAMQ sur les services pharmaceutiques rendus et sur les médicaments fournis dans le cadre du régime général d'assurance médicaments (RGAM) aux personnes âgées, aux prestataires d'aide de dernier recours ainsi qu'aux adhérents.



			Contient aussi les dépenses du Programme universel de remboursement des médicaments (MTS et maladies infectieuses).
Services Hors Québec – Services professionnels et séjours hospitaliers	SHQ SAHI	RAMQ	Contient des données clinico-administratives sur le système d'assurance hospitalisation interprovinciale et sur les demandes de services rendus hors Québec (services rendus hors du Québec et facturés par les organismes provinciaux ou les établissements ou professionnels de santé ou la personne assurée ou des compagnies d'assurance). Ne comprend pas les services à l'acte ayant été rendus "hors du Québec" par les médecins ayant adhéré au régime d'assurance maladie du Québec.
Aides techniques	AT	RAMQ	Contient les données clinico-administratives relatives aux programmes d'aides techniques et financières (appareil suppléant à une déficience physique, aides auditives, appareils fournis aux stomisés permanents, prothèses mammaires externes, aides visuelles et aides oculaires).

981. Outre ces données, d'autres renseignements pertinents, notamment d'ordre financier et statistique, ont été considérés aux fins du calcul du coût des soins de santé.

982. Compte tenu des données disponibles, le coût des soins de santé liés au tabac a d'abord été calculé pour la période 1992-1993 à 2008-2009, puis, utilisant ce résultat, le coût a été estimé pour la période de 1970-1971 à 1991-1992, de même que pour la période de 2009-2010 à 2029-2030.
983. C'est ainsi qu'après analyse de toutes les données pertinentes, la réclamation du gouvernement pour le recouvrement du coût des soins de santé liés au tabac des fumeurs s'établit en valeur actualisée à [...] **60 320 185 379 \$** et se détaille comme suit:
- a) Pour la période de 1970-1971 à 1991-1992: [...] **20 709 879 037 \$**;
  - b) Pour la période de 1992-1993 à 2008-2009: **25 045 248 274 \$**;
  - c) Pour la période de 2009-2010 à 2029-2030: **14 565 058 068 \$**.

b) Calcul pour les soins de santé des nouveau-nés

984. En ce qui concerne le coût des soins de santé des nouveau-nés, l'approche consiste à attribuer au tabagisme un pourcentage du surcoût des soins prodigués aux enfants nés avant terme et à ceux présentant un retard de croissance intra-utérine pour leur âge gestationnel.
985. Pour ce faire, des données issues des banques administratives MED-ÉCHO et APR-DRG ont été utilisées avec d'autres informations statistiques et épidémiologiques.
986. Le montant réclamé couvre uniquement les frais d'hospitalisation à la naissance.

987. Cette réclamation ne tient compte d'aucun autre coût associé aux problèmes de santé liés au tabagisme que ces enfants ont connus ou connaîtront au cours de leur vie, comme les infections respiratoires, le développement de l'asthme et l'augmentation de crises et de symptômes chez les enfants asthmatiques.
988. La réclamation du gouvernement pour le recouvrement du coût des soins de santé de ces nouveau-nés s'établit en valeur actualisée pour la période de 1992-1993 à 2010-2011 à [...] **104 842 511 \$**.

## B. LE COÛT DES PROGRAMMES DU MSSS

989. À ce titre, les coûts engagés par le MSSS sont en regard du fonctionnement du Service de Lutte contre le tabagisme, des campagnes de publicité, de la coordination au niveau des autorités régionales ainsi que des subventions accordées aux organismes qui luttent contre l'usage du tabac.
990. Pour la période s'échelonnant de l'année financière 1994-1995, date d'instauration du Programme de lutte contre le tabagisme, jusqu'au 31 mars 2012, le coût des programmes s'élève en valeur actualisée à **211 145 500 \$**.
991. Par ailleurs, le MSSS prévoit faire à cet égard des dépenses de l'ordre de 24,7 millions de dollars pour les années financières 2012-2013 et 2013-2014, ce qui correspond à un montant de **24 758 300 \$** en valeur actualisée.
992. En valeur actualisée, le montant total réclamé des défenderesses solidaires à ce chapitre est de **235 903 800 \$**.

**POUR CES MOTIFS, PLAISE À LA COUR:**

CONDAMNER les défenderesses solidairement à payer au demandeur la somme de [...] 60 660 931 690 \$, avec intérêts au taux légal majoré de l'indemnité additionnelle, à compter de l'assignation;

LE TOUT AVEC DÉPENS.

Montréal, le 28 mars 2014

(S) Bernard, Roy (Justice – Québec)

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**Bernard, Roy (Justice - Québec)**  
Procureurs du demandeur  
Procureur général du Québec

# Tab G

Court File No.

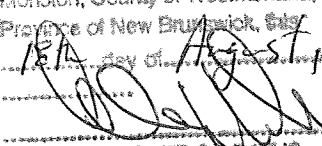
Numéro du dossier: **FC/88/08**

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF FREDERICTON

DANS LA COUR DU BANC DE LA REINE  
DU NOUVEAU-BRUNSWICK  
DIVISION DE PREMIÈRE INSTANCE  
CIRCONSCRIPTION JUDICIAIRE DE  
FREDERICTON

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF NEW BRUNSWICK,

ENTRE:  
This is Exhibit "A" referred to  
in the Affidavit of WILLIAM ANDERSON Q.C.  
sworn to before me at the City of FREDERICTON  
York, County of Westmorland,  
Province of New Brunswick, this  
13th day of August, 2008 AD.  
  
A COMMISSIONER OF OATHS  
BEING A SOLICITOR

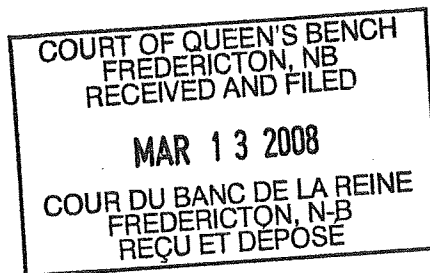
Plaintiff,

Demanderesse,

- and -

- et -

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



Defendants.

Défendeurs.

NOTICE OF ACTION  
WITH STATEMENT OF CLAIM  
ATTACHED  
(Form 16A)

AVIS DE POURSUITE  
ACCOMPAGNE D'UN EXPOSE  
DE LA DEMAND  
(Formule 16A)

TO:

DESTINATAIRES:

ROTHMANS INC.  
1500 Don Mills Road  
North York, Ontario

ROTHMANS, BENSON & HEDGES INC.  
1500 Don Mills Road  
North York, Ontario

CARRERAS ROTHMANS LIMITED  
Oxford Road  
Aylesbury  
Bucks, England

ALTRIA GROUP, INC.  
120 Park Ave.  
New York, New York

PHILIP MORRIS USA INC.  
6601 West Broad Street  
Richmond, Virginia

PHILIP MORRIS INTERNATIONAL, INC.  
Avenue de Cour 107  
Case Postale 197  
CH-1001  
Lausanne, Switzerland

JTI-MACDONALD CORP.  
5151 George Street, Suite 1600  
Halifax, Nova Scotia

R.J. REYNOLDS TOBACCO COMPANY  
830 Bear Tavern Road  
Trenton, New Jersey

R.J. REYNOLDS TOBACCO  
INTERNATIONAL, INC.,  
32 Loockerman Square, Suite L-100  
Dover, Delaware

IMPERIAL TOBACCO CANADA LIMITED  
3810 St. Antoine Street  
Montreal, Quebec

BRITISH AMERICAN TOBACCO P.L.C.  
Globe House  
4 Temple Place  
London, England

B.A.T INDUSTRIES P.L.C.  
Globe House  
4 Temple Place  
London, England

BRITISH AMERICAN TOBACCO  
(INVESTMENTS) LIMITED  
Globe House  
1 Water Street  
London, England

CANADIAN TOBACCO  
MANUFACTURERS' COUNCIL  
1808 Sherbrooke St. West  
Montreal Quebec

LEGAL PROCEEDINGS HAVE BEEN  
COMMENCED AGAINST YOU BY FILING  
THIS NOTICE OF ACTION WITH  
STATEMENT OF CLAIM ATTACHED.

If you wish to defend these proceedings,  
either you or a New Brunswick lawyer  
acting on your behalf must prepare your  
Statement of Defence in the form  
prescribed by the Rules of Court and serve  
it on the plaintiffs or plaintiffs' lawyer at the  
address shown below and with proof of  
such service, file it in this Court Office  
together with the filing fee of \$50:

(a) if you are served in New Brunswick,  
WITHIN 20 days after service on you of this  
Notice of Action With Statement of Claim  
Attached, or

PAR LE DÉPÔT DU PRÉSENT AVIS DE  
POURSUITE ACCOMPAGNÉ D'UN  
EXPOSÉ DE LA DEMANDE, UNE  
POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE  
CONTRE VOUS

Si vous désirez présenter une défense dans  
cette instance, vous même ou un avocat du  
Nouveau-Brunswick chargé de vous  
représenter devrez rédiger un exposé de  
votre défense en la forme prescrite par les  
Règles de procédure, le signifier aux  
demandeurs ou à leurs avocat à l'adresse  
indiquée ci-dessous et le déposer au greffe  
de cette Cour avec un droit de dépôt de \$50  
et une preuve de sa signification:

(a) DANS LES 20 JOURS de la signification  
que vous sera faite du présent avis de  
poursuite accompagné d'un exposé de la  
demande, si elle vous est faite au Nouveau  
Brunswick ou



(b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or

(c) if you are served anywhere else, WITHIN 60 DAYS after such service.

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

You are advised that:

(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

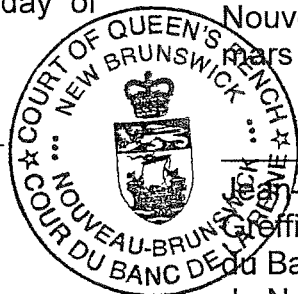
(b) the Plaintiff intends to proceed in the English and French languages; and

(c) your Statement of Defence must indicate the language in which you intend to proceed.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Jean-Marie Goguen, Clerk of the Court at Fredericton, New Brunswick, on the 13 day of March, 2008.



Jean-Marie Goguen  
Clerk of the Court  
of Queen's Bench  
of New Brunswick  
PO Box 6000  
Fredericton, NB  
E3B 5H1



(b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou

(c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ÊTRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

Sachez que:

(a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

(b) la demanderesse a l'intention d'utiliser les langues anglaise et française; et

(c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine Jean-Marie Goguen, greffier de la Cour à Fredericton, Nouveau-Brunswick ce \_\_\_\_ jour du mois de mars 2008.

Jean-Marie Goguen  
Greffier de la Cour  
du Banc de la Reine  
du Nouveau-Brunswick

Name of lawyer for plaintiff:

Philippe J. Eddie, Q.C.

Name of Firm:

Philippe J. Eddie Professional Corporation

Business Address:

37 rue Archibald  
Moncton, NB E1C 1C8

Telephone Number:

(506) 382-1917

Facsimile Number:

(506) 382-2816

Nom de l'avocat de la demanderesse:

  
Raison Societe:

Adresse professionnelle:

Numéro de telephone:

Name of Firm:

Correia & Collins

Business Address:

One Market Square, Dockside  
P.O. Box 6969, Station "A"  
Saint John, NB E2L 4S4

Telephone Number:

(506) 648-1700

Facsimile Number:

(506) 648-1701

Name of Firm:

Siskinds LLP

Business Address:

680 Waterloo Street  
London, ON N6A 3V8

Telephone Number:

(519) 672-2121

Facsimile Number:

(519) 672-6065

Name of Firm:

Fasken Martineau DuMoulin LLP

Business Address:

4200-66 Wellington Street West  
Box 20

Toronto Dominion Bank Tower

Toronto-Dominion Centre

Toronto, ON M5K 1N6

Telephone Number:

(416) 366-8381

Facsimile Number:

(416) 364-7813

Name of Firm:

Bennett Jones LLP

Business Address:

3400 One First Canadian Place

P.O. Box 130

Toronto, ON M5X 1A4

Telephone Number:

(416) 863-1200

Facsimile Number:

(416) 863-1716

Court File No.:

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

B E T W E E N :

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK,

Plaintiff,

- and -

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

Defendants.

**STATEMENT OF CLAIM**

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## I. INTRODUCTION

### A. The Plaintiff and the Nature of the Claim

1. The Plaintiff, Her Majesty the Queen in right of the Province of New Brunswick (the "Province"), brings this action against the Defendants pursuant to the provisions of section 2 of the *Tobacco Damages and Health Care Costs Recovery Act*, S.N.B. 2006. c. T-7.5 (the "Act") to recover the cost of health care benefits, namely:
  - (a) the present value of the total expenditure by the Province 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 Province 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,caused or contributed to by the tobacco-related wrongs hereinafter described.
2. Pursuant to subsection 2(1) and paragraph 2(4)(b) of the *Act*, the Province brings this action to recover, on an aggregate basis, the cost of health care benefits, provided for a population of insured persons as a result of smoking cigarettes.
3. Pursuant to subsections 2(1) and 2(2) of the *Act*, the Province brings this action as a direct and distinct action for the recovery of health care benefits caused or contributed to by a tobacco-related wrong as defined in the *Act*, and the Province does so in its own right and not on the basis of a subrogated claim.
4. The words and terms used in this Statement of Claim including, "cost of health care benefits", "disease", "exposure", "health care benefits", "insured person", "manufacture", "manufacturer", "promote", "promotion", "tobacco product", "tobacco-related disease", and "tobacco-related wrong", have the meanings ascribed to them in the *Act*.
5. Also in this Statement of Claim:
  - (a) "cigarette" includes loose tobacco intended for incorporation into a cigarette, and

- (b) "to smoke" or "smoking" means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette.

**B. The Defendants**

6. The defendant, Rothmans Inc. (formerly Rothmans of Pall Mall Canada Limited), is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, Toronto, Ontario.
7. The defendant, Rothmans Benson & Hedges Inc. (created through the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited), is a company incorporated pursuant to the laws of Canada with a registered office at 1500 Don Mills Road, North York, Ontario.
8. The defendant, Carreras Rothmans Limited, is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Oxford Road, Aylesbury, Bucks, England.
9. The defendant, Altria Group, Inc. (formerly known as Philip Morris Companies Inc.), has a registered office in New York, New York in the United States of America.
10. The defendant, Philip Morris USA Inc., is a company incorporated pursuant to the laws of Virginia and has a registered office in Richmond, Virginia in the United States of America.
11. The defendant, Philip Morris International Inc., is a company incorporated pursuant to the laws of Delaware, and has a registered office in Lausanne, Switzerland.
12. The defendant, JTI-Macdonald Corp. (formerly RJR-Macdonald Corp. and RJR-Macdonald Inc.), is a company incorporated pursuant to the laws of Nova Scotia with a registered office at 5151 George Street, Suite 1600, Halifax, Nova Scotia.

In 2004, JTI-Macdonald Corp. sought protection from the Ontario Superior Court of Justice under the *Companies Creditor Arrangements Act*, R.S.C. 1985, c. C-36. If required, the plaintiff will seek leave from the appropriate Court to proceed against JTI-Macdonald Corp. as a defendant in this action.

13. The defendant, R.J. Reynolds Tobacco Company, is a company incorporated pursuant to the laws of New Jersey and has a registered office at 830 Bear Tavern Road, Trenton, New Jersey, in the United States of America.
14. The defendant, R.J. Reynolds Tobacco International, Inc., is a company incorporated pursuant to the laws of Delaware and has a registered office at 32 Loockerman Square, Suite L-100, Dover, Delaware, in the United States of America.
15. The defendant, Imperial Tobacco Canada Limited (created through the amalgamation of, *inter alia*, Imperial Tobacco Limited and Imasco Ltd.), is a company incorporated pursuant to the laws of Canada and has a registered office at 3810 St. Antoine Street, Montreal, Quebec.
16. The defendant, British American Tobacco p.l.c., is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England.
17. The defendant, British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England.
18. The defendant, B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and Tobacco Securities Trust Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England.



19. All of the defendants described above or their predecessors in interest for whom they are in law responsible, collectively described hereinafter as the "Defendants", are "manufacturers" pursuant to the *Act* by reason of one or more of the following:
- (a) they manufacture, or have manufactured, tobacco products, including cigarettes;
  - (b) they cause, or have caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of tobacco products, including cigarettes;
  - (c) they engage in, or have engaged in, or cause, or have caused, directly or indirectly, other persons to engage in, the promotion of tobacco products, including cigarettes; or
  - (d) for one or more of the material fiscal years, each has derived at least 10% of its revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products, including cigarettes, by itself or by other persons.
20. The defendant, Canadian Tobacco Manufacturers' Council ("CTMC"), is a company incorporated pursuant to the laws of Canada and has a registered office at 1808 Sherbrooke St. West, Montreal, Quebec, and is the trade association of the Canadian tobacco industry.
21. CTMC is a manufacturer pursuant to the *Act* by reason of its having been primarily engaged in one or more of the following activities:
- (a) the advancement of the interests of manufacturers,
  - (b) the promotion of cigarettes, and
  - (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes.
22. This Notice of Action with Statement of Claim attached is being served outside New Brunswick without leave of the court pursuant to Rule 19.01 (h),(i),(n),(o) and (r) of the New Brunswick Rules of Court.

## II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN NEW BRUNSWICK

### A. Canadian Tobacco Enterprises

#### 1. The Defendant Rothmans Inc.

23. Rothmans Inc. purports to be the only Canadian owned, publicly traded tobacco company, and to have been a part of the Canadian tobacco industry for the past 100 years. Its predecessor companies include Rothmans of Pall Mall Canada Limited, which was incorporated in 1956 and changed its name in 1985 to Rothmans Inc.
24. Rothmans Inc. has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.

#### 2. The Defendant Rothmans, Benson & Hedges Inc.

25. Rothmans of Pall Mall Limited, incorporated in 1960 in the United Kingdom, acquired part of the tobacco related business of Rothmans Inc. in 1985 and engaged, until it amalgamated with Benson & Hedges (Canada) Inc. in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.
26. Benson & Hedges (Canada) Inc., incorporated in 1934, engaged, until it amalgamated with Rothmans of Pall Limited in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.
27. Rothmans, Benson & Hedges Inc., formed in 1986 by the amalgamation of Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc., has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.
28. Rothmans, Benson & Hedges Inc. manufactures and promotes cigarettes sold in New Brunswick and the rest of Canada under several brand names, including *Rothmans* and *Benson & Hedges*.

29. Rothmans, Benson & Hedges Inc. is 60% owned by Rothmans Inc. and 40% owned by FTR Holding S.A., a Swiss company, which is a subsidiary of the defendant, Altria Group, Inc., and is affiliated with the defendants, Philip Morris U.S.A. Inc. and Philip Morris International, Inc.

### **3. The Defendant JTI-Macdonald Corp.**

30. W.C. MacDonald Incorporated, which carried on business in Montreal from 1858 until incorporation in 1930, changed its name to Macdonald Tobacco Inc. in 1957 and became a wholly owned subsidiary of the defendant, R.J. Reynolds Tobacco Company, in 1973.
31. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. Also in 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald Tobacco Inc. and acquired all or substantially all of Macdonald Tobacco Inc.'s assets and continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc. In 1999, as the result of a series of mergers, the name of RJR-Macdonald Inc. was changed to RJR-Macdonald Corp. and, subsequently, to JTI-Macdonald Corp.
32. JTI-Macdonald Corp. (and its predecessor Macdonald Tobacco Inc.) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.
33. JTI-Macdonald Corp. manufactures and promotes cigarettes sold in New Brunswick and the rest of Canada under several brand names including *Export "A"* and *Vantage*.

### **4. The Defendant Imperial Tobacco Canada Limited**

34. Imperial Tobacco Company of Canada Limited, incorporated in 1912, changed its name, effective December 1, 1970, to Imasco Limited.

35. In or about 1970, part of the tobacco related business of Imasco was acquired by Imperial Tobacco Limited, (a wholly owned subsidiary).
36. In or about February, 2000, Imasco Limited amalgamated with its subsidiaries including Imperial Tobacco Limited to form Imasco Limited. In a second amalgamation, also in or about February, 2000, Imasco Limited amalgamated with its parent company, British American Tobacco p.l.c., to form Imperial Tobacco Canada Limited ("Imperial").
37. Imperial is a wholly owned subsidiary of the defendant, British American Tobacco p.l.c.
38. Imperial (and its predecessor corporations) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in New Brunswick.
39. Imperial manufactures and promotes cigarettes sold in New Brunswick and the rest of Canada under several brand names, including *Player's* and *duMaurier*.

#### **B. Multinational Tobacco Enterprises**

40. There are four multinational tobacco enterprises ("Groups") whose member companies engage directly or indirectly in the manufacture and promotion of cigarettes sold in New Brunswick and throughout the world. The four Groups are:
  - (a) the Rothmans Group;
  - (b) the Philip Morris Group;
  - (c) the RJR Group; and
  - (d) the BAT Group;
41. At all material times, cigarettes sold in New Brunswick have been manufactured and promoted by manufacturers who are, or were, members of one of the four Groups.
42. The manufacturers within each Group have had common policies relating to smoking and health. The common policies have been directed or co-ordinated by

one or more of the Defendants within each group ("Lead Companies") or their predecessors in interest for whom they are in law responsible.

43. At material times, Lead Companies of the four Groups were as follows:

<b>Group</b>	<b>Lead Companies</b>
Rothmans Group	Carreras Rothmans Limited Rothmans Inc. Rothmans, Benson & Hedges Inc.
Philip Morris Group	Altria Group, Inc. (formerly Philip Morris Companies Inc.) Philip Morris USA Inc. Philip Morris International, Inc.
RJR Group	R.J. Reynolds Tobacco Company R.J. Reynolds Tobacco International, Inc.
BAT Group	British American Tobacco p.l.c. B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and before that Tobacco Securities Trust Limited) British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited)

44. The members of the Rothmans Group have included the following companies:

- (a) Rothmans, Benson & Hedges Inc.;
- (b) Rothmans Inc.;
- (c) Rothmans of Pall Mall Limited; and
- (d) Carreras Rothmans Limited;

45. The members of the Philip Morris Group have included the following companies:

- (a) Altria Group, Inc.;
- (b) Philip Morris USA Inc.;
- (c) Philip Morris International, Inc.;
- (d) Rothmans Benson & Hedges Inc.; and

(e) Benson & Hedges (Canada) Inc.

46. The members of the RJR Group have included the following companies:

(a) R.J. Reynolds Tobacco Company;

(b) R.J. Reynolds Tobacco International, Inc.;

(c) JTI-Macdonald Corp.; and

(d) Macdonald Tobacco Inc.

47. The members of the BAT Group have included the following companies:

(a) Imasco Limited and Imperial Tobacco Limited (now Imperial Tobacco Canada Limited);

(b) B.A.T Industries p.l.c.;

(c) British American Tobacco (Investments) Limited; and

(d) British American Tobacco p.l.c.

### **III. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS**

#### **A. The Defendants' Knowledge**

48. The Defendants designed and manufactured cigarettes to deliver nicotine to smokers.

49. Nicotine is an addictive drug that affects the brain and central nervous system, the cardiovascular system, the lungs, other organs and body systems and endocrine function. Addicted smokers physically and psychologically crave nicotine.

50. Smoking causes or contributes to disease, including, but not limited to:

(a) chronic obstructive pulmonary disease and related conditions, including:

(i) emphysema;

(ii) chronic bronchitis;

(iii) chronic airways obstruction; and

(iv) asthma.

- (b) Cancer, including:
    - (i) cancer of the lung;
    - (ii) cancer of the lip, oral cavity and pharynx;
    - (iii) cancer of the larynx;
    - (iv) cancer of the esophagus;
    - (v) cancer of the bladder;
    - (vi) cancer of the kidney;
    - (vii) cancer of the pancreas; and
    - (viii) cancer of the stomach.
  - (c) circulatory system diseases, including:
    - (i) coronary heart disease;
    - (ii) pulmonary circulatory disease;
    - (iii) vascular disease; and
    - (iv) peripheral vascular disease.
  - (d) increased morbidity and general deterioration of health; and
  - (e) fetal harm.
51. The Defendants have been aware that, when smoked as intended, cigarettes:
- (a) contain substances which can cause or contribute to disease;
  - (b) produce by-products which can cause or contribute to disease; and
  - (c) cause or contribute to addiction.
52. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that smoking cigarettes could cause or contribute to disease.
53. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that the nicotine present in cigarettes is addictive. In the alternative, at all material times, the Defendants knew or ought to have known that:
- (a) nicotine is an active ingredient in cigarettes;

- (b) smokers crave nicotine; and
- (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.

**B. Deceit and Misrepresentation**

54. The Defendants owed a duty not to misrepresent the risks of smoking.
55. The Defendants, with full knowledge of the risks of addiction and disease, misrepresented the risks of smoking and, in particular, without limiting the generality of the foregoing, misrepresented that:
- (a) smoking has not been shown to cause any known diseases;
  - (b) they were not aware of any research, or any credible research, establishing a link between smoking and disease;
  - (c) many diseases shown to have been caused by smoking tobacco were in fact caused by other environmental or genetic factors;
  - (d) cigarettes are not addictive;
  - (e) smoking is merely a habit or custom as opposed to an addiction;
  - (f) they did not manipulate nicotine levels;
  - (g) they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;
  - (h) machine measurements of the tar and nicotine were representative of actual intake;
  - (i) certain of their cigarettes, such as "filter", "mild", "low tar" and "light" brands, were safer than other cigarettes;
  - (j) smoking is consistent with a healthy lifestyle; and
  - (k) the risks of smoking were less serious than they knew them to be.
56. The Defendants suppressed scientific and medical data which revealed the serious health risks of smoking.
57. The Defendants misinformed the public as to the harm of both smoking and of exposure to cigarette smoke.



58. The Defendants intended that these misrepresentations be relied upon by individuals in New Brunswick for the purpose of inducing them to start smoking, or to continue to smoke.
59. The Defendants participated in a misleading campaign to enhance their own credibility and diminish the credibility of health authorities and anti-smoking groups, for the purpose of reassuring smokers that cigarettes were not as dangerous as authorities were saying.
60. As a result of these tobacco-related wrongs, persons in New Brunswick started to, or continued to, smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco-related disease and an increased risk of tobacco-related disease.

**C. Failure to Warn**

61. At all material times the Defendants knew or ought to have known that their cigarettes, when smoked as intended, were addictive and could cause or contribute to disease, and they owed a duty of care to warn the public of the risks of smoking.
62. The Defendants breached their duty by failing to provide any warning prior to 1972, or any adequate warning thereafter, of:
  - (a) the risk of tobacco-related disease; or
  - (b) the risk of addiction to the nicotine contained in their cigarettes.
63. Any warnings that were provided were inadequate and ineffective in that they:
  - (a) failed to warn of the actual and known risks;
  - (b) were insufficient to give users, prospective users, and the public a true indication of the risks;
  - (c) were introduced for the purpose of delaying more accurate government mandated warnings; and

- (d) failed to make clear, credible, complete and current disclosure of the risks inherent in the ordinary use of their cigarettes and therefore failed to permit free and informed decisions concerning smoking.
64. The Defendants knew or ought to have known that children and adolescents in New Brunswick were smoking or might smoke their cigarettes, but failed to provide warnings sufficient to inform children of the risks.
65. The Defendants engaged in collateral marketing and promotional and public relations activities to neutralize or negate the effectiveness of the stated warnings on cigarette packaging in advertising and in warnings given by governments and other agencies concerned with public health.
66. The Defendants suppressed information regarding the risks of smoking.
67. The Defendants misinformed and misled the public about the risks of smoking.
68. As a result of these tobacco-related wrongs, persons in New Brunswick started or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco-related disease and an increased risk of tobacco-related disease.

#### **D. Promotion of Cigarettes to Children and Adolescents**

69. At all material times the Defendants owed a duty of care to children and adolescents in New Brunswick to take all reasonable measures to prevent them from starting or continuing to smoke.
70. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age.
71. The Defendants knew or ought to have known that children and adolescents in New Brunswick were smoking or might start to smoke and that it was contrary to law or public policy to sell cigarettes to children and adolescents or to promote smoking by such persons.

72. The Defendants knew or ought to have known of the risk that children and adolescents in New Brunswick who smoked their cigarettes would become addicted to cigarettes and would suffer tobacco-related disease.
73. The Defendants failed to take any measures to prevent children and adolescents from starting or continuing to smoke.
74. The Defendants targeted children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents in New Brunswick to start or continue to smoke.
75. The Defendants, in further breach of their duty, undermined government initiatives and legislation which were intended to prevent children and adolescents in New Brunswick from starting or continuing to smoke.
76. As a result of these tobacco-related wrongs, children and adolescents in New Brunswick started to or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco-related disease and an increased risk of tobacco-related disease.

**E. Negligent Design and Manufacture**

77. At all material times the Defendants owed a duty of care to design and manufacture a reasonably safe product, and to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking the cigarettes they manufactured and promoted.
78. The Defendants have breached, and continue to breach, these duties by failing to design a reasonably safe product, and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking.
79. The Defendants, in the design, manufacture and promotion of their cigarettes, created, and continue to create, an unreasonable risk of harm to the public from which they have failed to protect the public.

80. The Defendants increased the risks of smoking by manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
- (a) special blending of tobacco;
  - (b) adding nicotine or substances containing nicotine;
  - (c) introducing substances, including ammonia, to enhance the bio-availability of nicotine to smokers; and
  - (d) such further and other particulars known to the Defendants.
81. The Defendants increased the risks of smoking by adding to their cigarettes ineffective filters and by misleading the public and government agencies that these filters made smoking safer.
82. The Defendants further misled the public by misrepresenting that “mild”, “low tar” and “light” cigarettes were healthier than regular cigarettes.
83. As a result of these tobacco-related wrongs, persons in New Brunswick started to smoke or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco-related disease and an increased risk of tobacco-related disease.

**F. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations**

84. The Defendants, in their role as manufacturers of products for human use and consumption, were under legal, equitable and statutory duties to ensure that their cigarettes were reasonably safe, and they expressly or impliedly warranted that their cigarettes were reasonably safe.
85. Knowing that cigarettes were addictive and would cause and contribute to disease, the Defendants intentionally inflicted harm on persons in New Brunswick, by manufacturing, promoting and selling cigarettes, for profit and in disregard of public health.

86. The Defendants engaged in unconscionable acts or practices and exploited the vulnerabilities of children and adolescents, and persons addicted to nicotine, particulars of which include:
- (a) manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
    - (i) sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine;
    - (ii) deliberately increasing the level of nicotine through blending of tobaccos;
    - (iii) deliberately increasing the level of nicotine by adding nicotine or other substances containing nicotine;
  - (b) adding ineffective filters to cigarettes and misleading the public into believing these filters made smoking safer;
  - (c) failing to disclose to consumers the risks inherent in smoking including the risks of disease and addiction;
  - (d) engaging in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of safety warnings provided to the public;
  - (e) suppressing or concealing scientific and medical information regarding the risks of smoking;
  - (f) marketing and promoting smoking in a manner designed to mislead the public into believing that cigarettes have performance characteristics, ingredients, uses, benefits and approval that they did not have;
  - (g) using innuendo, exaggeration and ambiguity to misinform and mislead the public about the risks of smoking;
  - (h) failing to take any reasonable measures to prevent children and adolescents from starting or continuing to smoke;
  - (i) targeting children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents to start smoking or to continue to smoke;
  - (j) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that, when smoked as intended, they are addictive and inevitably cause or contribute to disease and death;

- (k) misrepresenting that:
  - (i) smoking has not been shown to cause any known diseases;
  - (ii) they were not aware of any research, or any credible research, linking smoking and disease;
  - (iii) many diseases shown to have been caused by smoking tobacco were in fact caused by other environmental or genetic factors;
  - (iv) cigarettes are not addictive;
  - (v) smoking is merely a habit or custom as opposed to an addiction;
  - (vi) they did not manipulate nicotine levels;
  - (vii) they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;
  - (viii) machine measurements of tar and nicotine were representative of actual intake;
  - (ix) certain of their cigarettes, such as "filter", "mild", "low tar" and "light" brands, were safer than other cigarettes;
  - (x) smoking is consistent with a healthy lifestyle;
  - (xi) the risks of smoking were less serious than they knew them to be;
- (l) failing to correct statements regarding the risks of smoking which they knew were incomplete or inaccurate, and, by omission or silence, thereby misrepresenting the risks of smoking;
- (m) misrepresenting the characteristics of their cigarettes without proper testing, investigation or research concerning:
  - (i) the risk of disease;
  - (ii) the risk of addiction to nicotine;
  - (iii) the feasibility of eliminating or minimizing these risks;
- (n) misrepresenting as safer products, cigarettes with filters, and mild, low tar or low nicotine tobacco, which adequate and proper testing would have revealed were ineffective to safeguard the health of smokers;
- (o) failing to make clear, credible, complete and current disclosure of the risks inherent in smoking their cigarettes;
- (p) misleading the public about the risks of smoking;

- (q) deliberately and unconscionably discrediting various testing and research which showed a link between smoking and disease and addiction; and
- (r) such further and other particulars known to the Defendants.

87. The Defendants breached their legal, equitable and statutory duties and obligations, provincially and federally, including the provisions of *Combines Investigation Act* R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act* S.C. 1968-69, chapter 38 and amendments thereto and subsequently the *Competition Act* R.C.S. 1985, chapter C-34 and amendments thereto, and statutory and regulatory obligations in the province of New Brunswick.
88. As a result of these tobacco-related wrongs, persons in New Brunswick started or continued to smoke cigarettes manufactured and promoted by the Defendants or were exposed to cigarette smoke and thereby suffered tobacco-related disease and increased risk of such disease.

#### IV. CONSPIRACY, CONCERT OF ACTION, AND COMMON DESIGN

##### A. Role of the Lead Companies

89. At various times after about 1953, in response to mounting publicity and public concern about the link between smoking and disease, some or all of the Lead Companies of the four Groups or their predecessors in interest for whom the Lead Companies are in law responsible, and some or all of the remaining Defendants, conspired, acted in concert or with a common design, to prevent the Province and persons in New Brunswick and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their actions would cause increased health care costs.
90. This conspiracy, concert of action and common design secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco Company Limited), and American Tobacco Company. These

companies, on their own behalf and on behalf of their respective Groups, agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking;
- (b) make no statement or admission that smoking caused disease;
- (c) suppress or conceal research regarding the risks of smoking; and
- (d) orchestrate a public relations program on smoking and health issues with the object of:
  - (i) promoting cigarettes;
  - (ii) protecting cigarettes from attack based upon health risks; and
  - (iii) reassuring the public that smoking was not hazardous.

91. This conspiracy, concert of action and common design was continued at secret committees, conferences and meetings involving senior personnel and through written and oral directives.

92. Between late 1953 and the early 1960s, the Lead Companies formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964 (the "CTR")), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), and the Tobacco Research Council ("TRC").

93. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, the CTR, CORESTA, the TRC and similar organizations, would objectively conduct research and gather data concerning the link between smoking and disease and would publicize the results of this research throughout the world.

94. In reality, the Lead Companies conspired with the TIRC, the CTR, CORESTA, the TRC, and similar organizations, to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Defendants intended to mislead the public and the Province,



- into believing that there was a real medical or scientific controversy about whether smoking caused addiction and disease.
95. In 1963 and 1964 the Lead Companies and some or all of the Defendants agreed to co-ordinate their research with research conducted by the TIRC in the United States, for the purpose of suppressing any findings which might indicate that cigarettes were a harmful and dangerous product.
  96. In April and September 1963, the Lead Companies agreed to develop a public relations campaign to counter the Royal College of Physicians report in England, the forthcoming Surgeon General's Report in the United States and a report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes.
  97. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease unless and until they were forced to do so by government action.
  98. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes.
  99. By the mid-1970s the Lead Companies, and some or all of the Defendants, decided that an increased international misinformation campaign was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease could lead to a "domino effect" to the detriment of the industry world-wide.
  100. As a result, in June, 1977, the Lead Companies, and some or all of the Defendants with international interests, met in England to establish the International Committee on Smoking Issues ("ICOSI").
  101. Through ICOSI, the Defendants resisted attempts by governments to provide adequate warnings about smoking and disease, and pledged to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking;
  - (b) make no statement or admission that smoking caused disease;
  - (c) suppress research regarding the risks of smoking;
  - (d) not compete with each other by making health claims with respect to their cigarettes, and thereby avoid direct or indirect admissions about the risks of smoking; and
  - (e) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring smokers, the public and authorities in New Brunswick and other jurisdictions that smoking was not hazardous.
102. In and after 1977 the members of ICOSI, including each of the Lead Companies agreed orally and in writing, to ensure that:
- (a) the members of their respective Groups, including those in Canada, would act in accordance with the ICOSI position on smoking and health, including the decision to mislead the public about the link between smoking and disease;
  - (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, CTMC, to ensure compliance in the various tobacco markets world wide;
  - (c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves; and
  - (d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.
103. In the late 1970s, the Defendants launched Operation Berkshire, which was aimed at Canada and other major markets, to further advance their campaign of misinformation and to promote smoking. Operation Berkshire was lead by both the Philip Morris Group in concert with the Rothmans Group and by the BAT Group with some or all of the Defendants.
104. In 1980, ICOSI was renamed the International Tobacco Information Centre / Centre International d'Information du Tabac - INFOTAB ("INFOTAB"). In or

before 1992 INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are hereinafter referred to collectively as "ICOSI").

105. At all times, the policies of ICOSI were identical to the policies of the NMAs including CTMC, and were presented as the policies and positions of the NMAs and their member companies so as to conceal from the public and from governments the existence of the conspiracy, concert of action and common design.
106. The Lead Companies at all times acted to ensure that manufacturers complied, and did not deviate, from the official ICOSI position on the adverse health effects of smoking.
107. At all material times, the Defendants conspired, acted in concert, and with common design, in committing tobacco-related wrongs.
108. Further particulars of the manner in which the conspiracy, concert of action or common design was entered into or continued, and of the breaches of duty committed in furtherance of the conspiracy, concert of action or common design are within the knowledge of the Defendants.

#### **B. Conspiracy and Concerted Action in Canada**

109. At all material times, the Defendants conspired, acted in concert or with common design, to prevent the Province and persons in New Brunswick and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and committed tobacco-related wrongs in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the conspiracy, concert of action or common design.
110. This conspiracy, concert of action and common design was entered into or continued at or through committees, conferences and meetings established, organized and convened by some or all of the Defendants in Canada, and

attended by their senior personnel and through written and oral directives and communications amongst some or all of them.

111. The conspiracy, concert of action and common design was continued when:
  - (a) in or about 1962, the Defendants in Canada agreed not to compete with each other by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of smoking;
  - (b) in 1963 some or all of the Defendants misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease;
  - (c) in or about 1963, some or all of the Defendants formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, and incorporated as CTMC in 1982) in order to maintain a united front on smoking and health issues (the Ad Hoc Committee on Smoking and Health, the pre-incorporation Canadian Tobacco Manufacturers' Council and CTMC are hereinafter collectively referred to as CTMC"); and
  - (d) in or about 1969, some or all of the Defendants misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.
112. Upon its formation, and at all material times thereafter, CTMC provided a means and method to continue the conspiracy, concert of action and common design and, upon its incorporation, agreed, adopted and participated in the conspiracy, concert of action and common design.
113. CTMC has lobbied governments and regulatory agencies throughout Canada since about 1963, with respect to tobacco industry matters, as well as misrepresenting the risks of smoking to the Canadian public, in accordance with the tobacco industry's position.
114. CTMC has co-ordinated, with some or all of the Defendants and international tobacco industry associations, the Canadian cigarette industry's positions on smoking and health issues.

115. In furtherance of the conspiracy, concert of action and common design, CTMC:
- (a) disseminated false and misleading information regarding the risks of smoking including making false and misleading submissions to governments;
  - (b) refused to admit that smoking caused disease;
  - (c) suppressed research regarding the risks of smoking;
  - (d) participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link between smoking and disease; and
  - (e) lobbied governments in order to delay and minimize government initiatives with respect to smoking and health.
116. At all material times, CTMC acted as the agent of some or all of the Defendants.
117. Further particulars of the manner in which the conspiracy, concert of action or common design was entered into or continued, and of the tobacco-related wrongs committed by the Defendants in Canada in furtherance of the conspiracy, concert of action or common design, are within the knowledge of the Defendants.

### **C. Joint Liability**

118. The Province pleads that the Defendants, including CTMC, are jointly and severally liable for the cost of health care benefits and relies upon the provisions of section 4 of the *Act*.
119. In the alternative, the Defendants within each Group are jointly and severally liable.

#### **1. The Rothmans Group**

120. The Rothmans Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design at or through committees, conferences and meetings established, organized, convened and attended by senior personnel of the Rothmans Group members, including those of Rothmans Inc., Rothmans,

Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Carreras Rothmans Limited, as well as those of the Philip Morris Group, and through written and oral directives and communications amongst the Rothmans Group members.

121. Carreras Rothmans Limited and affiliated companies were involved in directing or co-ordinating the Rothmans Group's common policies on smoking and health by preparing and distributing statements which set out the Rothmans Group's position on smoking and health issues.
122. Carreras Rothmans Limited and affiliated companies also were involved in directing or co-ordinating the smoking and health policies of Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc., by influencing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.
123. Further particulars of the manner in which the conspiracy, concert of action or common design was entered into or continued and of the tobacco-related wrongs committed by Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc., in furtherance of the conspiracy, concert of action or common design are within the knowledge of the Rothmans Group members.

## **2. The Philip Morris Group**

124. The Philip Morris Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design at or through committees, conferences and meetings established, organized and convened by Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc., and attended by senior personnel of the Philip Morris Group companies, including those of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., and

through written and oral directives and communications amongst the Philip Morris Group members.

125. The committees used by Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Committee on Smoking Issues and Management and the Corporate Products Committee.
126. The conferences used by Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Conference on Smoking and Health and the Corporate Affairs World Conference.
127. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. further directed or co-ordinated the Philip Morris Group's common policies on smoking and health by means of their respective Corporate Affairs and Public Affairs Departments which directed or advised various departments of the other members of the Philip Morris Group, including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., concerning the Philip Morris Group position on smoking and health issues.
128. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or co-ordinated the common policies of the Philip Morris Group on smoking and health by preparing and distributing to the members of the Philip Morris Group including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., written directives and communications including "Smoking and Health Quick Reference Guides" and "Issues Alerts". These directives and communications set out the Philip Morris Group's position on smoking and health issues to ensure that the personnel of the Philip Morris Group companies, including Rothmans, Benson & Hedges Inc., and its amalgamating company Benson & Hedges (Canada) Ltd., understood and disseminated the Philip Morris Group's position.

129. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or co-ordinated the smoking and health policies of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.
130. Further particulars of the manner in which the conspiracy, concert of action or common design was entered into or continued and of the tobacco-related wrongs committed by Rothmans, Benson & Hedges Inc., its amalgamating company Benson & Hedges (Canada) Inc., and by Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. in furtherance of the conspiracy, concert of action or common design are within the knowledge of the Philip Morris Group members.

### **3. The RJR Group**

131. The RJR Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design at or through committees, conferences and meetings established, organized and convened by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. and attended by senior personnel of the RJR Group members, including those of JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., and through written and oral directives and communications amongst the RJR Group members.
132. The meetings used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common policies on smoking and health included the Winston-Salem Smoking Issues Coordinator Meetings.
133. The conferences used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common



policies on smoking and health include the "Hound Ears" and Sawgrass conferences.

134. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc., further directed or co-ordinated the RJR Group's position on smoking and health by means of a system of reporting whereby each global "Area" had a "smoking issue designee" who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to the Manager of Science Information in the R.J. Reynolds Tobacco Company. In the case of Area II (Canada), this "designee" was, from 1974, a senior executive of Macdonald Tobacco Inc., and later of JTI-Macdonald Corp.
135. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the RJR Group's common policies on smoking and health by preparing and distributing to the members of the RJR Group, including JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., written directives and communications including an "Issues Guide". These directives and communications set out the RJR Group's position on smoking and health issues to ensure that the personnel of the RJR Group companies, including JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., understood and disseminated the RJR Group's position.
136. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the smoking and health policies of JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc. by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.
137. Further particulars of the manner in which the conspiracy, concert of action or common design was entered into or continued and of the tobacco-related wrongs committed by JTI-Macdonald Corp., its predecessor company Macdonald Tobacco Inc., and the defendant, R.J. Reynolds Tobacco Company, in

furtherance of the conspiracy, concert of action or common design are within the knowledge of the RJR Group members.

#### 4. The BAT Group

138. The BAT Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design at or through committees, conferences and meetings established, organized and convened by British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. and attended by senior personnel of the BAT Group members, including those of Imperial Tobacco Limited and Imasco Limited, and through written and oral directives and communications amongst the BAT Group members.
139. The committees used by British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., or either of them, to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board, the Tobacco Executive Committee, and the Tobacco Strategy Review Team (which later became known as the Tobacco Strategy Group).
140. The conferences used by the defendants, British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Advisory Conferences, BAT Group Research Conferences, and BAT Group Marketing Conferences. Some of these conferences took place in Canada.
141. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c. further directed or co-ordinated the BAT Group's common policies on smoking and health by preparing and distributing to the members of the BAT Group, including Imperial Tobacco Limited and Imasco Limited, written directives and communications including "Smoking Issues:

Claims and Responses", "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues", "Smoking and Health: The Unresolved Debate", "Smoking: The Scientific Controversy", "Smoking: Habit or Addiction?", and "Legal Considerations on Smoking and Health Policy". These directives and communications set out the BAT Group's position on smoking and health issues to ensure that the personnel of the BAT Group companies, including the personnel of Imperial Tobacco Limited and Imasco Limited, understood and disseminated the BAT Group's position.

142. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., further directed or co-ordinated the smoking and health policies of Imperial Tobacco Limited and Imasco Limited, by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.
143. Further particulars of the manner in which the conspiracy, concert of action or common design was entered into or continued and of the tobacco-related wrongs committed in furtherance of the conspiracy, concert of action or common design, are within the knowledge of the BAT Group members.

## V. RELIEF

144. The Province provides health care benefits for the population of insured persons who suffer tobacco-related disease or the risk of tobacco-related disease as a result of the tobacco-related wrongs committed by the Defendants and therefore claims against the Defendants, and each of them:
  - (a) the present value of the total expenditure by the Province for health care benefits provided for insured persons resulting from tobacco-related disease or the risk of tobacco-related disease, further particulars of which will be furnished as soon as they become available, pursuant to Rule 27.06(10);
  - (b) the present value of the estimated total expenditure by the Province 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, further particulars of which will be furnished as soon as they become available, pursuant to Rule 27.06 (10);

- (c) costs or, in the alternative, special or increased costs; and
- (d) such other relief as to this Honourable Court seems just.

145. The Province intends to proceed in the English and French languages.

**DATED** at Fredericton, New Brunswick, this 13<sup>th</sup> day of March, 2008.



---

Philippe J. Eddie, Q.C.  
Solicitor for the Plaintiff, Her Majesty  
the Queen in right of the Province  
of New Brunswick

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Corporation Prof. Philippe J. Eddie  
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Brunswick Square, Suite 1700  
1 Germain Street  
PO Box 6370 Saint John NB E2L 4R8

Our File: TO-319

May 16, 2008

Corporation Prof. Philippe J. Eddie  
37 rue Archibald  
Moncton, NB E1C 1C8

Correia & Collins  
One Market Square, Dockside  
Saint John, NB E2L 4S4

✓Attention: Mr. Philippe J. Eddie, Q.C.

Attention Mr. Chris M. Correia, Q.C.

Dear Sirs:

Re: **Her Majesty the Queen v. Imperial Tobacco Canada Limited**  
**Court File No.: F/C/88/08**

We have been retained as counsel for Imperial Tobacco Canada Limited in connection with the above action.

We have reviewed the circumstances surrounding the prosecution of this litigation and are of the view that there are substantial issues relating to the way in which the action has been brought which need to be resolved by the court as a preliminary matter before this action can proceed. Specifically, it appears that the contingency fee agreement entered into by the Attorney General violates the Constitution Act, 1867 amongst other rules and laws and that the external counsel retained by the Attorney General for New Brunswick are in a conflict of interest in prosecuting this action, that the U.S. law firms retained are engaged in the unauthorized practice of law in New Brunswick.

These issues to go the under-lying propriety of the current action. As a result, a motion to have these preliminary issues resolved will be the first step taken before proceeding with any other steps in the action including the filing of any defences or other motions. On that basis we will not be delivering a notice of intent to defend at this time. We understand that not all parties have yet been served with the action. In our view it would be efficient to have service completed and then proceed with this motion so that all interested parties may participate. Please confirm that this procedure is accepted and the no further steps will be taken in the proceeding without prior notice to us.

I suggest we coordinate on issues of timing and next steps to ensure an orderly process leading up to the motion and would ask that you contact me at your convenience so that we can come to terms on these issues.

Yours very truly,

Thomas G O'Neil

TGO/soc

This is Exhibit "B" referred to  
in the Affidavit of WILLIAM ANDERSON QC  
sworn to before me at the City of FREDERICTON  
Moncton, County of Westmorland, YORK  
Province of New Brunswick, this  
18th day of August, 2008 AD.  
  
A COMMISSIONER OF OATHS  
BEING A SOLICITOR

# COX & PALMER

Nova Scotia New Brunswick Prince Edward Island Newfoundland and Labrador  
www.coxandpalmer.com

June 11, 2008

**Via Facsimile: (506) 382-2816**  
**Original by Courier**

Philippe J. Eddie Law Office  
37 Archibald  
Moncton, NB  
E1C 5H8

**Attention: Philippe J. Eddie, Q.C.**

Dear Sir:

**Re: Her Majesty the Queen in Right of the Province of New Brunswick v.  
Rothmans Inc. et al. - Court File No.: F/C/88/08  
Our File No.: 5990750  
Your File No.: 10285**

Rothmans Inc. and Rothmans, Benson & Hedges Inc. will be filing a motion with respect to, among other things, the contingency fee agreement, based upon the grounds set out in Mr. O'Neil's letter of June 6<sup>th</sup>. Without prejudice to the relief to be sought in the motion, enclosed is our clients' Notice of Intent to Defend.

We understand that all parties may seek the appointment of a judge to deal with various procedural and interlocutory matters.

Kindly acknowledge receipt of this.

Yours truly,



Charles D. Whelley

CDW:kdh  
Encl.

This is Exhibit <sup>C</sup>..... referred to  
in the Affidavit of WILLIAM ANDERSON Q.C.  
sworn to before me at the City of FREDERICTON  
Moncton, County of Westmorland, YORK  
Province of New Brunswick this  
12th day of AUGUST..... A.D.  
2008  
A COMMISSIONER OF OATHS  
BEING A SOLICITOR

**Charles D. Whelley, Q.C.**  
Partner

Main Line 506 632-8900 Direct 506 633-2720  
Fax 506 632-8809 Email cwhelley@coxandpalmer.com  
One Germain Street, Suite 1500, Saint John, NB E2L 4V1  
Correspondence PO Box 1324, Saint John, NB E2L 4H8

**BINGHAM ROBINSON MACLENNAN EHRHARDT TEED**  
Barristers, Solicitors, Avocats

W. ROSS BINGHAM, Q.C.\*  
A. KENT ROBINSON  
DANIEL J. SURETTE  
GARY M. DURLING  
ANGELA J. RYAN  
KELSEY D. BINGHAM  
BRIAN M. HUNT

E. EMERSON MILLS, Q.C.  
EDWIN G. EHRHARDT, Q.C.  
RONALD J. SAVOY  
CONSTANCE GAMMON-MACLENNAN  
SYLVIE I. MICHAUD  
CÉLINE ROBICHAUD  
MICHEL J. BOUDREAU

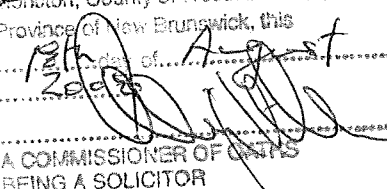
JOHN W. MACLENNAN, P.C.  
TERRENCE L. S. TEED, Q.C., P.C.  
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OUR FILE: 4012975  
YOUR FILE:

\*Also of the Nova Scotia Bar

July 21, 2008

Philippe J. Eddie, Q.C.  
Barrister & Solicitor  
37 Archibald Street  
Moncton, NB  
E1C 5H8

This is Exhibit "D" referred to  
In the Affidavit of William Anderson de  
sworn to before me at the City of FREDERICTON  
Moncton, County of YORK  
Province of New Brunswick, this  
21<sup>st</sup> day of August, 2008.  
  
A COMMISSIONER OF JUSTICE  
BEING A SOLICITOR

Dear Sir:

**Re: Her Majesty the Queen in right of the  
Province of New Brunswick v. Rothmans Inc. et al  
F/C/88/08**

Thank you for your correspondence dated July 14, 2008.

Rather than prepare a Notice of Motion at this time, I can advise that the motion of British American Tobacco p.l.c. will be brought pursuant to Rule 19.05 seeking an order dismissing or permanently staying the action against it on the basis that the courts of New Brunswick have no jurisdiction or New Brunswick is not the convenient forum. Generally, British American Tobacco p.l.c. will argue that it has no connection whatsoever to the jurisdiction or the claims made in the Statement of Claim or the unsubstantiated allegations made against it therein.

I trust this is satisfactory. The various scheduling issues can be further discussed once a case management judge is appointed.

Yours very truly,



Edwin G. Ehrhardt  
EGE/bam



# STEWART MCKELVEY

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Purdy's Wharf Tower One  
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William L. Ryan, Q.C.  
Direct Dial: 902.420.3316  
wryan@smss.com

File Reference: NS40900-1

July 23, 2008

Phillipe J. Eddie, Q.C.  
Barrister & Solicitor  
37 Archibald Street  
Moncton, NB E1C 5H8

Dear Mr. Eddie:


**Re: Her Majesty the Queen in right of the  
Province of New Brunswick v. Rothmans Inc. et al.  
F/C/88/08**

Thank you for your correspondence dated July 14, 2008.

I have also received a copy of Mr. Ehrhardt's letter to you of July 21<sup>st</sup>. Similarly, I can advise that the motion on behalf of our clients B.A.T. Industries P.L.C., British American Tobacco (Investments) Limited and Carreras Rothmans Limited will be brought pursuant to Rule 19.05 seeking an order dismissing or permanently staying the action against it on the basis that the courts of New Brunswick have no jurisdiction or New Brunswick is not the convenient forum. Generally, we will argue that our clients have no connection whatsoever to the jurisdiction or to the claims made in the Statement of Claim or the unsubstantiated allegations made against them.

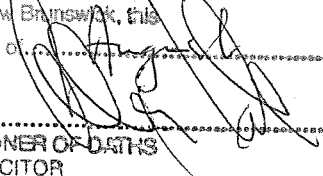
I trust this is satisfactory and that it is not necessary to prepare a formal Notice of Motion at this time. The various scheduling issues can be further discussed once a case management judge is appointed.

Yours very truly,

  
William L. Ryan

WLR/lmc

cc: Clients

This is Exhibit "....." referred to  
in the Affidavit of WILLIAM ANDERSON DE  
sworn to before me at the City of FREDERICTON  
Moncton, County of Westmorland, YORK  
Province of New Brunswick, this  
1<sup>st</sup> day of August, 2008 AD.  
  
.....  
A COMMISSIONER OF OATHS  
BEING A SOLICITOR

Court File No.: F/C/88/08

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

B E T W E E N :

**HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF NEW BRUNSWICK,**

Plaintiff,

- and -

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

Defendants.

**ACKNOWLEDGMENT OF RECEIPT CARD  
(FORM 18A)**

TO: Altria Group Inc. & Philip Morris U.S.A. Inc.  
c/o Gilbert McGloan  
**Att: Rodney J. Gillis, Q.C.**  
22 King Street  
P.O. Box 7174  
RPO Brunswick Square  
Saint John, N.B. E2L 4S6

-2-

You are served by mail with the document enclosed with this card pursuant to the Rules of Court.

You must complete and sign the acknowledgment below and mail this card within 3 days of the date you receive it or you may have to pay the costs of the Sheriff or some other person serving you personally.

**ACCEPTANCE OF SERVICE**

I hereby acknowledge receipt and accept service on behalf of the Defendants, Altria Group Inc. & Philip Morris U.S.A. Inc., of the Notice of Motion dated August 28, 2008 and of the Affidavit of William A. Anderson, Q.C. dated August 18, 2008.

**DATED** at Saint John, New Brunswick, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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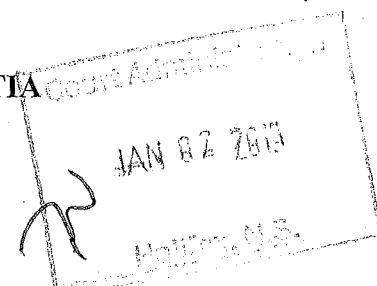
Rodney J. Gillis, Q.C.  
Solicitor for the defendants,  
Altria Group Inc. & Philip Morris U.S.A. Inc.

# Tab H

2015

HFX No. 434868

## SUPREME COURT OF NOVA SCOTIA



BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA

Plaintiff

- and -

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

Defendants

## NOTICE OF ACTION

TO: ROTHMANS, BENSON & HEDGES INC.  
1500 Don Mills Road  
North York, Ontario M3B 3L1

AND TO: ROTHMANS INC.  
1500 Don Mills Road  
North York, Ontario M3B 3L1

AND TO: ALTRIA GROUP, INC.  
6601 West Broad Street  
Richmond, Virginia 23230

AND TO: PHILIP MORRIS U.S.A. INC.  
6601 West Broad Street  
Richmond, Virginia 23230

AND TO: PHILIP MORRIS INTERNATIONAL, INC.  
120 Park Avenue, No. 6  
New York, New York 10017



- AND TO: JTI-MACDONALD CORP.  
1 Robert Speck Parkway  
Mississauga, Ontario L4Z 0A2
- AND TO: R.J. REYNOLDS TOBACCO COMPANY  
401 North Main Street  
Winston-Salem, North Carolina 27102
- AND TO: R.J. REYNOLDS TOBACCO INTERNATIONAL INC.  
401 North Main Street  
Winston-Salem, North Carolina 27101
- AND TO: IMPERIAL TOBACCO CANADA LIMITED  
3711 St. Antoine Street West  
Montreal, Quebec H4C 3P6
- AND TO: BRITISH AMERICAN TOBACCO P.L.C.  
Globe House  
4 Temple Place  
London, England WC2R 2PG
- AND TO: B.A.T INDUSTRIES P.L.C.  
Globe House  
4 Temple Place  
London, England WC2R 2PG
- AND TO: BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED  
Globe House  
1 Water Street  
London, England WC2R 3LA
- AND TO: CARRERAS ROTHMANS LIMITED  
Globe House  
1 Water Street  
London, England WC2R 3LA
- AND TO: CANADIAN TOBACCO MANUFACTURERS' COUNCIL  
6 Rue D'Angers  
Gatineau, Quebec J8T 4K1

**Action has been started against you**

The plaintiff takes action against you.

The plaintiff started the action by filing this notice with the court on the date certified by the Prothonotary.

The Plaintiff claims the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

### **Deadline for defending the action**

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

### **Judgment against you if you do not defend**

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

### **You may demand notice of steps in the action**

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

### **Rule 57 – Action for Damages Under \$100,000**

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

### **Filing and delivering documents**

Any documents you file with the court must be filed at the office of the Prothonotary, 1815 Upper Water Street, Halifax, Nova Scotia (902)424-4900.

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

### **Contact information**

The plaintiff designates the following addresses:

**McKiggan Hebert**

5670 Spring Garden Road, Suite 903  
 Halifax, Nova Scotia B3J 1H6  
 Telephone: (902) 423-2050  
 Facsimile: (902) 423-6707  
 Attention: John McKiggan, Q.C.

**Bennett Jones LLP**

3400-One First Canadian Place  
 P.O. Box 130  
 Toronto, Ontario M5X 1A4  
 Telephone: (416) 863-1200  
 Facsimile: (416) 863-1716  
 Attention: J. Leon, R. Ryan Bell and M. Eizenga

**Siskinds LLP**

680 Waterloo Street,  
 P.O. Box 2520  
 London, Ontario M6A 3V8  
 Telephone: (519) 672-2121  
 Facsimile: (519) 672-6065  
 Attention: A. Michael and J. Virtue

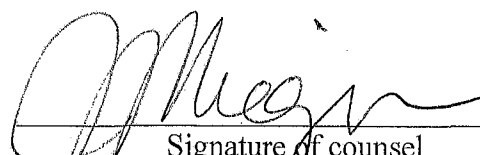
Documents delivered to this address are considered received by the plaintiff on delivery. Further contact information is available from the Prothonotary.

**Proposed place of trial**

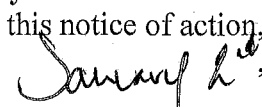
The plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

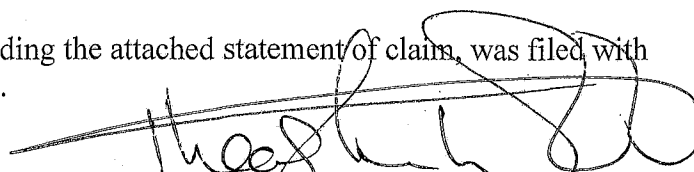
**Signature**

Signed: January 2, 2015

  
 Signature of counsel  
 John McKiggan, Q.C. as counsel for  
 Her Majesty the Queen in Right of the  
 Province of Nova Scotia

**Prothonotary's certificate**

I certify that this notice of action, including the attached statement of claim, was filed with the court on  January 2<sup>nd</sup>, 2015.

  
 Prothonotary

**Theaston White**  
 Deputy Prothonotary



2015

HFX No.

## SUPREME COURT OF NOVA SCOTIA

## BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA

Plaintiff

- and -

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

DEFENDANTS

## STATEMENT OF CLAIM

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## I. INTRODUCTION

### A. The Plaintiff and the Nature of the Claim

1. The Plaintiff, Her Majesty the Queen in Right of the Province of Nova Scotia (the "Province"), provides health-care benefits for insured persons. Pursuant to the provisions of the *Tobacco Damages and Health-care Costs Recovery Act*, S.N.S. 2005, c. 46 (the "Act"), the Province brings this action against the Defendants to recover the cost of health-care benefits, on an aggregate basis, for a population of insured persons as a result of exposure to cigarettes. In particular, the Province seeks to recover:

- (a) the present value of the total expenditure by the Province since 1953 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 Province 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,

caused or contributed to by the tobacco-related wrongs of the Defendants as described below. The Province pleads and relies on sections 3 and 4 of the Act.

2. The Province brings this action as a direct and distinct action for the recovery of health-care benefits caused or contributed to by a tobacco-related wrong as defined in the Act, and the Province does so in its own right and not on the basis of a subrogated claim. The Province pleads and relies on subsections 3(1) and 3(2) of the Act.

3. The Province also pleads and relies on the presumptions and population-based evidence provisions under the Act, including subsections 3(5), 4(2) and 4(3) and section 6.
4. The words and terms used in this Statement of Claim including, "cost of health-care benefits," "disease," "exposure," "health-care benefits," "insured person," "manufacture," "manufacturer," "market share," "promote," "promotion," "tobacco product," "tobacco-related disease" and "tobacco-related wrong," have the meanings ascribed to them in the Act. The Province pleads and relies on the provisions of section 2 of the Act.
5. Also in this Statement of Claim:
  - (a) "cigarette" includes loose tobacco intended for incorporation into a cigarette, and
  - (b) "to smoke" or "smoking" means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette and includes exposure to cigarette smoke.
6. Throughout the Statement of Claim, reference to a defendant includes both its predecessors in interest and its predecessors in name as identified in Part C. Reference to the Defendants means all of the Defendants unless otherwise stated.
7. The Defendants' tobacco-related wrongs began in 1950 and continue to the present, unless otherwise stated.

**B. Overview of the Province's Claim**

8. Each of the Defendants is a Manufacturer of tobacco products (referred to herein as cigarettes), as defined in the Act. At all times material to this action, cigarettes

manufactured and promoted by the Defendants were offered for sale in Nova Scotia. The Defendants owed a duty to persons in Nova Scotia who have been exposed or might become exposed to cigarettes.

9. By 1950, the Defendants knew or ought to have known that nicotine is addictive and that smoking cigarettes could cause or contribute to disease. By 1960, the Defendants also knew or ought to have known that exposure to cigarette smoke could cause or contribute to disease.
10. From 1950, all of the Defendants have committed tobacco-related wrongs by breaching duties and obligations to persons in Nova Scotia, particularly their duties and obligations not to misrepresent the risks of smoking, to warn of the risks of smoking, not to promote cigarettes to children and adolescents, to design and manufacture a reasonably safe product, and other common law, equitable and statutory duties and obligations, as pleaded.
11. The Defendants have breached these duties and obligations by misrepresenting the risks of smoking and exposure to smoke, failing to warn the public that cigarettes are addictive and cause disease, engaging in promotional activities to neutralize the effectiveness of the warnings on cigarette packaging, targeting children and adolescents in promotional and marketing activities, suppressing information and scientific and medical data about the risks of smoking and exposure to smoke, manipulating the level and bio-availability of nicotine in their cigarettes and misrepresenting that filters reduce the risks of smoking and that filtered, "mild," "low tar" and "light" cigarettes are healthier and safer than other cigarettes.

12. As a result of these tobacco-related wrongs, persons in Nova Scotia started or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and have suffered, or will suffer, tobacco-related disease or an increased risk of tobacco-related disease.
  
13. In committing these tobacco-related wrongs, the Defendants have conspired or acted in concert. From the 1950s, the Defendants have been members of multinational tobacco enterprises or "Groups" whose companies engaged in the manufacture and promotion of cigarettes in Nova Scotia and throughout the world. The four Groups were:
  - (a) the Philip Morris Group
  
  - (b) the R.J. Reynolds or RJR Group
  
  - (c) the British American Tobacco or BAT Group
  
  - (d) the Rothmans Group.
  
14. Beginning in 1953, these Groups agreed to disseminate false and misleading information, to suppress research and information on the risks of smoking and to orchestrate a false and misleading public relations program on smoking and health issues.
  
15. From 1953, the Defendants, both within each Group and with each other, have continued to conspire or to act in concert to distort research and to publicize misleading information about smoking and disease. They collectively agreed not to make any statement or admission that smoking caused disease and not to issue cigarette warnings unless they

were forced to do so by government action. Since 1960, the Defendants have conspired or acted in concert to misrepresent the risk of exposure to smoke.

16. Beginning in 1953, this conspiracy was implemented in Nova Scotia and throughout Canada through the defendants Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited, Rothmans Inc., and the Canadian Tobacco Manufacturers' Council.
17. The Defendants have conspired or acted in concert to prevent the Province and persons in Nova Scotia from acquiring knowledge of the harmful and addictive properties of cigarettes and in committing tobacco-related wrongs.
18. Particulars of the Province's claim are provided below.

**C. The Defendants**

19. In 1950 and for several decades thereafter, the four tobacco Groups were the Philip Morris Group, the RJR Group, the BAT Group and the Rothmans Group. Within each Group, certain companies (referred to herein as the Lead Companies) were responsible for the direction, control, coordination and implementation of the common policies on smoking and health described below.

**(i) The Philip Morris Group**

**1. Altria Group, Inc.**

20. The defendant Altria Group, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in



the United States of America. Altria Group, Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Companies Inc. Altria Group, Inc. is a Lead Company of the Philip Morris Group.

**2. Philip Morris U.S.A. Inc.**

21. The defendant Philip Morris U.S.A. Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in the United States of America. Philip Morris U.S.A. Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Incorporated. Philip Morris U.S.A. Inc. is a Lead Company of the Philip Morris Group.

**3. Philip Morris International, Inc.**

22. The defendant Philip Morris International, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 120 Park Avenue, New York, New York, in the United States of America. Philip Morris International, Inc. is responsible in law for the actions and conduct of its predecessor in interest, Philip Morris Overseas, a division of Philip Morris Incorporated. In 1987, Philip Morris International, Inc. was incorporated as a subsidiary of Altria Group, Inc. Philip Morris International, Inc. remained a subsidiary of Altria Group, Inc. until 2008. Philip Morris International, Inc. is a Lead Company of the Philip Morris Group.

**4. Rothmans, Benson & Hedges Inc.**

23. The defendant Rothmans, Benson & Hedges Inc. is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, North York,

Ontario. Rothmans, Benson & Hedges Inc. is responsible in law for the actions and conduct of its predecessors in interest, Benson & Hedges (Canada) Limited, Benson & Hedges (Canada) Inc., and Rothmans of Pall Mall Limited.

24. Benson & Hedges (Canada) Limited was incorporated in 1934. In 1958, Benson & Hedges (Canada) Limited became a subsidiary of Philip Morris International, Inc. and an integral part of the Philip Morris Group. In 1979, Benson & Hedges (Canada) Limited changed its name to Benson & Hedges (Canada) Inc.
25. Rothmans, Benson & Hedges Inc. was formed in 1986 by the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited. In 2009, Rothmans, Benson & Hedges Inc. and the defendant Rothmans Inc. amalgamated and continued to operate as Rothmans, Benson & Hedges Inc. Rothmans, Benson & Hedges Inc. is a wholly owned subsidiary of Philip Morris International, Inc.

**5. The Philip Morris Group Lead Companies Control and Direct Rothmans, Benson & Hedges Inc.**

26. At all times material to this action, the Canadian company, Rothmans, Benson & Hedges Inc., has been controlled and directed by the Lead Companies of the Philip Morris Group. The control and direction by Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. has extended to the manufacture and promotion of their cigarettes.
27. The means by which the Philip Morris Group Lead Companies have exercised control and direction include:

- i. Overseeing board meetings of Rothmans, Benson & Hedges Inc.
- ii. Placing board members of the Lead Companies on the board of directors of Rothmans, Benson & Hedges Inc.
- iii. Placing senior executives of the Lead Companies as senior executives of Rothmans, Benson & Hedges Inc.
- iv. Providing technical expertise, smoking and health materials, financial support and direction to Rothmans, Benson & Hedges Inc., including information on the relationship between smoking and health and technical knowledge for the manufacture of cigarettes, the levels of tar and nicotine and the type of tobacco to be used
- v. Organizing Philip Morris Group smoking and health conferences to set common policies for key tobacco companies in the Philip Morris Group, including Rothmans, Benson & Hedges Inc.
- vi. Developing and implementing Philip Morris Group positions and policies through committees, including the Corporate Issues Management Committee, the Corporate Products Committee and the Committee on Smoking Issues and Management
- vii. Creating a Public Affairs branch designed to manage smoking and health issues and government relations
- viii. Orchestrating marketing and promotional campaigns

- ix. Approving the deployment of funds for subsidiary operations, research into smoking and health, the promotion of cigarettes and smoker reassurance campaigns.
28. The control and direction by the Lead Companies of the Philip Morris Group have involved the implementation of the Philip Morris Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Philip Morris Group has maintained a policy that members of the Philip Morris Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the Philip Morris Group was to create doubt and controversy regarding the adverse health consequences of smoking and to defeat or delay anti-smoking legislation that would impose restrictions on the formulation, marketing, sale or use of cigarettes.
  29. From 1960, it has been the Philip Morris Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
  30. The Lead Companies of the Philip Morris Group have communicated and directed these policies for Rothmans, Benson & Hedges Inc. by a variety of means, including:
    - i. Establishing directives and communications such as "Smoking and Health Quick Reference Guides" and "Issues Alerts" to the Regions, including Canada
    - ii. Providing training, technical expertise and support
    - iii. Convening conferences, including the Conference on Smoking and Health and the Corporate Affairs World Conference

- iv. Forming committees, such as the Committee on Smoking Issues Policy and Management and the Scientific Research and Review Committee for Worldwide Tobacco
  - v. Establishing Corporate Affairs and Public Affairs departments of the Lead Companies
  - vi. Conspiring or acting in concert as particularized in Part IV below.
31. These common policies of the Philip Morris Group have continued notwithstanding changes in the corporate structure of the Philip Morris Group. These common policies on smoking and health in the Philip Morris Group have been maintained in Canada under the control and direction of Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. from 1950 to the present, such that these defendants are responsible in law for the Philip Morris Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
32. In particular, the Province states that:
- i. By reason of the facts pleaded, Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
  - ii. Rothmans, Benson & Hedges Inc. has acted as agent for Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada

- iii. As described in Part IV, Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**6. The Philip Morris Group Defendants are Manufacturers under the Act**

33. Each of Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. (collectively, "the Philip Morris Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the Philip Morris Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the Philip Morris Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the Philip Morris Defendants derives at least ten percent of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
- iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the Philip Morris Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants,

associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

34. From 1950 and continuing to the present, cigarettes manufactured or promoted by the Philip Morris Defendants have been offered for sale in Nova Scotia. The brand names of the cigarettes of the Philip Morris Defendants offered for sale in Nova Scotia and the rest of Canada include *Benson & Hedges*, *Belvedere*, *Marlboro*, *Marlboro Lights*, *Rothmans*, *Alpine* and *Parliament*.

(ii) **The RJR Group**

1. **R.J. Reynolds Tobacco Company**

35. The defendant R.J. Reynolds Tobacco Company is a company incorporated pursuant to the laws of North Carolina and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco Company is a Lead Company of the RJR Group.
36. R.J. Reynolds Tobacco Company was incorporated in 1922. In 2004, the U.S. assets, liabilities and operations of R.J. Reynolds Tobacco Company (at the time, incorporated pursuant to the laws of New Jersey) were combined with those of Brown & Williamson Tobacco Corporation, owned by the defendant, British American Tobacco p.l.c. Concurrent with the completion of the business combination, R.J. Reynolds Tobacco Company became a North Carolina corporation. Its principal place of business continued to be North Carolina. For greater certainty, the Province pleads that R.J. Reynolds Tobacco Company (incorporated in North Carolina) is responsible in law for the actions

and conduct of its predecessor in interest and name, R.J. Reynolds Tobacco Company (incorporated in New Jersey).

**2. R.J. Reynolds Tobacco International, Inc.**

37. The defendant R.J. Reynolds Tobacco International, Inc. is a company incorporated pursuant to the laws of Delaware and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco International, Inc. is a Lead Company of the RJR Group.

**3. JTI-Macdonald Corp.**

38. The defendant JTI-Macdonald Corp. is a company formed by continuance pursuant to the laws of Canada and has a registered office at 1 Robert Speck Parkway, Mississauga, Ontario. JTI-Macdonald Corp. is responsible in law for the actions and conduct of its predecessors in interest, RJR-Macdonald Corp., RJR-Macdonald Inc. and Macdonald Tobacco Inc.
39. W.C. Macdonald Incorporated was incorporated in 1930 and changed its name to Macdonald Tobacco Inc. in 1957. In 1970, Macdonald Tobacco Inc. became the exclusive Canadian distributor of the cigarette brands of R.J. Reynolds Tobacco Company referred to in paragraph 50. Macdonald Tobacco Inc. became a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1974.
40. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. In 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald



Tobacco Inc. and acquired all or substantially all of Macdonald Tobacco Inc.'s assets and continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc.

41. In 1999, RJR-Macdonald Inc. amalgamated with 3027221 Nova Scotia Company and continued as RJR-Macdonald Corp. JTI-Macdonald Corp. was created in 1999 as a result of an amalgamation between RJR-Macdonald Corp. and JT-Nova Scotia Corporation.

**4. The RJR Group Lead Companies Control and Direct JTI-Macdonald Corp.**

42. At all times material to this action, the Canadian company, JTI-Macdonald Corp., has been controlled and directed by the Lead Companies of the RJR Group. The control and direction by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. has extended to the manufacture and promotion of their cigarettes.
43. The means by which the RJR Lead Companies have exercised control and direction include:
- i. Developing a reporting system whereby each global "Area," including Canada as Area II, had a smoking issue designee who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to R.J. Reynolds Tobacco Company's Manager of Science Information
  - ii. Convening meetings such as the Winston-Salem Smoking Issues Coordinator Meetings

- iii. Developing and implementing positions and policies such as the "Issues Guide" to direct and control the activities of the RJR Group's subsidiaries, including JTI-Macdonald Corp.
  - iv. Placing senior executives of the Lead Companies as senior executives of JTI-Macdonald Corp.
  - v. Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department
  - vi. Providing technical expertise, including information and knowledge on the manufacture of cigarettes, the use of substitutes and additives, the use of pH controls, the appropriate levels of tar and nicotine and the type and mixture of tobacco used in the manufacture of cigarettes (
  - vii. Providing cigarettes and cigarette samples made by the Lead Companies to JTI-Macdonald Corp. for sale in Canada, including Nova Scotia
  - viii. Maintaining a veto over research funding by the Canadian Tobacco Manufacturers' Council.
44. The control and direction by the Lead Companies of the RJR Group have involved the implementation of the RJR Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the RJR Group has maintained a policy that members of the RJR Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. This policy included the creation of an action plan to respond to health and smoking

issues by distributing information creating a scientific controversy surrounding smoking-related disease and by countering anti-smoking groups and legislation.

45. From 1960, it has been the RJR Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
46. The Lead Companies of the RJR Group have communicated and directed these policies for JTI-Macdonald Corp. by a variety of means, including:
  - i. Establishing directives and communications such as the "Issues Guide"
  - ii. Developing an action plan which set out the RJR Group's position on smoking and health issues to ensure that the personnel in the RJR Group companies, including JTI-Macdonald Corp., understood and disseminated the RJR Group's position
  - iii. Convening meetings including the Winston-Salem Smoking Issues Coordinator Meetings
  - iv. Convening conferences including the "Hounds Ears" and Sawgrass conferences
  - v. Taking a leadership role in the International Committee on Smoking Issues ("ICOSI"), particularly in relation to Canada
  - vi. Conspiring or acting in concert as particularized in Part IV below.
47. These common policies of the RJR Group have continued notwithstanding changes in the corporate structure of the RJR Group. These common policies on smoking and health in the RJR Group have been maintained in Canada under the control and direction of R.J.

Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. from 1950 to the present, such that these defendants are responsible in law for the RJR Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of JTI-Macdonald Corp.

48. In particular, the Province states that:

- i. By reason of the facts pleaded, R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of JTI-Macdonald Corp.
- ii. JTI-Macdonald Corp. has acted as agent for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. in committing tobacco-related wrongs in Canada
- iii. As described in Part IV, R.J. Reynolds Tobacco Company, R.J. Reynolds International, Inc. and JTI-Macdonald Corp. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**5. The RJR Group Defendants are Manufacturers under the Act**

49. Each of R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc. and JTI-Macdonald Corp. (collectively, "the RJR Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the RJR Defendants manufactures or has manufactured cigarettes.

- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the RJR Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
  - iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the RJR Defendants derives at least ten percent of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
  - iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the RJR Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.
50. From 1950 and continuing to the present, cigarettes manufactured or promoted by the RJR Defendants have been offered for sale in Nova Scotia. The brand names of the cigarettes of the RJR Defendants offered for sale in Nova Scotia and the rest of Canada include *Export*, *Export "A"*, *Vantage*, *Camel*, *Salem*, *Smooth*, *Contessa*, *Contessa Slims*, *More*, *Macdonald* and *Winston*.

**(iii) The BAT Group**

**1. British American Tobacco p.l.c.**

51. The defendant British American Tobacco p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place,

London, England. British American Tobacco p.l.c. is responsible in law for the actions and conduct of its predecessors in interest, British-American Tobacco Company Limited (now known as British American Tobacco (Investments) Limited) and B.A.T Industries p.l.c. British American Tobacco p.l.c. is a Lead Company of the BAT Group.

52. British American Tobacco p.l.c. has been the parent company of the BAT Group since 1998. British American Tobacco p.l.c. purports to have been in the tobacco business in the Americas for more than 100 years and to be solely focused on tobacco.

## **2. British American Tobacco (Investments) Limited**

53. The defendant British American Tobacco (Investments) Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England. British American Tobacco (Investments) Limited is responsible in law for the actions and conduct of its predecessor in name, British-American Tobacco Company Limited. British American Tobacco (Investments) Limited is a Lead Company of the BAT Group.

54. British American Tobacco (Investments) Limited was the parent company of the BAT Group from 1902 to 1976. British American Tobacco (Investments) Limited was known as British-American Tobacco Company Limited until 1998.

## **3. B.A.T Industries p.l.c.**

55. The defendant B.A.T Industries p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England. B.A.T Industries p.l.c. is responsible in law for the actions and

conduct of its predecessors in interest, B.A.T Industries Limited, Tobacco Securities Trust Limited and British American Tobacco (Investments) Limited. B.A.T Industries p.l.c. is a Lead Company of the BAT Group.

56. B.A.T Industries p.l.c. was the parent company of the BAT Group from 1976 to 1998.

#### **4. Imperial Tobacco Canada Limited**

57. The defendant Imperial Tobacco Canada Limited is a company incorporated pursuant to the laws of Canada and has a registered office at 3711 St. Antoine Street West, Montreal, Quebec. Imperial Tobacco Canada Limited is responsible in law for the actions and conduct of its predecessors in interest, Imperial Tobacco Company of Canada Limited, Imperial Tobacco Limited and Imasco Ltd.
58. For 100 years, Imperial Tobacco Canada Limited and its predecessors have been an integral part of the BAT Group and a subsidiary of the parent company of the BAT Group.
59. Imperial Tobacco Company of Canada Limited was incorporated in 1912. In 1970, Imperial Tobacco Company of Canada Limited changed its name to Imasco Limited, and formed a wholly owned subsidiary, Imperial Tobacco Limited. In 2000, Imasco Limited and Imperial Tobacco Limited were amalgamated under the name Imperial Tobacco Canada Limited.
60. In 2000, Imperial Tobacco Canada Limited became a wholly owned subsidiary of British American Tobacco p.l.c., the current parent of the BAT Group.

**5. The BAT Group Lead Companies Control and Direct Imperial Tobacco Canada Limited**

61. At all times material to this action, the Canadian company, Imperial Tobacco Canada Limited has been controlled and directed by the Lead Companies of the BAT Group. The control and direction by British American Tobacco p.l.c., British American Tobacco (Investments) Limited, and B.A.T Industries p.l.c. has extended to the manufacture and promotion of their cigarettes.
62. The means by which the BAT Group Lead Companies have exercised control and direction include:
- i. Establishing Smoking and Health Policies to be followed by the members of the BAT Group
  - ii. Convening Tobacco Strategy Review Team Policy meetings
  - iii. Convening Smoking and Health, Marketing and Research conferences for major international markets, including Canada
  - iv. Forming committees including the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board and the Tobacco Executive Committee
  - v. Overseeing tobacco-related activities in Canada by the Chairman of the BAT Group Tobacco Division Board



- vi. Making final decisions on which Canadian Tobacco Manufacturers' Council research should be funded by Imperial Tobacco Canada Limited.
63. The control and direction by the Lead Companies of the BAT Group have involved the implementation of the BAT Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the BAT Group has maintained a policy that members of the BAT Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the BAT Group was to maintain that causation had not been scientifically proven and remained controversial and to resist warnings as long as possible.
  64. From 1960, it has been the BAT Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
  65. The Lead Companies of the BAT Group have communicated and directed these policies for Imperial Tobacco Canada Limited by a variety of means, including:
    - i. Establishing the Smoking and Health Policies which ensured that all BAT Group companies gave uniform answers to similar questions on smoking and health issues, including B.A.T Industries p.l.c.'s Statement of Business Conduct
    - ii. Convening the Chairman's Advisory Conferences, BAT Group Research Conferences and BAT Group Marketing Conferences, all of which included Imperial Tobacco Canada Limited

- iii. Preparing and distributing to BAT Group members, including Imperial Tobacco Canada Limited, written directives and communications, including "Smoking Issues: Claims and Responses," "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues," "Smoking and Health: The Unresolved Debate," "Smoking: The Scientific Controversy," "Smoking: Habit or Addiction?" and "Legal Considerations on Smoking and Health Policy"
  - iv. Ensuring through all of these means that the personnel of the BAT Group companies, including Imperial Tobacco Canada Limited, understood and disseminated the BAT Group's position on smoking and health
  - v. Conspiring or acting in concert as particularized in Part IV below.
66. These common policies of the BAT Group have continued notwithstanding changes in the corporate structure of the BAT Group. There continues to be central coordination of the BAT Group's international strategy, of which Canada is an integral part, and central control and management of the BAT Group policies on smoking and health issues. These common policies on smoking and health in the BAT Group have been maintained in Canada under the control and direction of British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited from 1950 to the present, such that these defendants are responsible in law for the BAT Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited.

67. In particular, the Province states that:

- i. By reason of the facts pleaded, British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited are jointly liable with and are vicariously liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited
- ii. Imperial Tobacco Canada Limited has acted as agent for British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited in committing tobacco-related wrongs in Canada
- iii. As described in Part IV, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Imperial Tobacco Canada Limited have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**6. The BAT Group Defendants are Manufacturers under the Act**

68. Each of British American Tobacco p.l.c., British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Imperial Tobacco Canada Limited (collectively, "the BAT Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the BAT Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the BAT Defendants causes or has caused, directly or indirectly, through arrangements with

contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.

- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the BAT Defendants derives at least ten percent of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
  - iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the BAT Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.
69. From 1950 and continuing to the present, cigarettes manufactured or promoted by the BAT Defendants have been offered for sale in Nova Scotia. The brand names of the cigarettes of the BAT Defendants offered for sale in Nova Scotia and the rest of Canada include *du Maurier, Peter Jackson, Player's Matinee, Goldcrest, John Player, Avanti, Cameo, Kool, Marlboro, Sweet Caporal, Pall Mall, Medallion, Matinee Slims, Matinee Special Mild, Matinee Extra Mild* and *Vogue*.

**(iv) The Rothmans Group**

**1. Carreras Rothmans Limited**

70. The defendant Carreras Rothmans Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street,

London, England. Carreras Rothmans Limited is responsible in law for the actions and conduct of its predecessors in interest Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada and Carreras Limited. Carreras Rothmans Limited was a Lead Company of the Rothmans Group. Since 1999, Carreras Rothmans Limited has been part of the BAT Group.

71. In 1936, Carreras Limited acquired a controlling interest in Rock City Tobacco Company of Quebec City. In November 1958, the controlling shareholding interest in Carreras Limited was sold to the Rembrandt Group of South Africa. Rothmans of Pall Mall Limited (which controlled Rothmans of Pall Mall Canada Limited) merged with Carreras Limited to create Carreras Rothmans Limited. In 1963, all of the outstanding shares of Rock City Tobacco Company were acquired by Rothmans of Pall Mall Canada.

## **2. Rothmans Inc.**

72. The defendant Rothmans Inc. is a company incorporated pursuant to the laws of Ontario and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans Inc. has represented itself to have been a part of the Canadian tobacco industry for the past 100 years. Rothmans Inc. is responsible for the actions and conduct of its predecessor in name Rothmans of Pall Mall Canada Limited.
73. Rothmans of Pall Mall Canada Limited was incorporated in 1956. In 1985, Rothmans of Pall Mall Canada Limited changed its name to Rothmans Inc. Between 1986 and 2008, Rothmans Inc. was a co-owner with Altria Group, Inc. of Rothmans, Benson & Hedges Inc. In 2009, Rothmans Inc. amalgamated with and continued as Rothmans, Benson & Hedges Inc. as a wholly owned subsidiary of Philip Morris International, Inc.

**3. The Rothmans Group Lead Companies Controlled and Directed Rothmans Inc.**

74. Prior to 1986, the Canadian company, Rothmans Inc., was controlled and directed by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group. The control and direction by the Rothmans Group Lead Companies extended to the manufacture and promotion of their cigarettes.
75. Since 1980, the Philip Morris Group exercised substantial influence over Rothmans International through the creation of a partnership with the Rothmans Group and the placement of board members of the Philip Morris Group Lead Companies on the board of Rothmans International.
76. The means by which Carreras Rothmans Limited and Rothmans International exercised control and direction included:
- i. Coordinating the research strategy of all of the Rothmans Group companies worldwide, including Canada
  - ii. Facilitating a constant exchange of information, knowledge and ideas of all of the Rothmans Group companies worldwide, including Canada
  - iii. Directing its subsidiaries and affiliates, including Rothmans Inc., to conform their policies to those of the broader tobacco industry
  - iv. Creating the International Advisory Board for the development of common policies and strategies for the benefit of the Rothmans Group

- v. Providing technical expertise and other support to members of the Rothmans Group
  - vi. Placing board members of the Lead Companies on the board of directors of Rothmans Inc.
77. The control and direction by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group involved the implementation of the Rothmans Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Rothmans Group maintained a policy that members of the Rothmans Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed.
78. From 1960, it was the Rothmans Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
79. The Lead Companies of the Rothmans Group, including Carreras Rothmans Limited and Rothmans International, communicated and directed these policies for Rothmans Inc. by a variety of means, including:
- i. Directing Rothmans Inc. to maintain the Rothmans Group's position that more research was needed in order to determine whether cigarettes cause disease
  - ii. Instructing Rothmans Inc. not to agree voluntarily to cautionary warnings in advertising
  - iii. Creating the International Advisory Board

- iv. Conspiring or acting in concert as particularized in Part IV below.
80. These common policies on smoking and health in the Rothmans Group were maintained in Canada under the control and direction of Carreras Rothmans Limited and Rothmans International from 1950 to 1986 such that Carreras Rothmans Limited is responsible in law for its own tobacco-related wrongs and is jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
  81. Altria Group, Inc. and Philip Morris International, Inc. controlled and directed the Rothmans Group such that from 1980 to the present, Altria Group, Inc. and Philip Morris International, Inc. are responsible in law for their own tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
  82. In particular, the Province states that:
    - i. By reason of the facts pleaded, Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans Inc.
    - ii. Rothmans Inc. has acted as agent for Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada
    - iii. As described in Part IV, Carreras Rothmans Limited, Altria Group, Inc., Philip Morris International, Inc. and Rothmans Inc. have, together and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.



**4. The Rothmans Group Defendants are Manufacturers under the Act**

83. Each of Carreras Rothmans Limited and Rothmans Inc. (together, the "Rothmans Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the Rothmans Defendants has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the Rothmans Defendants has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the Rothmans Defendants derived at least ten percent of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
- iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the Rothmans Defendants engaged in, or caused, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of tobacco cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

84. From 1950 until 2008, cigarettes manufactured or promoted by the Rothmans Group were offered for sale in Nova Scotia. The brand names of the cigarettes of the Rothmans Group offered for sale in Nova Scotia and the rest of Canada are now offered for sale through the defendant, Rothmans, Benson & Hedges Inc. and include *Rothmans*, *Dunhill*, *Craven "A"*, *Craven "A" Super Slims*, *Sportsman* and *Black Cat*.

(v) **The Canadian Tobacco Manufacturers' Council**

85. The defendant Canadian Tobacco Manufacturers' Council is a company incorporated pursuant to the laws of Canada and has a registered office at 6 Rue D'Angers, Gatineau, Quebec. The Canadian Tobacco Manufacturers' Council is the trade association of the Canadian tobacco industry and was originally formed as an ad hoc committee of members of the Canadian tobacco industry in 1963 to influence government authorities on the question of smoking and health.
86. The founding members of the Canadian Tobacco Manufacturers' Council were Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans Inc.
87. As described in paragraphs 167 - 184, the Canadian Tobacco Manufacturers' Council provided a means by which the Defendants' Conspiracy (defined in Part IV) was implemented and continues to be implemented in Canada. In addition, the Canadian Tobacco Manufacturers' Council itself was and remains a participant in the Conspiracy.
88. The Canadian Tobacco Manufacturers' Council is a Manufacturer pursuant to subparagraph 2(1)(h)(iv) of the Act because it has been and is engaged in all of the following activities:
- (a) the advancement of the interests of Manufacturers
  - (b) the promotion of cigarettes

- (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes.

## **II. THE DEFENDANTS' KNOWLEDGE OF THE RISKS OF SMOKING AND EXPOSURE TO SMOKE**

- 89. The Defendants designed and manufactured cigarettes to deliver nicotine to smokers.
- 90. Nicotine is an addictive drug that affects the brain and central nervous system, the cardiovascular system, the lungs, other organs and body systems and endocrine function. Addicted smokers physically and psychologically crave nicotine.
- 91. Smoking causes or contributes to disease, including, but not limited to:
  - (a) chronic obstructive pulmonary disease and related conditions, including:
    - i. emphysema
    - ii. chronic bronchitis
    - iii. chronic airways obstruction
    - iv. asthma
  - (b) cancer, including:
    - i. cancer of the lung
    - ii. cancer of the lip, oral cavity and pharynx
    - iii. cancer of the larynx

- iv. cancer of the esophagus
  - v. cancer of the bladder
  - vi. cancer of the kidney
  - vii. cancer of the pancreas
  - viii. cancer of the stomach
- (c) circulatory system diseases, including:
- i. coronary heart disease
  - ii. pulmonary circulatory disease
  - iii. cerebrovascular disease
  - iv. atherosclerosis, aortic and other aneurysms
  - v. peripheral vascular disease
- (d) pneumonia and influenza
- (e) peptic ulcers
- (f) increased morbidity and general deterioration of health
- (g) fetal harm.

92. Since 1950, the Defendants have been aware that cigarettes:
- (a) contain substances and produce by-products which can cause or contribute to disease including, nitrosamines, carbon monoxide, benzene, benzo[a]pyrene, dibenz[a,h]anthracene, benzo[e]pyrene, chrysene, dibenzo[a,i]pyrene, n'nitrosonornicotine, acrolein, hydrogen cyanide, isoprene, chromium, chloracetophenone and arsenic
  - (b) cause or contribute to addiction.
93. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that smoking cigarettes could cause or contribute to disease.
94. By 1950, the Defendants knew or ought to have known that:
- (a) nicotine is an addictive and active ingredient in cigarettes
  - (b) smokers crave nicotine
  - (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.

### **III. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS**

#### **A. Deceit and Misrepresentation**

95. At all material times, the Defendants have owed a duty to persons in Nova Scotia not to misrepresent the risks of smoking, those risks being the risks of addiction and disease.

96. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Nova Scotia started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

**(i) The Misrepresentations**

97. From 1950, the Defendants have misrepresented the risks of addiction and disease and in particular, without limiting the generality of the foregoing, have misrepresented in Nova Scotia and throughout Canada that:

- (a) smoking has not been shown to cause any known diseases
- (b) there is no medical or scientific link between smoking and disease
- (c) they were not aware of any research, or any credible research, establishing a link between smoking and disease
- (d) environmental and genetic factors are to blame for many diseases rather than smoking
- (e) cigarettes are not addictive
- (f) smoking is merely a habit or custom, not an addiction
- (g) they have not manipulated nicotine levels

- (h) they have not included substances in their cigarettes designed to increase the bio-availability of nicotine
  - (i) certain of their cigarettes, such as "filter," "mild," "low tar" and "light" brands, are safer than other cigarettes
  - (j) machine measurements of tar and nicotine are representative of actual intake
  - (k) smoking is consistent with a healthy lifestyle
  - (l) smoking is not harmful to health
  - (m) exposure to cigarette smoke is not harmful to health
  - (n) smoking and exposure to cigarette smoke are not a serious health risk
  - (o) they are interested in the health and well-being of smokers.
98. The misrepresentations by the Philip Morris Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)

- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
  - iii. Public and media statements to Canadian newspapers and on North American television (including a statement in the Toronto Daily Star (September 1967) and a speech in Halifax (June 1978))
  - iv. Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.)
  - v. Publications (including in the 1978 Booklet "The Facts" published by Benson & Hedges (Canada) Inc.)
  - vi. Advertising, marketing and promotional campaigns
  - vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.
99. The misrepresentations by the RJR Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare



- (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)
- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
  - iii. Publications (including "R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina" in *The Tobacco Industry in Transition*)
  - iv. Speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts)
  - v. Public statements (including the 1983 Revised Mission Statement on Smoking and Health)
  - vi. Advertising, marketing and promotional campaigns
  - vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

100. The misrepresentations by the BAT Group in Canada have been continuous and have been made through a variety of means, including:

- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969), the National Association of Tobacco and Confectionery Distributors Convention (October 1969), federal Legislative Committees (including in November 1987 and January 1988) and the House of Commons Standing Committee on Health (December 1996)
- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
- iii. Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited)
- iv. Public and media statements to Canadian newspapers and on national television (including CBC television (December 1969) and in the Toronto Daily Star (June 1971))

- v. Publications (including on the topics of smoking and health, "habit or addiction" and environmental tobacco smoke)
  - vi. British American Tobacco p.l.c.'s website relating to environmental tobacco smoke
  - vii. Advertising, marketing and promotional campaigns
  - viii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.
101. The misrepresentations by the Rothmans Group in Canada were continuous and were made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and the National Association of Tobacco and Confectionery Distributors Convention (October 1969)
  - ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979) and with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981)

- iii. Full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart "vital information" as soon as available
  - iv. Public and media statements to Canadian newspapers and on national television, (including in the Toronto Daily Star (September 1962, June 1969) and in the Globe and Mail (June 1967))
  - v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.
102. Since 1963, the Canadian Tobacco Manufacturers' Council's misrepresentations have been continuous and have been made through a variety of means including:
- i. Presentations, including the 1963 presentation to the Canadian Medical Association, the 1963 presentation to the federal Department of National Health and Welfare, the 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs, the 1969 presentation to the National Association of Tobacco and Confectionery Distributors Convention and the 1987 and 1988 presentations to federal Legislative Committees
  - ii. Meetings with the federal Department of National Health and Welfare, the purpose of which was to oppose and delay regulatory measures
  - iii. Position papers

- iv. Public statements characterizing warnings as misstatements and exaggerations of the scientific evidence, and representing environmental tobacco smoke as a symptom of inadequate ventilation in buildings
- v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

**(ii) Suppression and Concealment of Scientific and Medical Data**

103. From 1950, the Defendants have suppressed and concealed scientific and medical data which revealed the serious health risks of smoking and exposure to cigarette smoke. Each Group had policies in accordance with which the Defendants have withheld, altered and destroyed research on addiction and disease causation.

104. Particulars of this suppression of scientific and medical data and research by the Philip Morris Group include:

- i. Agreeing with British American Tobacco (Investments) Limited and the RJR Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
- ii. Destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group
- iii. Closing of research laboratories and destroying related scientific information
- iv. Withdrawing internal research relating to nicotine from peer review
- v. Destroying internal research relating to nicotine

- vi. Prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the additive effect of smoking
  - vii. Establishing INBIFO, a facility in Europe where unfavourable research was destroyed
  - viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
105. Particulars of this suppression of scientific and medical data by the RJR Group include:
- i. Agreeing with British American Tobacco (Investments) Limited and the Philip Morris Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
  - ii. Ceasing research on the effects of smoke because of its potential bearing on product liability
  - iii. Removing 150 boxes of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina
  - iv. Imposing restrictions on the use of terms, including "drug," "marketing" and "dependency," in scientific studies
  - v. Destroying research relating to the biological activity of Camel cigarettes
  - vi. Invalidating and destroying research reports

- vii. Terminating and destroying research associated with R.J. Reynolds Tobacco Company's "The Mouse House" experiments
  - viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
106. Particulars of this suppression of scientific and medical data by the BAT Group include:
- i. Agreeing with the Philip Morris and RJR Groups to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
  - ii. Agreeing with the Rothmans Group to suppress research relating to carbon monoxide and smoke intake
  - iii. Implementing a policy with Imperial Tobacco Canada Limited to avoid written documentation on issues relating to smoking and health
  - iv. Agreeing within the BAT Group not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the BAT Group
  - v. Directing that certain research reports in Canada be destroyed (1992)
  - vi. Suppressing information and developments relating to potentially safer products
  - vii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

107. Particulars of this suppression of scientific and medical data by the Rothmans Group include:

- i. Agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake
- ii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

108. Particulars of the Canadian Tobacco Manufacturers' Council's suppression of scientific and medical data include:

- i. Refusing to approve and fund research where there was a concern that the results could be adverse to the tobacco industry
- ii. Sponsoring studies only where there was no likelihood that the results could be harmful to the tobacco industry.

**(iii) Misleading Campaigns to Enhance Their Own Credibility**

109. From 1950, the Defendants have participated in misleading campaigns to enhance their own credibility and to diminish the credibility of health authorities and anti-smoking groups for the purposes of reassuring smokers that cigarettes were not as dangerous as authorities were saying and of maintaining the social acceptability of smoking.

110. The misleading campaigns were at least two-pronged: (a) public denials as to the harmful effects of smoking and the calls for more research (while concealing research findings and suppressing further research); and (b) implementing misleading campaigns designed



to reassure smokers which (as described in paragraphs 98 to 102) included advertising campaigns and numerous public statements relating both to cigarette smoking and exposure to cigarette smoke.

**(iv) Misrepresentations Relating to Filtered, "Mild," "Low Tar" and "Light" Cigarettes**

111. Beginning in the 1960s, the Defendants have wrongfully promoted filtered, "mild," "low tar" and "light" cigarettes to the public and government agencies, including the federal government and the federal Department of Health and Welfare, with the purpose of deceiving the public and these agencies into believing that these cigarettes were healthier and safer.
112. From the 1960s, the Defendants have known that filtered, "mild," "low tar" and "light" cigarettes were not healthier or safer because smokers would compensate by increasing their inhalation of smoke to obtain as much or more nicotine.
113. The Defendants have also misled the public by linking a healthy image and lifestyle to filtered, "mild," "low tar" and "light" cigarettes. In this way, the Defendants have reassured the public and furthered their campaign of misrepresentation. The tobacco industry's research confirmed that smokers and the public mistakenly believed that filtered, "mild," "low tar" and "light" cigarettes meant healthier or safer cigarettes.
114. Particulars of the Defendants' research are as follows:
  - i. The Philip Morris Group's research confirmed that smokers develop a daily nicotine intake quota and that when smoking a cigarette lower in nicotine delivery

than their regular cigarettes, smokers will adjust their smoking patterns to obtain their normal nicotine intake.

- ii. The RJR Group's research confirmed that smokers will subconsciously adjust their intake volume and frequency, and smoking frequency, to obtain and maintain their hourly and daily requirements of nicotine. The RJR Group also knew that "low tar, low nicotine" cigarettes did not offer a health advantage compared to regular filter cigarettes.
- iii. The BAT Group's research confirmed that smokers must maintain a threshold amount of nicotine. BAT Group scientists found that when nicotine content was reduced, smokers would adjust their smoking patterns to obtain their threshold nicotine intake. These scientists also found that smokers would obtain a tar yield proportionately higher than that which the cigarette was designed to produce and could more than double the amount of nicotine intake reported in league tables.
- iv. The Rothmans Group possessed research which confirmed that when a smoker changes to a brand of cigarette with purportedly lower delivery of nicotine the smoker will compensate by increasing inhalation of tar and carbon monoxide.

**(v) Campaigns to Increase Smoking Rates Among Women**

- 115. From 1950, the Defendants have engaged in deceitful advertising, marketing and promotional campaigns to increase smoking rates among women.
- 116. The Defendants have advertised, marketed and promoted their cigarettes to women as being reasonably healthy and safe, both expressly, through public statements including

denials that cigarettes are harmful, and impliedly, through campaigns which equate smoking cigarettes with physical activities and a healthy lifestyle.

117. Each of the four Groups has targeted women as smokers and as potential smokers through advertising and branding campaigns. In Nova Scotia, and throughout Canada, brands targeted at women include the Philip Morris Group's *Marlboro Lights* and *Virginia Slims*, the RJR Group's *Contessa* and *Contessa Slims*, the BAT Group's *Matinee*, *Matinee Slims*, *Matinee Special Mild* and *Matinee Extra Mild*, and the Rothmans Group's *Craven "A" Superslims*.

**B. Failure to Warn**

118. At all material times, the Defendants knew or ought to have known that their cigarettes were addictive and could cause or contribute to disease. At all material times, the Defendants owed a duty to persons in Nova Scotia to warn of the risks of smoking, being addiction and disease. As Manufacturers, the Defendants have owed a duty to persons in Nova Scotia as consumers of cigarettes and as persons who would be exposed to cigarette and tobacco smoke.

119. As described below, from 1950, the Defendants have breached this duty, thereby committing tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Nova Scotia started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

120. Beginning in 1950, the Defendants breached their duty by failing to provide any warning, or any adequate warning after 1972, of:

- (a) the risk of tobacco-related disease or
- (b) the risk of addiction to the nicotine contained in their cigarettes.

121. Any warnings that were provided were inadequate and ineffective in that they:

- (a) failed to warn of the actual and known risks
- (b) failed to give smokers, prospective smokers, and the public a true indication of the risks
- (c) were introduced for the purpose of delaying more accurate government mandated warnings
- (d) were combined with marketing plans and campaigns designed to reassure smokers
- (e) failed to make clear, credible, complete and current disclosure of the harmful substances in their cigarettes.

122. From 1950, the Defendants have breached their duty to warn by wrongfully engaging in advertising, marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings on cigarette packaging and of warnings and advertising by governments and other agencies concerned with public health. These activities include the campaigns to reassure the public and governments, all as previously described.

123. From 1950, the Defendants have breached their duty to warn by misinforming and misleading the public about the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 95-102.
124. From 1950, the Defendants have breached their duty to warn by selectively promoting and publicising misleading research to create doubt and controversy regarding the risks of smoking and of exposure to cigarette smoke. This selective promotion and publication of misleading research was facilitated, in part, by the Defendants' creation of tobacco organizations, as particularized in paragraphs 151-157, and the Canadian tobacco Manufacturers' Council, and by presentations made by the Lead Companies to the public.
125. From 1950, the Defendants have breached their duty to warn by suppressing and concealing information regarding the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 103 to 108.
126. From 1950, the Defendants have breached their duty to warn children and adolescents. The Defendants knew or ought to have known that children (under the age of 13) and adolescents (between the ages of 13 and 18) in Nova Scotia either were smoking or might start smoking. Despite their knowledge, the Defendants failed to provide warnings sufficient to inform children and adolescents of the risks. The Defendants wrongfully directed advertising, marketing and promotional material to children and adolescents who were unable to make informed decisions about smoking.

**C. Promotion of Cigarettes to Children and Adolescents**

127. At all material times, the Defendants have owed a duty to children and adolescents in Nova Scotia to take all reasonable measures to prevent them from starting or continuing to smoke.
128. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, children and adolescents in Nova Scotia started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.
129. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age. The Defendants were also aware that children and adolescents are unable to make informed decisions about smoking.
130. From 1950, the Defendants knew or ought to have known that children and adolescents in Nova Scotia were smoking or might start to smoke and that it was contrary to law, including the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and public policy, to sell cigarettes to children and adolescents or to promote smoking by such persons.
131. From 1950, the Defendants knew or ought to have known that children and adolescents in Nova Scotia who smoked cigarettes would become addicted and would suffer tobacco-related disease.

132. From 1950, the Defendants have failed to take any reasonable and effective measures to prevent children and adolescents from starting or continuing to smoke. Instead, the Defendants have effectively done the opposite: they have targeted children and adolescents in their advertising, promotional and marketing activities; they have advertised in publications accessed by children and adolescents; they have marketed cigarettes for sale in places frequented by children and adolescents; and they have engaged in marketing campaigns directed at children and adolescents.
133. These activities were undertaken to induce children and adolescents in Nova Scotia to start or continue to smoke and to undermine government initiatives and legislation (including that set out in paragraph 130) aimed at preventing children and adolescents in Nova Scotia from starting or continuing to smoke.
134. In particular:
  - (a) The Philip Morris Group targeted youth as a means to both attract new smokers and develop those smokers into a "young adult franchise" and through Rothmans, Benson & Hedges Inc., undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands.
  - (b) The RJR Group recognized the importance of imagery for the youth market and developed marketing criteria (including the use of cartoons and celebrities) and specific brands it believed would assist in obtaining and maintaining the youth marketing position.

(c) The BAT Group targeted what it described as "starters", that is, children and adolescents, by studying their smoking habits and adopting advertising strategies which focused on youth-oriented and youth-appealing activities.

(d) The Rothmans Group targeted youth and undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands in Canada.

**D. Negligent Design and Manufacture**

135. At all material times, the Defendants have owed a duty to design and manufacture a reasonably safe product and a duty to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking the cigarettes they manufactured and promoted.

136. As described below, since 1950, the Defendants have breached these duties by failing to design a reasonably safe product – a product that is not addictive and does not cause disease – and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking. In breaching these duties, the Defendants have committed tobacco-related wrongs.

137. As a result of these tobacco-related wrongs, persons in Nova Scotia started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

138. From the 1960s, the Defendants have halted research and development of alternative products because of concerns that such products would imply that cigarettes were unsafe.



As described in paragraph 105, the RJR Group stopped work on the alleged positive effects of smoke due to concerns about product liability. As described in paragraph 106, through its control of Imperial Tobacco Canada Limited, B.A.T Industries p.l.c. suppressed information relating to potentially safer products because of the negative implications for cigarettes.

139. From the 1960s, the Defendants have increased the risks of smoking by manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:

- (a) blending of tobacco
- (b) adding nicotine or substances containing nicotine
- (c) increasing the pH level to increase the rate of nicotine intake into the body
- (d) introducing substances, such as ammonia and menthol, to enhance the bio-availability of nicotine to smokers or to compensate for the variability in the nicotine content
- (e) such further and other activities known to the Defendants.

140. From the 1960s, the Defendants have increased the risks of smoking by adding to their cigarettes ineffective filters and by misleading the public and government agencies, including the federal government and the federal Department of Health and Welfare, that these filters made smoking safer. At all material times, the Defendants have known that smokers compensated for the filters by increasing their inhalation and by adopting other means to increase the assimilation of smoke into their lungs. The Defendants have

known that the design of these filters resulted in a larger dose of nicotine to be inhaled by the smoker.

141. From the 1960s, the Defendants have designed and manufactured filtered, "mild," "low tar" and "light" cigarettes which they promoted as healthier than regular cigarettes, with knowledge that this was not the case. The Defendants have misled the public by linking a healthy image to a low tar – low nicotine cigarette through the use of descriptors and the portrayal of filtered, "mild," "low tar" and "light" cigarettes in the context of a lifestyle or activities that misrepresented smoking and health.
142. These filtered, "mild," "low tar" and "light" cigarettes were designed and manufactured notwithstanding the Defendants' own research and knowledge. In particular, the BAT Group's research confirmed that smokers and the public mistakenly believed that "light" or "low tar" meant a healthier cigarette and Imperial Tobacco Canada Limited marketed its brands, including *Medallion*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The Philip Morris Group's research confirmed that smokers mistakenly believed that low delivery was healthy and that the public's positive perception of filtration was more important than the filtration's actual effectiveness. Rothmans, Benson & Hedges Inc. marketed its brands, including *Benson & Hedges Lights*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The RJR Group's research confirmed that younger people believed "mild," "low tar" and "light" cigarettes to be more healthy and JTI-Macdonald Corp. marketed its brands, including *Vantage*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette.

**E. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations**

143. The Defendants, in their role as Manufacturers of cigarettes for human use and consumption, were under legal, equitable and statutory duties and obligations to ensure that their cigarettes were reasonably safe, and they expressly or impliedly warranted that their cigarettes were reasonably safe. In particular, from 1950, the Defendants advertised and promoted their cigarettes as being reasonably safe, both expressly, through public statements including denials that they are harmful, and impliedly, through campaigns which related cigarettes to a healthy lifestyle and physical activities. The Defendants also have repeatedly proclaimed to be interested in the health and well-being of smokers.

144. Knowing that cigarettes are addictive and cause and contribute to disease, from 1950, the Defendants inflicted harm on persons in Nova Scotia by manufacturing, promoting and selling cigarettes for profit and in disregard of public health.

145. From 1950, the Defendants engaged in unconscionable acts or practices and exploited the vulnerabilities of children and adolescents, and persons addicted to nicotine, particulars of which include:

(a) manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:

- i. sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine
- ii. deliberately increasing the level of nicotine through blending of tobaccos

- iii. deliberately increasing the level of nicotine by adding nicotine or other substances containing nicotine
  - iv. adding ammonia and menthol
- (b) adding ineffective filters to cigarettes and misleading the public into believing these filters made smoking safer
  - (c) failing to disclose to consumers the risks inherent in smoking, those being the risks of disease and addiction
  - (d) engaging in marketing, promotional and public relations activities to neutralize or negate the effectiveness of safety warnings provided to the public
  - (e) suppressing or concealing scientific and medical information regarding the risks of smoking and of exposure to cigarette smoke
  - (f) marketing and promoting smoking in a manner designed to mislead the public into believing that cigarettes have performance characteristics, ingredients, uses, benefits and approval that they did not have
  - (g) using innuendo, exaggeration and ambiguity to misinform and mislead the public about the risks of smoking and of exposure to cigarette smoke by mischaracterizing any health concerns relating to smoking and exposure to smoke or attempts at regulation as unproven, controversial, extremist and an infringement of liberty or authoritarian

- (h) failing to take any reasonable measures to prevent children and adolescents from starting or continuing to smoke
- (i) targeting children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents to start smoking or to continue to smoke
- (j) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that they are addictive and cause or contribute to disease and death
- (k) misrepresenting that:
  - i. smoking has not been shown to cause any known diseases
  - ii. there is no medical or scientific link between smoking and disease
  - iii. they were not aware of any research, or any credible research, establishing a link between smoking and disease
  - iv. environmental and genetic factors are to blame for many diseases rather than smoking
  - v. cigarettes are not addictive
  - vi. smoking is merely a habit or custom, not an addiction
  - vii. they have not manipulated nicotine levels

- viii. they have not included substances in their cigarettes designed to increase the bio-availability of nicotine
  - ix. certain of their cigarettes, such as filtered, "mild," "low tar" and "light" brands, are safer than other cigarettes
  - x. machine measurements of tar and nicotine are representative of actual intake
  - xi. smoking is consistent with a healthy lifestyle
  - xii. smoking is not harmful to health
  - xiii. exposure to cigarette smoke is not harmful to health
  - xiv. smoking and exposure to cigarette smoke are not a serious health risk
  - xv. they are interested in health and well-being of smokers.
- (l) failing to correct statements regarding the risks of smoking which they knew were incomplete or inaccurate, thereby misrepresenting the risks of smoking by omission or silence
- (m) misrepresenting the characteristics of their cigarettes without proper testing, investigation or research concerning:
- i. the risk of disease
  - ii. the risk of addiction to nicotine

- iii. the feasibility of eliminating or minimizing these risks
- (n) misrepresenting as safer products, cigarettes with filters, and "mild," "low tar" or "low nicotine" tobacco, which adequate and proper testing would have revealed were ineffective to safeguard the health of smokers
- (o) failing to make clear, credible, complete and current disclosure of the risks inherent in smoking their cigarettes
- (p) misleading the public about the risks of smoking and of exposure to cigarette smoke
- (q) deliberately and unconscionably discrediting various testing and research which showed a link between smoking and disease and addiction
- (r) such further and other activities known to the Defendants.

146. The Defendants breached their legal, equitable and statutory duties and obligations, provincially and federally, including the provisions of *Combines Investigation Act*, R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act*, S.C. 1968-69, chapter 38 and amendments thereto (and in particular, section 33D) and subsequently the *Competition Act*, R.S.C. 1985, chapter C-34 and amendments thereto (and in particular, section 74.01), the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and statutory and regulatory obligations in the province of Nova Scotia.

147. As a result of these tobacco-related wrongs, persons in Nova Scotia started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and increased risk of such disease.

**IV. CONSPIRACY AND CONCERT OF ACTION IN COMMITTING TOBACCO-RELATED WRONGS**

**A. Role of the Lead Companies**

148. At various times beginning in 1953 and continuing to the present, in response to reports in medical and other publications linking smoking and disease, the Defendants conspired or acted in concert to prevent the Province and persons in Nova Scotia and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their actions would cause increased health-care costs (the "Conspiracy").

149. The Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups were acting throughout on their own behalf and on behalf of their respective Groups. As particularized below, the Conspiracy was renewed at numerous meetings and through various campaigns and policies, all of which are known to the Defendants.

**(i) The Industry Conspiracy is Hatched**

150. The Conspiracy or concert of action secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and



as agent for British American Tobacco (Investments) Limited), American Tobacco Company, Lorillard Tobacco Company and the public relations firm, Hill & Knowlton. At least two of these meetings were held at the Plaza Hotel in New York on December 15 and 28, 1953. These companies agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking
- (b) make no statement or admission that smoking caused disease
- (c) orchestrate a public relations program on smoking and health issues with the object of:
  - i. promoting cigarettes
  - ii. protecting cigarettes from attack based upon health risks
  - iii. reassuring the public that smoking was not hazardous (sometimes referred to as the campaign of reassurance).

**(ii) Use of Research Organizations in Furtherance of the Conspiracy**

151. Between late 1953 and the early 1960s, the Lead Companies of each of the Groups formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964, both referred to herein as TIRC), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Manufacturers' Standing Committee (the "TMSC", renamed the Tobacco Research Council in 1963 and renamed the Tobacco Advisory

Council in 1978, collectively referred to herein as TMSC) and Verband der Cigarettenindustrie ("Verband").

152. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, CORESTA, TMSC and Verband, would objectively conduct research and gather data concerning the link between smoking and disease and would publicize the results of this research throughout the world. Particulars of these misrepresentations are within the knowledge of the Defendants but include:

- i. The issuance of the TIRC's 1954 "Frank Statement to Cigarette Smokers" which received coverage in the Canadian press
- ii. Statements made to the Canadian Medical Association in May 1963
- iii. November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare
- iv. May 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs
- v. Statements to the national press and news organizations in Canada
- vi. Communications through the Canadian Tobacco Manufacturers' Council in Canada, including to the federal Department of Health and Welfare
- vii. As to British American Tobacco p.l.c. and the Philip Morris Group in particular, misleading statements on environmental tobacco smoke.

153. From 1953, the Lead Companies conspired with the TIRC, CORESTA, TMSC and Verband to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Defendants misled the public and the Province, into believing that there was a medical or scientific controversy about whether smoking is addictive and causes disease. The Defendants' position and policy has been that causation remains an "open question." As described below, this policy was enforced through ICOSI and the Canadian Tobacco Manufacturers' Council.
154. In 1963 and 1964 the Lead Companies and the Defendants agreed to co-ordinate their research with research conducted by the TIRC in the United States, for the purpose of suppressing any findings which might indicate that cigarettes are harmful and dangerous. In particular, the Lead Companies contributed to research and vetted and selected the persons who were to conduct such research.
155. In April and September 1963, the Lead Companies, and in particular, British American Tobacco (Investments) Limited, through its agent Brown & Williamson Tobacco Corporation, and Imperial Tobacco Canada Limited, Philip Morris U.S.A. Inc. and R.J. Reynolds Tobacco Company, together with TIRC and Hill & Knowlton, agreed to develop a public relations campaign to counter the Royal College of Physicians Report in England, the forthcoming Surgeon General's Report in the United States and a Report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes. This public relations campaign was part of the broader ongoing public relations campaign which continues to the present to reassure the public and to suppress information.

156. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease unless and until they were forced to do so by government action.
157. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes and risks of smoking, including research funded by British American Tobacco (Investments) Limited at Harrogate Labs in England. In particular, the Lead Companies agreed to suppress and conceal all information which confirmed scientific work on the carcinogenicity of tobacco smoke condensate, and to avoid reference to nicotine, nicotine dependence and nicotine pharmacology in the development of research proposals.

**(iii) Operation Berkshire and the Establishment of ICOSI**

158. By the mid-1970s, the Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups decided that an increased international misinformation campaign ("Operation Berkshire") was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease could lead to a "domino effect" to the detriment of the industry world-wide.
159. Through Operation Berkshire, the Defendants further advanced their campaign of misinformation. Operation Berkshire was aimed at Canada and other major markets and led by both the Philip Morris Group in concert with the Rothmans Group and the BAT Group.

160. Operation Berkshire was implemented as a scheme among the Defendants. This scheme involved an agreement among the Defendants not to make concessions voluntarily and to oppose, through legal or other means, the imposition of anti-smoking legislation. The Defendants also agreed not to concede that adverse health effects had been linked to smoking and, instead, agreed to create "controversy" concerning any research or studies suggesting otherwise.
161. In June, 1977, Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Rothmans International, as Lead Companies of each of the four Groups and acting on behalf of the members of those Groups, met in England to establish ICOSI.
162. The primary objective of ICOSI was to implement the Conspiracy. The smoking and health scheme denying the relationship between smoking and disease was directed at major international markets, including Canada. This scheme included an agreement by all members that the issue of causation remains controversial and unresolved and that warning notices would be strenuously resisted with all means at their disposal.
163. On June 2 and 3, 1977 and November 11 and 12, 1977, the founding members of ICOSI, including Philip Morris U.S.A. Inc., the R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Rothmans International, adopted a position paper and then a revised version thereof, developed jointly by the BAT and Philip Morris Groups. The position paper and the revised version required that the tobacco industry as a whole take the position that there was "medical controversy" regarding the relationship between smoking and disease.

164. Through ICOSI, the Defendants resisted attempts by governments to provide warnings about smoking and disease and sought to attribute warnings to governments. In furtherance of the Conspiracy, all of the Defendants pledged to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking
- (b) make no statement or admission that smoking caused disease
- (c) suppress research regarding the risks of smoking
- (d) resist government attempts to restrict advertising, sponsorship and smoking in public places
- (e) not compete with each other by making health claims with respect to their cigarettes – in other words, not advertise "safer" cigarettes - and thereby avoid direct or indirect admissions about the risks of smoking
- (f) attribute quotes on smoking and health to "appropriate non-ICOSI sources"
- (g) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring smokers, the public and authorities in Nova Scotia and other jurisdictions that smoking was not hazardous.

165. In and after 1977 the members of ICOSI, including the Lead Companies of each of the Groups, in furtherance of the Conspiracy, agreed orally and in writing, to ensure that:

- (a) the members of their respective Groups, including those in Canada, would act in accordance with the ICOSI position on smoking and health' (as described in paragraph 164), including the decision to mislead the public about the link between smoking and disease
- (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, the Canadian Tobacco Manufacturers' Council, to ensure compliance in the various tobacco markets worldwide
- (c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves
- (d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.

166. In 1980, ICOSI was renamed the International Tobacco Information Centre/Centre International d'Information du Tabac – INFOTAB. In 1992, INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are referred to collectively as ICOSI). The objectives of ICOSI have remained the same notwithstanding these name changes and the Defendants maintained and have continued their Conspiracy to commit tobacco-related wrongs.

(iv) **ICOSI and the Canadian Tobacco Manufacturers' Council**

167. At all times from 1977 onward, the policies of ICOSI were identical to the policies of the NMAs, including the Canadian Tobacco Manufacturers' Council, and were presented as the policies and positions of the NMAs, including the Canadian Tobacco Manufacturers' Council and its member companies, so as to conceal from the public and from governments the existence of the Conspiracy or concert of action. ICOSI organized conferences of the NMAs, including the Canadian Tobacco Manufacturers' Council, to ensure compliance with ICOSI initiatives.
168. The Lead Companies were members of the Canadian Tobacco Manufacturers' Council through their respective operating companies in Canada, the predecessors of the defendants Imperial Tobacco Canada Limited, JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Rothmans Inc. The Canadian Tobacco Manufacturers' Council was an allied member of ICOSI.
169. In particular, the ICOSI and the Canadian Tobacco Manufacturers' Council position papers were essentially identical in most respects and include the false and misleading positions that:
- i. No causal relationship between smoking and disease exists
  - ii. No persuasive scientific evidence exists to support the contention that non-smokers are harmed by the tobacco smoke of others
  - iii. Laws and regulations banning smoking are an unwarranted intrusion into the lives and rights of citizens.



170. At all material times, the Lead Companies conspired or acted in concert to ensure that manufacturers complied with, and did not deviate from, the official ICOSI position on the adverse health effects of smoking. In particular, "Issues Binders" were prepared so that ICOSI affiliates, including the Defendants in Canada, would speak with one voice on key issues such as addiction, advertising and sponsorship, the public smoking issue, smoking and health, social costs and warning labels. The Lead Companies instructed their respective Group companies to conform their policies to those of ICOSI. ICOSI developed workshops for the training of NMA personnel, including personnel of the Canadian Tobacco Manufacturers' Council.
171. The Defendants conspired or acted in concert in committing the tobacco-related wrongs particularized in Part III. The Defendants have continued the Conspiracy or have continued to act in concert to commit tobacco-related wrongs. The Defendants have continued to maintain that environmental tobacco smoke is not harmful, have continued to create doubt and controversy regarding the health effects of exposure to cigarette smoke. The Defendants also have continued to oppose, delay and negate attempts by all levels of government, including municipal governments, and by health authorities, to provide health warnings or to otherwise limit or control cigarette smoking and exposure to cigarette smoke.
172. The Defendants' Conspiracy or concert of action has continued for more than thirty years since the inception of ICOSI. Further particulars of the manner in which the Conspiracy or concert of action was entered into and continued, and of the breaches of duty committed in furtherance of the Conspiracy or concert of action, are within the knowledge of the Defendants.

**B. Conspiracy and Concerted Action in Canada**

**(i) Canadian Tobacco Manufacturer's Council**

173. In furtherance of the Conspiracy, from 1953, the Defendants conspired or acted in concert with one another and within each Group to prevent the Province and persons in Nova Scotia and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and to commit the tobacco-related wrongs described in Part III. The Defendants conspired or acted in concert in circumstances where they knew or ought to have known that harm and health-care costs would result from acts done in furtherance of the Conspiracy or concert of action.

174. The Conspiracy or concert of action was continued in Canada when:

- (a) In 1962, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited secretly agreed not to compete with each other by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of smoking.
- (b) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease.
- (c) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, incorporated as the Canadian Tobacco Manufacturers' Council in 1982 and

collectively referred to as the Canadian Tobacco Manufacturers' Council) in order to maintain a united front on smoking and health issues and to respond to what the Defendants viewed as an increasingly vocal anti-tobacco lobby.

(d) In May 1969, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited, through the Canadian Tobacco Manufacturers' Council, misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.

(e) The Lead Companies of each of the Groups recruited, approved and coordinated the witnesses who presented the positions and misrepresentations of the Canadian tobacco industry.

175. Upon its formation in 1963 and at all material times thereafter, the Canadian Tobacco Manufacturers' Council provided a means and method to continue the Conspiracy or concert of action in Canada. From its inception, the Canadian Tobacco Manufacturers' Council agreed, adopted and participated in the Conspiracy or concert of action.

176. Through meetings, presentations and position papers, the Canadian Tobacco Manufacturers' Council has maintained that smoking was not the cause of any disease and has misrepresented the risks of smoking to governments and regulatory agencies throughout Canada. Through its misrepresentations and delay tactics, the Canadian Tobacco Manufacturers' Council has opposed or negated government restrictions on the tobacco industry.

177. In accordance with the position of the Lead Companies and its members, the Canadian Tobacco Manufacturers' Council has maintained that smoking is not the cause of any disease and misrepresented the risks of smoking to the Canadian public.
178. Since 1963, the Canadian Tobacco Manufacturers' Council has co-ordinated with its co-Defendants and international tobacco industry associations the Canadian tobacco industry's positions on smoking and health issues. At all material times, the Canadian Tobacco Manufacturers' Council acted as agent for each of its co-Defendants.
179. In furtherance of the Conspiracy or concert of action, the Canadian Tobacco Manufacturers' Council:
  - (a) Disseminated false and misleading information regarding the risks of smoking, including making false and misleading submissions to governments and withheld from the federal government research relating to carbon monoxide, addiction, smoker compensation and warnings
  - (b) Refused to admit that smoking caused disease
  - (c) Suppressed research regarding the risks of smoking
  - (d) Participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link between smoking and disease

- (e) Misled governments in order to delay and minimize government initiatives with respect to smoking and health
- (f) Characterized anyone who disagreed with the Canadian tobacco industry on the issue of smoking and health as uninformed, misinformed or extremist
- (g) Participated in coordinated tobacco industry efforts in Canada to dismiss or minimize the risk of exposure to smoke.

**(ii) The Conspiracy in Canada Among the Groups**

180. As to the Philip Morris Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. Philip Morris Conference on Smoking and Health in June 1976
- ii. International Conference on Smoking Behaviour in November – December 1977
- iii. Conference on May 9, 1978 designed to change public opinion by developing policies to challenge and fight anti-smoking efforts
- iv. Tobacco Technology Group Meetings
- v. Corporate Affairs World Conference
- vi. Philip Morris International Legal Conference
- vii. Philip Morris International Corporate Affairs Presentation
- viii. Meetings of the Canadian Tobacco Manufacturers' Council

- ix. Meetings of ICOSI
  - x. Position Papers of the Canadian Tobacco Manufacturers' Council
  - xi. Direction by the Lead Companies to Rothmans, Benson & Hedges Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
  - xii. The Canadian Tobacco Manufacturers' Council and Rothmans, Benson & Hedges Inc. acting as agents for the Lead Companies in the Philip Morris Group
  - xiii. Requests by Rothmans, Benson & Hedges Inc. to the Canadian Tobacco Manufacturers' Council and ICOSI to respond to anti-tobacco campaigns
  - xiv. Public statements about the Philip Morris Group's continued efforts, in concert with the other Defendants, to present the smoking and health issue to the public
  - xv. Philip Morris Group and tobacco industry meetings relating to environmental tobacco smoke.
181. As for the RJR Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:
- i. Hounds Ears and Sawgrass conferences
  - ii. Meetings of the Canadian Tobacco Manufacturers' Council

- iii. Meetings of ICOSI and in particular, the Social Acceptability Working Party chaired by the RJR Group
  - iv. Smoking Issues Coordinator meetings
  - v. Position Papers of the Canadian Tobacco Manufacturers' Council
  - vi. Direction by the Lead Companies to JTI-Macdonald Corp. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research and the importance of maintaining the right to veto any particular research proposal
  - vii. The Canadian Tobacco Manufacturers' Council and JTI-Macdonald Corp. acting as agents for the Lead Companies in the RJR Group
  - viii. RJR Group and tobacco industry meetings relating to environmental tobacco smoke.
182. As for the BAT Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:
- i. BAT Group Smoking and Health Policy Meetings, including Chairman's Advisory Conferences and BAT Group Smoking Behaviour Conferences
  - ii. Smoker Reassurance Campaigns, including Project Viking and the September 1976 campaign

- iii. BAT Group document destruction meetings, including on January 8, 1990, June 21-22, 1990, August 1990 and September 1991
- iv. Imperial Tobacco Canada Limited's retention of Hill & Knowlton in 1962 to combat certain Health Canada information
- v. Meetings of the Canadian Tobacco Manufacturers' Council, including those dealing with the threshold nicotine content, procrastination in relation to carbon monoxide warnings and environmental tobacco smoke
- vi. The Canadian Tobacco Manufacturers' Council Position Papers
- vii. Meetings of ICOSI at which Imperial Tobacco Canada Limited was present or represented
- viii. Direction by the Lead Companies to Imperial Tobacco Canada Limited regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
- ix. The Canadian Tobacco Manufacturers' Council and Imperial Tobacco Canada Limited acting as agents for the Lead Companies in the BAT Group
- x. Direction by the Lead Companies to Imperial Tobacco Canada Limited regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research



- xi. Provision of personnel from the Lead Companies to assist Imperial Tobacco Canada Limited in responding to federal government inquiries
  - xii. BAT Group and tobacco industry meetings relating to environmental tobacco smoke.
183. As for the Rothmans Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:
- i. November 22, 1976 meeting among the Philip Morris Group, the BAT Group and Carreras Rothmans Limited relating to the smoker reassurance campaign
  - ii. Meetings of ICOSI
  - iii. Meetings of the Canadian Tobacco Manufacturers' Council
  - iv. Position Papers of the Canadian Tobacco Manufacturers' Council
  - v. Pooling of resources with other companies in the tobacco industry to fund studies intended to generate data that supported the industry's position that environmental tobacco smoke is not a health risk
  - vi. Direction by Carreras Rothmans Limited to Rothmans Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
  - vii. The Canadian Tobacco Manufacturers' Council and Rothmans Inc. acting as agents for Carreras Rothmans Limited

viii. Rothmans Group and tobacco industry meetings relating to environmental tobacco smoke.

184. Further particulars of the manner in which the Conspiracy or concert of action was entered into or continued, and of the tobacco-related wrongs committed by the Defendants in furtherance and as a result of the Conspiracy or concert of action, are within the knowledge of the Defendants.

**C. Joint and Several Liability**

185. The Province states that by reason of the facts pleaded, all of the Defendants are jointly and severally liable for the Province's aggregate cost of health-care benefits equal to the Defendants' combined market share in cigarettes.

186. The Province also states that by reason of the facts pleaded, the Defendants within each Group are jointly and severally liable.

187. The Province pleads and relies on subsections 2(6) and 4(3) and section 5 of the Act.

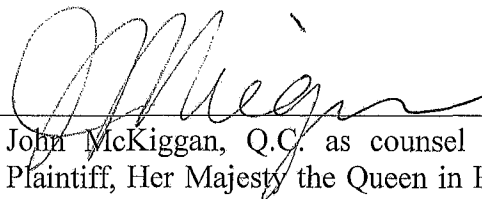
**V. RELIEF**

188. The Province claims against the Defendants, and each of them:

- (a) Its health-care expenditures attributable to tobacco-related disease or the risk of tobacco-related disease, for each fiscal year from 1953, the present value of which for each year will be calculated to the date of trial. Further particulars will be furnished as soon as they become available, pursuant to Rule 38;

- (b) The present value of the estimated total expenditure by the Province for health-care benefits which could reasonably be expected to result from tobacco-related disease or the risk of tobacco-related disease. Further particulars will be furnished as soon as they become available, pursuant to Rule 38;
- (c) costs; and
- (d) such other relief as to this Honourable Court seems just.

Dated at Halifax Regional Municipality, Province of Nova Scotia, this 9 day of January, 2015



John McKiggan, Q.C. as counsel for the Plaintiff, Her Majesty the Queen in Right of the Province of Nova Scotia

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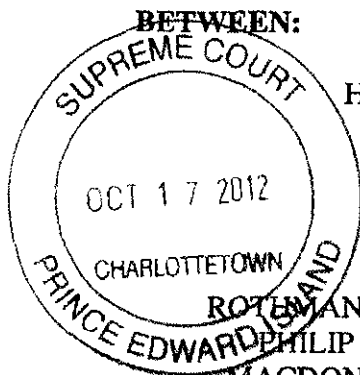
TO: The Prothonotary

AND TO: The Defendants, their solicitors or agents

# Tab I

**SUPREME COURT OF PRINCE EDWARD ISLAND  
(GENERAL SECTION)**

**BETWEEN:**



HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
PRINCE EDWARD ISLAND

**PLAINTIFF**

- and -

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

**DEFENDANTS**

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Prince Edward Island lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Prince Edward Island.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

- 2 -

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$300 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$300 for costs and have the costs assessed by the court.

September 10, 2012  
October 17, 2012

Issued by

  
\_\_\_\_\_  
/Registrar

Address of court office:  
42 Water Street  
Charlottetown, PEI C1A 1A4

TO: ROTHMANS, BENSON & HEDGES INC.  
1500 Don Mills Road  
North York, Ontario M3B 3L1

AND TO: ROTHMANS INC.  
1500 Don Mills Road, 9<sup>th</sup> Floor (Tax Dept.)  
North York, Ontario M3B 3L1

AND TO: ALTRIA GROUP, INC.  
6601 West Broad Street  
Richmond, Virginia 23230

AND TO: PHILIP MORRIS U.S.A. INC.  
6601 West Broad Street  
Richmond, Virginia 23230

AND TO: PHILIP MORRIS INTERNATIONAL, INC.  
120 Park Avenue, No. 6  
New York, New York 10017

AND TO: JTI-MACDONALD CORP.  
1 Robert Speck Parkway, Suite 1601  
Mississauga, Ontario L4Z 0A2

AND TO: R.J. REYNOLDS TOBACCO COMPANY  
401 North Main Street  
Winston-Salem, North Carolina 27102

AND TO: R.J. REYNOLDS TOBACCO INTERNATIONAL INC.  
401 North Main Street  
Winston-Salem, North Carolina 27101

- 3 -

AND TO: IMPERIAL TOBACCO CANADA LIMITED  
3711 St. Antoine Street West  
Montreal, Quebec H4C 3P6

AND TO: BRITISH AMERICAN TOBACCO P.L.C.  
Globe House  
4 Temple Place  
London, England WC2R 2PG

AND TO: B.A.T INDUSTRIES P.L.C.  
Globe House  
4 Temple Place  
London, England WC2R 2PG

AND TO: BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED  
Globe House  
1 Water Street  
London, England WC2R 3LA

AND TO: CARRERAS ROTHMANS LIMITED  
Globe House  
1 Water Street  
London, England WC2R 3LA

AND TO: CANADIAN TOBACCO MANUFACTURERS' COUNCIL  
6 Rue D'Angers  
Gatineau, Quebec J8T 4K1



## CLAIM

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## **I. RELIEF**

1. The Province claims against the Defendants, and each of them:
  - (a) Its health care expenditures attributable to tobacco-related disease or the risk of tobacco-related disease, for each fiscal year from 1953, the present value of which for each year will be calculated to the date of trial, which further particulars of shall be furnished prior to trial;
  - (b) The present value of the estimated total expenditure by the Province for health care benefits which could reasonably be expected to result from tobacco-related disease or the risk of tobacco-related disease, which further particulars of shall be furnished prior to trial.
  - (c) Costs; and
  - (d) Such other relief as to this Honourable Court seems just.

## **II. INTRODUCTION**

### **A. The Plaintiff and the Nature of the Claim**

2. The Plaintiff Her Majesty the Queen in right of the Province of Prince Edward Island (the "Province"), provides health care benefits for insured persons. Pursuant to the provisions of the *Tobacco Damages and Health Care Costs Recovery Act*, R.S.P.E.I. 1988, T-3.02 (the "Act"), the Province brings this action against the Defendants to recover the cost of health care benefits, on an aggregate basis, for a population of insured persons as a result of exposure to cigarettes. In particular, the Province seeks to recover:

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- (a) the present value of the total expenditure by the Province since 1953 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 Province 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,

caused or contributed to by the tobacco-related wrongs of the Defendants as described below. The Province pleads and relies on sections 2 and 3 of the Act.

- 3. The Province brings this action as a direct and distinct action for the recovery of health care benefits caused or contributed to by a tobacco-related wrong as defined in the Act, and the Province does so in its own right and not on the basis of a subrogated claim. The Province pleads and relies on subsections 2(1) and 2(2) of the Act.
- 4. The Province also pleads and relies on the presumptions and population-based evidence provisions under the Act, including subsections 2(5), 3(2) and 3(3) and section 5.
- 5. The words and terms used in this Statement of Claim including, "cost of health care benefits," "disease," "exposure," "health care benefits," "insured person," "manufacture," "manufacturer," "market share," "promote," "promotion," "tobacco product," "tobacco-related disease" and "tobacco-related wrong," have the meanings ascribed to them in the Act. The Province pleads and relies on the provisions of section 1 of the Act.
- 6. Also in this Statement of Claim:
  - (a) "cigarette" includes loose tobacco intended for incorporation into a cigarette, and

(b) "to smoke" or "smoking" means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette and includes exposure to cigarette smoke.

7. Throughout the Statement of Claim, reference to a defendant includes both its predecessors in interest and its predecessors in name as identified in Part C. Reference to the Defendants means all of the Defendants unless otherwise stated.
8. The Defendants' tobacco-related wrongs began in 1950 and continue to the present, unless otherwise stated.

**B. Overview of the Province's Claim**

9. Each of the Defendants is a Manufacturer of tobacco products (referred to herein as cigarettes), as defined in the Act. At all times material to this action, cigarettes manufactured and promoted by the Defendants were offered for sale in Prince Edward Island. The Defendants owed a duty to persons in Prince Edward Island who have been exposed or might become exposed to cigarettes.
10. By 1950, the Defendants knew or ought to have known that nicotine is addictive and that smoking cigarettes could cause or contribute to disease. By 1960, the Defendants also knew or ought to have known that exposure to cigarette smoke could cause or contribute to disease.
11. From 1950, all of the Defendants have committed tobacco-related wrongs by breaching duties and obligations to persons in Prince Edward Island, particularly their duties and obligations not to misrepresent the risks of smoking, to warn of the risks of smoking, not to promote cigarettes to children and adolescents, to design and manufacture a reasonably

safe product, and other common law, equitable and statutory duties and obligations, as pleaded.

12. The Defendants have breached these duties and obligations by misrepresenting the risks of smoking and exposure to smoke, failing to warn the public that cigarettes are addictive and cause disease, engaging in promotional activities to neutralize the effectiveness of the warnings on cigarette packaging, targeting children and adolescents in promotional and marketing activities, suppressing information and scientific and medical data about the risks of smoking and exposure to smoke, manipulating the level and bio-availability of nicotine in their cigarettes and misrepresenting that filters reduce the risks of smoking and that filtered, "mild," "low tar" and "light" cigarettes are healthier and safer than other cigarettes.
13. As a result of these tobacco-related wrongs, persons in Prince Edward Island started or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and have suffered, or will suffer, tobacco-related disease or an increased risk of tobacco-related disease.
14. In committing these tobacco-related wrongs, the Defendants have conspired or acted in concert. From the 1950s, the Defendants have been members of multinational tobacco enterprises or "Groups" whose companies engaged in the manufacture and promotion of cigarettes in Prince Edward Island and throughout the world. The four Groups were:
  - (a) the Philip Morris Group
  - (b) the R.J. Reynolds or RJR Group
  - (c) the British American Tobacco or BAT Group

(d) the Rothmans Group.

15. Beginning in 1953, these Groups agreed to disseminate false and misleading information, to suppress research and information on the risks of smoking and to orchestrate a false and misleading public relations program on smoking and health issues.
16. From 1953, the Defendants, both within each Group and with each other, have continued to conspire or to act in concert to distort research and to publicize misleading information about smoking and disease. They collectively agreed not to make any statement or admission that smoking caused disease and not to issue cigarette warnings unless they were forced to do so by government action. Since 1960, the Defendants have conspired or acted in concert to misrepresent the risk of exposure to smoke.
17. Beginning in 1953, this conspiracy was implemented in Prince Edward Island and throughout Canada through the defendants Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited, Rothmans Inc., and the Canadian Tobacco Manufacturers' Council.
18. The Defendants have conspired or acted in concert to prevent the Province and persons in Prince Edward Island from acquiring knowledge of the harmful and addictive properties of cigarettes and in committing tobacco-related wrongs.
19. Particulars of the Province's claim are provided below.

**C. The Defendants**

20. In 1950 and for several decades thereafter, the four tobacco Groups were the Philip Morris Group, the RJR Group, the BAT Group and the Rothmans Group. Within each Group, certain companies (referred to herein as the Lead Companies) were responsible

for the direction, control, coordination and implementation of the common policies on smoking and health described below.

(i) **The Philip Morris Group**

**1. Altria Group, Inc.**

21. The defendant Altria Group, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in the United States of America. Altria Group, Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Companies Inc. Altria Group, Inc. is a Lead Company of the Philip Morris Group.

**2. Philip Morris U.S.A. Inc.**

22. The defendant Philip Morris U.S.A. Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in the United States of America. Philip Morris U.S.A. Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Incorporated. Philip Morris U.S.A. Inc. is a Lead Company of the Philip Morris Group.

**3. Philip Morris International, Inc.**

23. The defendant Philip Morris International, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 120 Park Avenue, New York, New York, in the United States of America. Philip Morris International, Inc. is responsible in law for the actions and conduct of its predecessor in interest, Philip Morris Overseas, a division of Philip Morris Incorporated. In 1987, Philip Morris International, Inc. was incorporated as a subsidiary of Altria Group, Inc. Philip Morris International, Inc. remained a



subsidiary of Altria Group, Inc. until 2008. Philip Morris International, Inc. is a Lead Company of the Philip Morris Group.

**4. Rothmans, Benson & Hedges Inc.**

24. The defendant Rothmans, Benson & Hedges Inc. is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans, Benson & Hedges Inc. is responsible in law for the actions and conduct of its predecessors in interest, Benson & Hedges (Canada) Limited, Benson & Hedges (Canada) Inc., and Rothmans of Pall Mall Limited.
25. Benson & Hedges (Canada) Limited was incorporated in 1934. In 1958, Benson & Hedges (Canada) Limited became a subsidiary of Philip Morris International, Inc. and an integral part of the Philip Morris Group. In 1979, Benson & Hedges (Canada) Limited changed its name to Benson & Hedges (Canada) Inc.
26. Rothmans, Benson & Hedges Inc. was formed in 1986 by the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited. In 2009, Rothmans, Benson & Hedges Inc. and the defendant Rothmans Inc. amalgamated and continued to operate as Rothmans, Benson & Hedges Inc. Rothmans, Benson & Hedges Inc. is a wholly owned subsidiary of Philip Morris International, Inc.

**5. The Philip Morris Group Lead Companies Control and Direct Rothmans, Benson & Hedges Inc.**

27. At all times material to this action, the Canadian company, Rothmans, Benson & Hedges Inc., has been controlled and directed by the Lead Companies of the Philip Morris Group. The control and direction by Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip

Morris International, Inc. has extended to the manufacture and promotion of their cigarettes.

28. The means by which the Philip Morris Group Lead Companies have exercised control and direction include:
- i. Overseeing board meetings of Rothmans, Benson & Hedges Inc.
  - ii. Placing board members of the Lead Companies on the board of directors of Rothmans, Benson & Hedges Inc.
  - iii. Placing senior executives of the Lead Companies as senior executives of Rothmans, Benson & Hedges Inc.
  - iv. Providing technical expertise, smoking and health materials, financial support and direction to Rothmans, Benson & Hedges Inc., including information on the relationship between smoking and health and technical knowledge for the manufacture of cigarettes, the levels of tar and nicotine and the type of tobacco to be used
  - v. Organizing Philip Morris Group smoking and health conferences to set common policies for key tobacco companies in the Philip Morris Group, including Rothmans, Benson & Hedges Inc.
  - vi. Developing and implementing Philip Morris Group positions and policies through committees, including the Corporate Issues Management Committee, the Corporate Products Committee and the Committee on Smoking Issues and Management

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- vii. Creating a Public Affairs branch designed to manage smoking and health issues and government relations
  - viii. Orchestrating marketing and promotional campaigns
  - ix. Approving the deployment of funds for subsidiary operations, research into smoking and health, the promotion of cigarettes and smoker reassurance campaigns.
29. The control and direction by the Lead Companies of the Philip Morris Group have involved the implementation of the Philip Morris Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Philip Morris Group has maintained a policy that members of the Philip Morris Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the Philip Morris Group was to create doubt and controversy regarding the adverse health consequences of smoking and to defeat or delay anti-smoking legislation that would impose restrictions on the formulation, marketing, sale or use of cigarettes.
30. From 1960, it has been the Philip Morris Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
31. The Lead Companies of the Philip Morris Group have communicated and directed these policies for Rothmans, Benson & Hedges Inc. by a variety of means, including:
- i. Establishing directives and communications such as "Smoking and Health Quick Reference Guides" and "Issues Alerts" to the Regions, including Canada
  - ii. Providing training, technical expertise and support

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- iii. Convening conferences, including the Conference on Smoking and Health and the Corporate Affairs World Conference
  - iv. Forming committees, such as the Committee on Smoking Issues Policy and Management and the Scientific Research and Review Committee for Worldwide Tobacco
  - v. Establishing Corporate Affairs and Public Affairs departments of the Lead Companies
  - vi. Conspiring or acting in concert as particularized in Part V below.
32. These common policies of the Philip Morris Group have continued notwithstanding changes in the corporate structure of the Philip Morris Group. These common policies on smoking and health in the Philip Morris Group have been maintained in Canada under the control and direction of Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. from 1950 to the present, such that these defendants are responsible in law for the Philip Morris Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
33. In particular, the Province states that:
- i. By reason of the facts pleaded, Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
  - ii. Rothmans, Benson & Hedges Inc. has acted as agent for Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada

- iii. As described in Part V, Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**6. The Philip Morris Group Defendants are Manufacturers under the Act**

34. Each of Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. (collectively, "the Philip Morris Defendants") is a Manufacturer pursuant to clause 1(1)(h) of the Act because:

- i. Each of the Philip Morris Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to subclause 1(1)(h)(i) of the Act, each of the Philip Morris Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subclause 1(1)(h)(ii) of the Act, each of the Philip Morris Defendants derives at least 10 percent of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
- iv. Pursuant to subclause 1(1)(h)(iii) of the Act, each of the Philip Morris Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the

promotion of cigarettes and associations opposing the plain packaging of cigarettes.

35. From 1950 and continuing to the present, cigarettes manufactured or promoted by the Philip Morris Defendants have been offered for sale in Prince Edward Island. The brand names of the cigarettes of the Philip Morris Defendants offered for sale in Prince Edward Island and the rest of Canada include *Benson & Hedges, Belvedere, Marlboro, Marlboro Lights, Rothmans, Alpine* and *Parliament*.

(ii) **The RJR Group**

**1. R.J. Reynolds Tobacco Company**

36. The defendant R.J. Reynolds Tobacco Company is a company currently incorporated pursuant to the laws of ~~New Jersey~~ North Carolina and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco Company is a Lead Company of the RJR Group.

37. R.J. Reynolds Tobacco Company was incorporated in 1922. In 2004~~3~~, the U.S. assets, liabilities and operations of R.J. Reynolds Tobacco Company (at the time, incorporated pursuant to the laws of New Jersey) were combined entered into a business combination with those of Brown & Williamson Tobacco Corporation, owned by the defendant, British American Tobacco p.l.c. Concurrent with the completion of the business combination, R.J. Reynolds Tobacco Company became a North Carolina corporation. Its principal place of business continued to be North Carolina. For greater certainty, the Province pleads that R.J. Reynolds Tobacco Company (incorporated in North Carolina) is

responsible in law for the actions and conduct of its predecessor in interest and name, R.J. Reynolds Tobacco Company (incorporated in New Jersey).

**2. R.J. Reynolds Tobacco International, Inc.**

38. The defendant R.J. Reynolds Tobacco International, Inc. is a company incorporated pursuant to the laws of Delaware and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco International, Inc. is a Lead Company of the RJR Group.

**3. JTI-Macdonald Corp.**

39. The defendant JTI-Macdonald Corp. is a company formed by continuance pursuant to the laws of Canada and has a registered office at 1 Robert Speck Parkway, Mississauga, Ontario. JTI-Macdonald Corp. is responsible in law for the actions and conduct of its predecessors in interest, RJR-Macdonald Corp., RJR-Macdonald Inc. and Macdonald Tobacco Inc.
40. W.C. Macdonald Incorporated was incorporated in 1930 and changed its name to Macdonald Tobacco Inc. in 1957. In 1970, Macdonald Tobacco Inc. became the exclusive Canadian distributor of the cigarette brands of R.J. Reynolds Tobacco Company referred to in paragraph 51. Macdonald Tobacco Inc. became a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1974.
41. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. In 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald Tobacco Inc. and acquired all or substantially all of Macdonald Tobacco Inc.'s assets and

continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc.

42. In 1999, RJR-Macdonald Inc. amalgamated with 3027221 Nova Scotia Company and continued as RJR-Macdonald Corp. JTI-Macdonald Corp. was created in 1999 as a result of an amalgamation between RJR-Macdonald Corp. and JT-Nova Scotia Corporation.

**4. The RJR Group Lead Companies Control and Direct JTI-Macdonald Corp.**

43. At all times material to this action, the Canadian company, JTI-Macdonald Corp., has been controlled and directed by the Lead Companies of the RJR Group. The control and direction by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. has extended to the manufacture and promotion of their cigarettes.
44. The means by which the RJR Lead Companies have exercised control and direction include:
- i. Developing a reporting system whereby each global "Area," including Canada as Area II, had a smoking issue designee who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to R.J. Reynolds Tobacco Company's Manager of Science Information
  - ii. Convening meetings such as the Winston-Salem Smoking Issues Coordinator Meetings
  - iii. Developing and implementing positions and policies such as the "Issues Guide" to direct and control the activities of the RJR Group's subsidiaries, including JTI-Macdonald Corp.



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- iv. Placing senior executives of the Lead Companies as senior executives of JTI-Macdonald Corp.
  - v. Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department
  - vi. Providing technical expertise, including information and knowledge on the manufacture of cigarettes, the use of substitutes and additives, the use of pH controls, the appropriate levels of tar and nicotine and the type and mixture of tobacco used in the manufacture of cigarettes
  - vii. Providing cigarettes and cigarette samples made by the Lead Companies to JTI-Macdonald Corp. for sale in Canada, including Prince Edward Island
  - viii. Maintaining a veto over research funding by the Canadian Tobacco Manufacturers' Council.
45. The control and direction by the Lead Companies of the RJR Group have involved the implementation of the RJR Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the RJR Group has maintained a policy that members of the RJR Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. This policy included the creation of an action plan to respond to health and smoking issues by distributing information creating a scientific controversy surrounding smoking-related disease and by countering anti-smoking groups and legislation.
46. From 1960, it has been the RJR Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.

47. The Lead Companies of the RJR Group have communicated and directed these policies for JTI-Macdonald Corp. by a variety of means, including:
- i. Establishing directives and communications such as the "Issues Guide"
  - ii. Developing an action plan which set out the RJR Group's position on smoking and health issues to ensure that the personnel in the RJR Group companies, including JTI-Macdonald Corp., understood and disseminated the RJR Group's position
  - iii. Convening meetings including the Winston-Salem Smoking Issues Coordinator Meetings
  - iv. Convening conferences including the "Hounds Ears" and Sawgrass conferences
  - v. Taking a leadership role in the International Committee on Smoking Issues ("ICOSI"), particularly in relation to Canada
  - vi. Conspiring or acting in concert as particularized in Part V below.
48. These common policies of the RJR Group have continued notwithstanding changes in the corporate structure of the RJR Group. These common policies on smoking and health in the RJR Group have been maintained in Canada under the control and direction of R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. from 1950 to the present, such that these defendants are responsible in law for the RJR Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of JTI-Macdonald Corp.

49. In particular, the Province states that:

- i. By reason of the facts pleaded, R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of JTI-Macdonald Corp.
- ii. JTI-Macdonald Corp. has acted as agent for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. in committing tobacco-related wrongs in Canada
- iii. As described in Part V, R.J. Reynolds Tobacco Company, R.J. Reynolds International, Inc. and JTI-Macdonald Corp. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**5. The RJR Group Defendants are Manufacturers under the Act**

50. Each of R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc. and JTI-Macdonald Corp. (collectively, "the RJR Defendants") is a Manufacturer pursuant to clause 1(1)(h) of the Act because:

- i. Each of the RJR Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to subclause 1(1)(h)(i) of the Act, each of the RJR Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subclause 1(1)(h)(ii) of the Act, each of the RJR Defendants derives at least 10 percent of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.

iv. Pursuant to subclause 1(1)(h)(iii) of the Act, each of the RJR Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

51. From 1950 and continuing to the present, cigarettes manufactured or promoted by the RJR Defendants have been offered for sale in Prince Edward Island. The brand names of the cigarettes of the RJR Defendants offered for sale in Prince Edward Island and the rest of Canada include *Export*, *Export "A"*, *Vantage*, *Camel*, *Salem*, *Smooth*, *Contessa*, *Contessa Slims*, *More*, *Macdonald* and *Winston*.

**(iii) The BAT Group**

**1. British American Tobacco p.l.c.**

52. The defendant British American Tobacco p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England. British American Tobacco p.l.c. is responsible in law for the actions and conduct of its predecessors in interest, British-American Tobacco Company Limited (now known as British American Tobacco (Investments) Limited) and B.A.T Industries p.l.c. British American Tobacco p.l.c. is a Lead Company of the BAT Group.

53. British American Tobacco p.l.c. has been the parent company of the BAT Group since 1998. British American Tobacco p.l.c. purports to have been in the tobacco business in the Americas for more than 100 years and to be solely focused on tobacco.

**2. British American Tobacco (Investments) Limited**

54. The defendant British American Tobacco (Investments) Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England. British American Tobacco (Investments) Limited is responsible in law for the actions and conduct of its predecessor in name, British-American Tobacco Company Limited. British American Tobacco (Investments) Limited is a Lead Company of the BAT Group.
55. British American Tobacco (Investments) Limited was the parent company of the BAT Group from 1902 to 1976. British American Tobacco (Investments) Limited was known as British-American Tobacco Company Limited until 1998.

**3. B.A.T Industries p.l.c.**

56. The defendant B.A.T Industries p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England. B.A.T Industries p.l.c. is responsible in law for the actions and conduct of its predecessors in interest, B.A.T Industries Limited and Tobacco Securities Trust Limited. B.A.T Industries p.l.c. is a Lead Company of the BAT Group.
57. B.A.T Industries p.l.c. was the parent company of the BAT Group from 1976 to 1998.

**4. Imperial Tobacco Canada Limited**

58. The defendant Imperial Tobacco Canada Limited is a company incorporated pursuant to the laws of Canada and has a registered office at 3711 St. Antoine Street West, Montreal, Quebec. Imperial Tobacco Canada Limited is responsible in law for the actions and

conduct of its predecessors in interest, Imperial Tobacco Company of Canada Limited, Imperial Tobacco Limited and Imasco Ltd.

59. For 100 years, Imperial Tobacco Canada Limited and its predecessors have been an integral part of the BAT Group and a subsidiary of the parent company of the BAT Group.
60. Imperial Tobacco Company of Canada Limited was incorporated in 1912. In 1970, Imperial Tobacco Company of Canada Limited changed its name to Imasco Limited, and formed a wholly owned subsidiary, Imperial Tobacco Limited. In 2000, Imasco Limited and Imperial Tobacco Limited were amalgamated under the name Imperial Tobacco Canada Limited.
61. In 2000, Imperial Tobacco Canada Limited became a wholly owned subsidiary of British American Tobacco p.l.c., the current parent of the BAT Group.

**5. The BAT Group Lead Companies Control and Direct Imperial Tobacco Canada Limited**

62. At all times material to this action, the Canadian company, Imperial Tobacco Canada Limited has been controlled and directed by the Lead Companies of the BAT Group. The control and direction by British American Tobacco p.l.c., British American Tobacco (Investments) Limited, and B.A.T Industries p.l.c. has extended to the manufacture and promotion of their cigarettes.
63. The means by which the BAT Group Lead Companies have exercised control and direction include:

- i. Establishing Smoking and Health Policies to be followed by the members of the BAT Group
  - ii. Convening Tobacco Strategy Review Team Policy meetings
  - iii. Convening Smoking and Health, Marketing and Research conferences for major international markets, including Canada
  - iv. Forming committees including the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board and the Tobacco Executive Committee
  - v. Overseeing tobacco-related activities in Canada by the Chairman of the BAT Group Tobacco Division Board
  - vi. Making final decisions on which Canadian Tobacco Manufacturers' Council research should be funded by Imperial Tobacco Canada Limited.
64. The control and direction by the Lead Companies of the BAT Group have involved the implementation of the BAT Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the BAT Group has maintained a policy that members of the BAT Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the BAT Group was to maintain that causation had not been scientifically proven and remained controversial and to resist warnings as long as possible.
65. From 1960, it has been the BAT Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.

66. The Lead Companies of the BAT Group have communicated and directed these policies for Imperial Tobacco Canada Limited by a variety of means, including:
- i. Establishing the Smoking and Health Policies which ensured that all BAT Group companies gave uniform answers to similar questions on smoking and health issues, including B.A.T Industries p.l.c.'s Statement of Business Conduct
  - ii. Convening the Chairman's Advisory Conferences, BAT Group Research Conferences and BAT Group Marketing Conferences, all of which included Imperial Tobacco Canada Limited
  - iii. Preparing and distributing to BAT Group members, including Imperial Tobacco Canada Limited, written directives and communications, including "Smoking Issues: Claims and Responses," "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues," "Smoking and Health: The Unresolved Debate," "Smoking: The Scientific Controversy," "Smoking: Habit or Addiction?" and "Legal Considerations on Smoking and Health Policy"
  - iv. Ensuring through all of these means that the personnel of the BAT Group companies, including Imperial Tobacco Canada Limited, understood and disseminated the BAT Group's position on smoking and health
  - v. Conspiring or acting in concert as particularized in Part V below.
67. These common policies of the BAT Group have continued notwithstanding changes in the corporate structure of the BAT Group. There continues to be central coordination of the BAT Group's international strategy, of which Canada is an integral part, and central control and management of the BAT Group policies on smoking and health issues. These



common policies on smoking and health in the BAT Group have been maintained in Canada under the control and direction of British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited from 1950 to the present, such that these defendants are responsible in law for the BAT Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited.

68. In particular, the Province states that:

- i. By reason of the facts pleaded, British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited are jointly liable with and are vicariously liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited
- ii. Imperial Tobacco Canada Limited has acted as agent for British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited in committing tobacco-related wrongs in Canada
- iii. As described in Part V, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Imperial Tobacco Canada Limited have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**6. The BAT Group Defendants are Manufacturers under the Act**

69. Each of British American Tobacco p.l.c., British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Imperial Tobacco Canada Limited (collectively, "the BAT Defendants") is a Manufacturer pursuant to clause 1(1)(h) of the Act because:

- i. Each of the BAT Defendants manufactures or has manufactured cigarettes.
  - ii. Pursuant to subclause 1(1)(h)(i) of the Act, each of the BAT Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
  - iii. Pursuant to subclause 1(1)(h)(ii) of the Act, each of the BAT Defendants derives at least 10 percent of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
  - iv. Pursuant to subclause 1(1)(h)(iii) of the Act, each of the BAT Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.
70. From 1950 and continuing to the present, cigarettes manufactured or promoted by the BAT Defendants have been offered for sale in Prince Edward Island. The brand names of the cigarettes of the BAT Defendants offered for sale in Prince Edward Island and the rest of Canada include *du Maurier, Peter Jackson, Player's Matinee, Goldcrest, John Player, Avanti, Cameo, Kool, Marlboro, Sweet Caporal, Pall Mall, Medallion, Matinee Slims, Matinee Special Mild, Matinee Extra Mild* and *Vogue*.

**(iv) The Rothmans Group**

**1. Carreras Rothmans Limited**

71. The defendant Carreras Rothmans Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street,

London, England. Carreras Rothmans Limited is responsible in law for the actions and conduct of its predecessors in interest Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada and Carreras Limited. Carreras Rothmans Limited was a Lead Company of the Rothmans Group. Since 1999, Carreras Rothmans Limited has been part of the BAT Group.

72. Carreras Rothmans Limited was formed in 1958 when Rothmans of Pall Mall Limited acquired a controlling interest in Carreras Limited. At that time, Rothmans of Pall Mall Limited controlled Rothmans of Pall Mall Canada Limited and Carreras Limited controlled Rock City Tobacco Company of Quebec. By 1963, Rothmans of Pall Mall Canada had assumed all outstanding shares of Rock City Tobacco Company of Quebec.

## **2. Rothmans Inc.**

73. The defendant Rothmans Inc. is a company incorporated pursuant to the laws of Ontario and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans Inc. has represented itself to have been a part of the Canadian tobacco industry for the past 100 years. Rothmans Inc. is responsible for the actions and conduct of its predecessor in name Rothmans of Pall Mall Canada Limited.
74. Rothmans of Pall Mall Canada Limited was incorporated in 1956. In 1985, Rothmans of Pall Mall Canada Limited changed its name to Rothmans Inc. Between 1986 and 2008, Rothmans Inc. was a co-owner with Altria Group, Inc. of Rothmans, Benson & Hedges Inc. In 2009, Rothmans Inc. amalgamated with and continued as Rothmans, Benson & Hedges Inc. as a wholly owned subsidiary of Philip Morris International, Inc.

**3. The Rothmans Group Lead Companies Controlled and Directed Rothmans Inc.**

75. Prior to 1986, the Canadian company, Rothmans Inc., was controlled and directed by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group. The control and direction by the Rothmans Group Lead Companies extended to the manufacture and promotion of their cigarettes.
76. Since 1980, the Philip Morris Group exercised substantial influence over Rothmans International through the creation of a partnership with the Rothmans Group and the placement of board members of the Philip Morris Group Lead Companies on the board of Rothmans International.
77. The means by which Carreras Rothmans Limited and Rothmans International exercised control and direction included:
- i. Coordinating the research strategy of all of the Rothmans Group companies worldwide, including Canada
  - ii. Facilitating a constant exchange of information, knowledge and ideas of all of the Rothmans Group companies worldwide, including Canada
  - iii. Directing its subsidiaries and affiliates, including Rothmans Inc., to conform their policies to those of the broader tobacco industry
  - iv. Creating the International Advisory Board for the development of common policies and strategies for the benefit of the Rothmans Group

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- v. Providing technical expertise and other support to members of the Rothmans Group
  - vi. Placing board members of the Lead Companies on the board of directors of Rothmans Inc.
78. The control and direction by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group involved the implementation of the Rothmans Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Rothmans Group maintained a policy that members of the Rothmans Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed.
79. From 1960, it was the Rothmans Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
80. The Lead Companies of the Rothmans Group, including Carreras Rothmans Limited and Rothmans International, communicated and directed these policies for Rothmans Inc. by a variety of means, including:
- i. Directing Rothmans Inc. to maintain the Rothmans Group's position that more research was needed in order to determine whether cigarettes cause disease
  - ii. Instructing Rothmans Inc. not to agree voluntarily to cautionary warnings in advertising
  - iii. Creating the International Advisory Board
  - iv. Conspiring or acting in concert as particularized in Part V below.

81. These common policies on smoking and health in the Rothmans Group were maintained in Canada under the control and direction of Carreras Rothmans Limited and Rothmans International from 1950 to 1986 such that Carreras Rothmans Limited is responsible in law for its own tobacco-related wrongs and is jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
82. Altria Group, Inc. and Philip Morris International, Inc. controlled and directed the Rothmans Group such that from 1980 to the present, Altria Group, Inc. and Philip Morris International, Inc. are responsible in law for their own tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
83. In particular, the Province states that:
- i. By reason of the facts pleaded, Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans Inc.
  - ii. Rothmans Inc. has acted as agent for Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada
  - iii. As described in Part V, Carreras Rothmans Limited, Altria Group, Inc., Philip Morris International, Inc. and Rothmans Inc. have, together and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

**4. The Rothmans Group Defendants are Manufacturers under the Act**

84. Each of Carreras Rothmans Limited and Rothmans Inc. (together, the "Rothmans Defendants") is a Manufacturer pursuant to clause 1(1)(h) of the Act because:

- i. Each of the Rothmans Defendants has manufactured cigarettes.
  - ii. Pursuant to subclause 1(1)(h)(i) of the Act, each of the Rothmans Defendants has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
  - iii. Pursuant to subclause 1(1)(h)(ii) of the Act, each of the Rothmans Defendants derived at least 10 percent of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
  - iv. Pursuant to subclause 1(1)(h)(iii) of the Act, each of the Rothmans Defendants engaged in, or caused, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of tobacco cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.
85. From 1950 until 2008, cigarettes manufactured or promoted by the Rothmans Group were offered for sale in Prince Edward Island. The brand names of the cigarettes of the Rothmans Group offered for sale in Prince Edward Island and the rest of Canada are now offered for sale through the defendant, Rothmans, Benson & Hedges Inc. and include *Rothmans, Dunhill, Craven "A", Craven "A" Super Slims, Sportsman and Black Cat*.
- (v) **The Canadian Tobacco Manufacturers' Council**
86. The defendant Canadian Tobacco Manufacturers' Council is a company incorporated pursuant to the laws of Canada and has a registered office at 6 Rue D'Angers, Gatineau, Quebec. The Canadian Tobacco Manufacturers' Council is the trade association of the

Canadian tobacco industry and was originally formed as an ad hoc committee of members of the Canadian tobacco industry in 1963 to influence government authorities on the question of smoking and health.

87. The founding members of the Canadian Tobacco Manufacturers' Council were Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans Inc.
88. As described in paragraphs 168 - 185, the Canadian Tobacco Manufacturers' Council provided a means by which the Defendants' Conspiracy (defined in Part V) was implemented and continues to be implemented in Canada. In addition, the Canadian Tobacco Manufacturers' Council itself was and remains a participant in the Conspiracy.
89. The Canadian Tobacco Manufacturers' Council is a Manufacturer pursuant to subclause 1(1)(h)(iv) of the Act because it has been and is engaged in all of the following activities:
  - (a) the advancement of the interests of Manufacturers
  - (b) the promotion of cigarettes
  - (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes.

### **III. THE DEFENDANTS' KNOWLEDGE OF THE RISKS OF SMOKING AND EXPOSURE TO SMOKE**

90. The Defendants designed and manufactured cigarettes to deliver nicotine to smokers.



91. Nicotine is an addictive drug that affects the brain and central nervous system, the cardiovascular system, the lungs, other organs and body systems and endocrine function. Addicted smokers physically and psychologically crave nicotine.
92. Smoking causes or contributes to disease, including, but not limited to:
- (a) chronic obstructive pulmonary disease and related conditions, including:
    - i. emphysema
    - ii. chronic bronchitis
    - iii. chronic airways obstruction
    - iv. asthma
  - (b) cancer, including:
    - i. cancer of the lung
    - ii. cancer of the lip, oral cavity and pharynx
    - iii. cancer of the larynx
    - iv. cancer of the esophagus
    - v. cancer of the bladder
    - vi. cancer of the kidney
    - vii. cancer of the pancreas
    - viii. cancer of the stomach

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- (c) circulatory system diseases, including:
  - i. coronary heart disease
  - ii. pulmonary circulatory disease
  - iii. cerebrovascular disease
  - iv. atherosclerosis, aortic and other aneurysms
  - v. peripheral vascular disease
- (d) pneumonia and influenza
- (e) peptic ulcers
- (f) increased morbidity and general deterioration of health
- (g) fetal harm.

93. Since 1950, the Defendants have been aware that cigarettes:

- (a) contain substances and produce by-products which can cause or contribute to disease including, nitrosamines, carbon monoxide, benzene, benzo[a]pyrene, dibenz[a,h]anthracene, benzo[e]pyrene, chrysene, dibenzo[a,i]pyrene, n'nitrosornicotine, acrolein, hydrogen cyanide, isoprene, chromium, chloracetophenone and arsenic
- (b) cause or contribute to addiction.

94. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that smoking cigarettes could cause or contribute to disease.

95. By 1950, the Defendants knew or ought to have known that:
- (a) nicotine is an addictive and active ingredient in cigarettes
  - (b) smokers crave nicotine
  - (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.

#### **IV. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS**

##### **A. Deceit and Misrepresentation**

96. At all material times, the Defendants have owed a duty to persons in Prince Edward Island not to misrepresent the risks of smoking, those risks being the risks of addiction and disease.

97. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Prince Edward Island started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

##### **(i) The Misrepresentations**

98. From 1950, the Defendants have misrepresented the risks of addiction and disease and in particular, without limiting the generality of the foregoing, have misrepresented in Prince Edward Island and throughout Canada that:

- (a) smoking has not been shown to cause any known diseases

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- (b) there is no medical or scientific link between smoking and disease
- (c) they were not aware of any research, or any credible research, establishing a link between smoking and disease
- (d) environmental and genetic factors are to blame for many diseases rather than smoking
- (e) cigarettes are not addictive
- (f) smoking is merely a habit or custom, not an addiction
- (g) they have not manipulated nicotine levels
- (h) they have not included substances in their cigarettes designed to increase the bio-availability of nicotine
- (i) certain of their cigarettes, such as "filter," "mild," "low tar" and "light" brands, are safer than other cigarettes
- (j) machine measurements of tar and nicotine are representative of actual intake
- (k) smoking is consistent with a healthy lifestyle
- (l) smoking is not harmful to health
- (m) exposure to cigarette smoke is not harmful to health
- (n) smoking and exposure to cigarette smoke are not a serious health risk
- (o) they are interested in the health and well-being of smokers.

99. The misrepresentations by the Philip Morris Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)
  - ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
  - iii. Public and media statements to Canadian newspapers and on North American television (including a statement in the Toronto Daily Star (September 1967) and a speech in Halifax (June 1978))
  - iv. Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.)
  - v. Publications (including in the 1978 Booklet "The Facts" published by Benson & Hedges (Canada) Inc.)
  - vi. Advertising, marketing and promotional campaigns

- vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part V below.
100. The misrepresentations by the RJR Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)
  - ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
  - iii. Publications (including "R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina" in *The Tobacco Industry in Transition*)
  - iv. Speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts)

- v. Public statements (including the 1983 Revised Mission Statement on Smoking and Health)
  - vi. Advertising, marketing and promotional campaigns
  - vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part V below.
101. The misrepresentations by the BAT Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969), the National Association of Tobacco and Confectionery Distributors Convention (October 1969), federal Legislative Committees (including in November 1987 and January 1988) and the House of Commons Standing Committee on Health (December 1996)
  - ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
  - iii. Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited)

- iv. Public and media statements to Canadian newspapers and on national television, (including CBC television (December 1969) and in the Toronto Daily Star (June 1971))
  - v. Publications (including on the topics of smoking and health, "habit or addiction" and environmental tobacco smoke)
  - vi. British American Tobacco p.l.c.'s website relating to environmental tobacco smoke
  - vii. Advertising, marketing and promotional campaigns
  - viii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part V below.
102. The misrepresentations by the Rothmans Group in Canada were continuous and were made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and the National Association of Tobacco and Confectionery Distributors Convention (October 1969)
  - ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979) and with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981)



- iii. Full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart "vital information" as soon as available
  - iv. Public and media statements to Canadian newspapers and on national television (including in the Toronto Daily Star (September 1962, June 1969) and in the Globe and Mail (June 1967))
  - v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part V below.
103. Since 1963, the Canadian Tobacco Manufacturers' Council's misrepresentations have been continuous and have been made through a variety of means including:
- i. Presentations, including the 1963 presentation to the Canadian Medical Association, the 1963 presentation to the federal Department of National Health and Welfare, the 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs, the 1969 presentation to the National Association of Tobacco and Confectionery Distributors Convention and the 1987 and 1988 presentations to federal Legislative Committees
  - ii. Meetings with the federal Department of National Health and Welfare, the purpose of which was to oppose and delay regulatory measures
  - iii. Position papers
  - iv. Public statements characterizing warnings as misstatements and exaggerations of the scientific evidence, and representing environmental tobacco smoke as a symptom of inadequate ventilation in buildings

- v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part V below.

**(ii) Suppression and Concealment of Scientific and Medical Data**

104. From 1950, the Defendants have suppressed and concealed scientific and medical data which revealed the serious health risks of smoking and exposure to cigarette smoke. Each Group had policies in accordance with which the Defendants have withheld, altered and destroyed research on addiction and disease causation.
105. Particulars of this suppression of scientific and medical data and research by the Philip Morris Group include:
  - i. Agreeing with British American Tobacco (Investments) Limited and the RJR Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
  - ii. Destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group
  - iii. Closing of research laboratories and destroying related scientific information
  - iv. Withdrawing internal research relating to nicotine from peer review
  - v. Destroying internal research relating to nicotine
  - vi. Prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the additive effect of smoking

- vii. Establishing INBIFO, a facility in Europe where unfavourable research was destroyed
  - viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
106. Particulars of this suppression of scientific and medical data by the RJR Group include:
- i. Agreeing with British American Tobacco (Investments) Limited and the Philip Morris Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
  - ii. Ceasing research on the effects of smoke because of its potential bearing on product liability
  - iii. Removing 150 boxes of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina
  - iv. Imposing restrictions on the use of terms, including "drug," "marketing" and "dependency," in scientific studies
  - v. Destroying research relating to the biological activity of Camel cigarettes
  - vi. Invalidating and destroying research reports
  - vii. Terminating and destroying research associated with R.J. Reynolds Tobacco Company's "The Mouse House" experiments
  - viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

107. Particulars of this suppression of scientific and medical data by the BAT Group include:
- i. Agreeing with the Philip Morris and RJR Groups to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
  - ii. Agreeing with the Rothmans Group to suppress research relating to carbon monoxide and smoke intake
  - iii. Implementing a policy with Imperial Tobacco Canada Limited to avoid written documentation on issues relating to smoking and health
  - iv. Agreeing within the BAT Group not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the BAT Group
  - v. Directing that certain research reports in Canada be destroyed (1992)
  - vi. Suppressing information and developments relating to potentially safer products
  - vii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
108. Particulars of this suppression of scientific and medical data by the Rothmans Group include:
- i. Agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake

- ii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
109. Particulars of the Canadian Tobacco Manufacturers' Council's suppression of scientific and medical data include:
  - i. Refusing to approve and fund research where there was a concern that the results could be adverse to the tobacco industry
  - ii. Sponsoring studies only where there was no likelihood that the results could be harmful to the tobacco industry.
- (iii) Misleading Campaigns to Enhance Their Own Credibility**
110. From 1950, the Defendants have participated in misleading campaigns to enhance their own credibility and to diminish the credibility of health authorities and anti-smoking groups for the purposes of reassuring smokers that cigarettes were not as dangerous as authorities were saying and of maintaining the social acceptability of smoking.
111. The misleading campaigns were at least two-pronged: (a) public denials as to the harmful effects of smoking and the calls for more research (while concealing research findings and suppressing further research); and (b) implementing misleading campaigns designed to reassure smokers which (as described in paragraphs 99 to 103) included advertising campaigns and numerous public statements relating both to cigarette smoking and exposure to cigarette smoke.

(iv) **Misrepresentations Relating to Filtered, "Mild," "Low Tar" and "Light" Cigarettes**

112. Beginning in the 1960s, the Defendants have wrongfully promoted filtered, "mild," "low tar" and "light" cigarettes to the public and government agencies, including the federal government and the federal Department of Health and Welfare, with the purpose of deceiving the public and these agencies into believing that these cigarettes were healthier and safer.
113. From the 1960s, the Defendants have known that filtered, "mild," "low tar" and "light" cigarettes were not healthier or safer because smokers would compensate by increasing their inhalation of smoke to obtain as much or more nicotine.
114. The Defendants have also misled the public by linking a healthy image and lifestyle to filtered, "mild," "low tar" and "light" cigarettes. In this way, the Defendants have reassured the public and furthered their campaign of misrepresentation. The tobacco industry's research confirmed that smokers and the public mistakenly believed that filtered, "mild," "low tar" and "light" cigarettes meant healthier or safer cigarettes.
115. Particulars of the Defendants' research are as follows:
  - i. The Philip Morris Group's research confirmed that smokers develop a daily nicotine intake quota and that when smoking a cigarette lower in nicotine delivery than their regular cigarettes, smokers will adjust their smoking patterns to obtain their normal nicotine intake.
  - ii. The RJR Group's research confirmed that smokers will subconsciously adjust their intake volume and frequency, and smoking frequency, to obtain and

maintain their hourly and daily requirements of nicotine. The RJR Group also knew that "low tar, low nicotine" cigarettes did not offer a health advantage compared to regular filter cigarettes.

- iii. The BAT Group's research confirmed that smokers must maintain a threshold amount of nicotine. BAT Group scientists found that when nicotine content was reduced, smokers would adjust their smoking patterns to obtain their threshold nicotine intake. These scientists also found that smokers would obtain a tar yield proportionately higher than that which the cigarette was designed to produce and could more than double the amount of nicotine intake reported in league tables.
- iv. The Rothmans Group possessed research which confirmed that when a smoker changes to a brand of cigarette with purportedly lower delivery of nicotine the smoker will compensate by increasing inhalation of tar and carbon monoxide.

**(v) Campaigns to Increase Smoking Rates Among Women**

116. From 1950, the Defendants have engaged in deceitful advertising, marketing and promotional campaigns to increase smoking rates among women.
117. The Defendants have advertised, marketed and promoted their cigarettes to women as being reasonably healthy and safe, both expressly, through public statements including denials that cigarettes are harmful, and impliedly, through campaigns which equate smoking cigarettes with physical activities and a healthy lifestyle.
118. Each of the four Groups has targeted women as smokers and as potential smokers through advertising and branding campaigns. In Prince Edward Island, and throughout Canada, brands targeted at women include the Philip Morris Group's *Marlboro Lights*

and *Virginia Slims*, the RJR Group's *Contessa* and *Contessa Slims*, the BAT Group's *Matinee*, *Matinee Slims*, *Matinee Special Mild* and *Matinee Extra Mild*, and the Rothmans Group's *Craven "A" Super Slims*.

**B. Failure to Warn**

119. At all material times, the Defendants knew or ought to have known that their cigarettes were addictive and could cause or contribute to disease. At all material times, the Defendants owed a duty to persons in Prince Edward Island to warn of the risks of smoking, being addiction and disease. As Manufacturers, the Defendants have owed a duty to persons in Prince Edward Island as consumers of cigarettes and as persons who would be exposed to cigarette and tobacco smoke.
120. As described below, from 1950, the Defendants have breached this duty, thereby committing tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Prince Edward Island started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.
121. Beginning in 1950, the Defendants breached their duty by failing to provide any warning, or any adequate warning after 1972, of:
- (a) the risk of tobacco-related disease or
  - (b) the risk of addiction to the nicotine contained in their cigarettes.
122. Any warnings that were provided were inadequate and ineffective in that they:
- (a) failed to warn of the actual and known risks



- (b) failed to give smokers, prospective smokers, and the public a true indication of the risks
  - (c) were introduced for the purpose of delaying more accurate government mandated warnings
  - (d) were combined with marketing plans and campaigns designed to reassure smokers
  - (e) failed to make clear, credible, complete and current disclosure of the harmful substances in their cigarettes.
123. From 1950, the Defendants have breached their duty to warn by wrongfully engaging in advertising, marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings on cigarette packaging and of warnings and advertising by governments and other agencies concerned with public health. These activities include the campaigns to reassure the public and governments, all as previously described.
124. From 1950, the Defendants have breached their duty to warn by misinforming and misleading the public about the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 96-103.
125. From 1950, the Defendants have breached their duty to warn by selectively promoting and publicising misleading research to create doubt and controversy regarding the risks of smoking and of exposure to cigarette smoke. This selective promotion and publication of misleading research was facilitated, in part, by the Defendants' creation of tobacco organizations, as particularized in paragraphs 152-158, and the Canadian Tobacco Manufacturers' Council, and by presentations made by the Lead Companies to the public.

126. From 1950, the Defendants have breached their duty to warn by suppressing and concealing information regarding the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 104 to 109.
127. From 1950, the Defendants have breached their duty to warn children and adolescents. The Defendants knew or ought to have known that children (under the age of 13) and adolescents (between the ages of 13 and 18) in Prince Edward Island either were smoking or might start smoking. Despite their knowledge, the Defendants failed to provide warnings sufficient to inform children and adolescents of the risks. The Defendants wrongfully directed advertising, marketing and promotional material to children and adolescents who were unable to make informed decisions about smoking.

**C. Promotion of Cigarettes to Children and Adolescents**

128. At all material times, the Defendants have owed a duty to children and adolescents in Prince Edward Island to take all reasonable measures to prevent them from starting or continuing to smoke.
129. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, children and adolescents in Prince Edward Island started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

130. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age. The Defendants were also aware that children and adolescents are unable to make informed decisions about smoking.
131. From 1950, the Defendants knew or ought to have known that children and adolescents in Prince Edward Island were smoking or might start to smoke and that it was contrary to law, including the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and public policy, to sell cigarettes to children and adolescents or to promote smoking by such persons.
132. From 1950, the Defendants knew or ought to have known that children and adolescents in Prince Edward Island who smoked cigarettes would become addicted and would suffer tobacco-related disease.
133. From 1950, the Defendants have failed to take any reasonable and effective measures to prevent children and adolescents from starting or continuing to smoke. Instead, the Defendants have effectively done the opposite: they have targeted children and adolescents in their advertising, promotional and marketing activities; they have advertised in publications accessed by children and adolescents; they have marketed cigarettes for sale in places frequented by children and adolescents; and they have engaged in marketing campaigns directed at children and adolescents.
134. These activities were undertaken to induce children and adolescents in Prince Edward Island to start or continue to smoke and to undermine government initiatives and legislation (including that set out in paragraph 131) aimed at preventing children and adolescents in Prince Edward Island from starting or continuing to smoke.

135. In particular:

- (a) The Philip Morris Group targeted youth as a means to both attract new smokers and develop those smokers into a "young adult franchise" and through Rothmans, Benson & Hedges Inc., undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands.
- (b) The RJR Group recognized the importance of imagery for the youth market and developed marketing criteria (including the use of cartoons and celebrities) and specific brands it believed would assist in obtaining and maintaining the youth marketing position.
- (c) The BAT Group targeted what it described as "starters", that is, children and adolescents, by studying their smoking habits and adopting advertising strategies which focused on youth-oriented and youth-appealing activities.
- (d) The Rothmans Group targeted youth and undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands in Canada.

**D. Negligent Design and Manufacture**

136. At all material times, the Defendants have owed a duty to design and manufacture a reasonably safe product and a duty to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking the cigarettes they manufactured and promoted.

137. As described below, since 1950, the Defendants have breached these duties by failing to design a reasonably safe product – a product that is not addictive and does not cause disease – and by failing to take all reasonable measures to eliminate, minimize, or reduce

the risks of smoking. In breaching these duties, the Defendants have committed tobacco-related wrongs.

138. As a result of these tobacco-related wrongs, persons in Prince Edward Island started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.
139. From the 1960s, the Defendants have halted research and development of alternative products because of concerns that such products would imply that cigarettes were unsafe. As described in paragraph 106, the RJR Group stopped work on the alleged positive effects of smoke due to concerns about product liability. As described in paragraph 107, through its control of Imperial Tobacco Canada Limited, B.A.T Industries p.l.c. suppressed information relating to potentially safer products because of the negative implications for cigarettes.
140. From the 1960s, the Defendants have increased the risks of smoking by manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
  - (a) blending of tobacco
  - (b) adding nicotine or substances containing nicotine
  - (c) increasing the pH level to increase the rate of nicotine intake into the body
  - (d) introducing substances, such as ammonia and menthol, to enhance the bio-availability of nicotine to smokers or to compensate for the variability in the nicotine content

- (e) such further and other activities known to the Defendants.
141. From the 1960s, the Defendants have increased the risks of smoking by adding to their cigarettes ineffective filters and by misleading the public and government agencies, including the federal government and the federal Department of Health and Welfare, that these filters made smoking safer. At all material times, the Defendants have known that smokers compensated for the filters by increasing their inhalation and by adopting other means to increase the assimilation of smoke into their lungs. The Defendants have known that the design of these filters resulted in a larger dose of nicotine to be inhaled by the smoker.
142. From the 1960s, the Defendants have designed and manufactured filtered, "mild," "low tar" and "light" cigarettes which they promoted as healthier than regular cigarettes, with knowledge that this was not the case. The Defendants have misled the public by linking a healthy image to a low tar – low nicotine cigarette through the use of descriptors and the portrayal of filtered, "mild," "low tar" and "light" cigarettes in the context of a lifestyle or activities that misrepresented smoking and health.
143. These filtered, "mild," "low tar" and "light" cigarettes were designed and manufactured notwithstanding the Defendants' own research and knowledge. In particular, the BAT Group's research confirmed that smokers and the public mistakenly believed that "light" or "low tar" meant a healthier cigarette and Imperial Tobacco Canada Limited marketed its brands, including *Medallion*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The Philip Morris Group's research confirmed that smokers mistakenly believed that low delivery was healthy and that the public's positive perception of filtration was more important than the filtration's actual

effectiveness. Rothmans, Benson & Hedges Inc. marketed its brands, including *Benson & Hedges Lights*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The RJR Group's research confirmed that younger people believed "mild," "low tar" and "light" cigarettes to be more healthy and JTI-Macdonald Corp. marketed its brands, including *Vantage*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette.

**E. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations**

144. The Defendants, in their role as Manufacturers of cigarettes for human use and consumption, were under legal, equitable and statutory duties and obligations to ensure that their cigarettes were reasonably safe, and they expressly or impliedly warranted that their cigarettes were reasonably safe. In particular, from 1950, the Defendants advertised and promoted their cigarettes as being reasonably safe, both expressly, through public statements including denials that they are harmful, and impliedly, through campaigns which related cigarettes to a healthy lifestyle and physical activities. The Defendants also have repeatedly proclaimed to be interested in the health and well-being of smokers.
145. Knowing that cigarettes are addictive and cause and contribute to disease, from 1950, the Defendants inflicted harm on persons in Prince Edward Island by manufacturing, promoting and selling cigarettes for profit and in disregard of public health.
146. From 1950, the Defendants engaged in unconscionable acts or practices and exploited the vulnerabilities of children and adolescents, and persons addicted to nicotine, particulars of which include:

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- (a) manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
  - i. sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine
  - ii. deliberately increasing the level of nicotine through blending of tobaccos
  - iii. deliberately increasing the level of nicotine by adding nicotine or other substances containing nicotine
  - iv. adding ammonia and menthol
- (b) adding ineffective filters to cigarettes and misleading the public into believing these filters made smoking safer
- (c) failing to disclose to consumers the risks inherent in smoking, those being the risks of disease and addiction
- (d) engaging in marketing, promotional and public relations activities to neutralize or negate the effectiveness of safety warnings provided to the public
- (e) suppressing or concealing scientific and medical information regarding the risks of smoking and of exposure to cigarette smoke
- (f) marketing and promoting smoking in a manner designed to mislead the public into believing that cigarettes have performance characteristics, ingredients, uses, benefits and approval that they did not have



- (g) using innuendo, exaggeration and ambiguity to misinform and mislead the public about the risks of smoking and of exposure to cigarette smoke by mischaracterizing any health concerns relating to smoking and exposure to smoke or attempts at regulation as unproven, controversial, extremist and an infringement of liberty or authoritarian
- (h) failing to take any reasonable measures to prevent children and adolescents from starting or continuing to smoke
- (i) targeting children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents to start smoking or to continue to smoke
- (j) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that they are addictive and cause or contribute to disease and death
- (k) misrepresenting that:
  - i. smoking has not been shown to cause any known diseases
  - ii. there is no medical or scientific link between smoking and disease
  - iii. they were not aware of any research, or any credible research, establishing a link between smoking and disease
  - iv. environmental and genetic factors are to blame for many diseases rather than smoking
  - v. cigarettes are not addictive

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- vi. smoking is merely a habit or custom, not an addiction
  - vii. they have not manipulated nicotine levels
  - viii. they have not included substances in their cigarettes designed to increase the bio-availability of nicotine
  - ix. certain of their cigarettes, such as filtered, "mild," "low tar" and "light" brands, are safer than other cigarettes
  - x. machine measurements of tar and nicotine are representative of actual intake
  - xi. smoking is consistent with a healthy lifestyle
  - xii. smoking is not harmful to health
  - xiii. exposure to cigarette smoke is not harmful to health
  - xiv. smoking and exposure to cigarette smoke are not a serious health risk
  - xv. they are interested in health and well-being of smokers.
- (l) failing to correct statements regarding the risks of smoking which they knew were incomplete or inaccurate, thereby misrepresenting the risks of smoking by omission or silence
- (m) misrepresenting the characteristics of their cigarettes without proper testing, investigation or research concerning:
- i. the risk of disease

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- ii. the risk of addiction to nicotine
  - iii. the feasibility of eliminating or minimizing these risks
- (n) misrepresenting as safer products, cigarettes with filters, and "mild," "low tar" or "low nicotine" tobacco, which adequate and proper testing would have revealed were ineffective to safeguard the health of smokers
- (o) failing to make clear, credible, complete and current disclosure of the risks inherent in smoking their cigarettes
- (p) misleading the public about the risks of smoking and of exposure to cigarette smoke
- (q) deliberately and unconscionably discrediting various testing and research which showed a link between smoking and disease and addiction
- (r) such further and other activities known to the Defendants.
147. The Defendants breached their legal, equitable and statutory duties and obligations, provincially and federally, including the provisions of *Combines Investigation Act*, R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act*, S.C. 1968-69, chapter 38 and amendments thereto (and in particular, section 33D) and subsequently the *Competition Act*, R.S.C. 1985, chapter C-34 and amendments thereto (and in particular, section 74.01), the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and statutory and regulatory obligations in the province of Prince Edward Island.

148. As a result of these tobacco-related wrongs, persons in Prince Edward Island started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and increased risk of such disease.

**V. CONSPIRACY AND CONCERT OF ACTION IN COMMITTING TOBACCO-RELATED WRONGS**

**A. Role of the Lead Companies**

149. At various times beginning in 1953 and continuing to the present, in response to reports in medical and other publications linking smoking and disease, the Defendants conspired or acted in concert to prevent the Province and persons in Prince Edward Island and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their actions would cause increased health care costs (the "Conspiracy").

150. The Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups were acting throughout on their own behalf and on behalf of their respective Groups. As particularized below, the Conspiracy was renewed at numerous meetings and through various campaigns and policies, all of which are known to the Defendants.

**(i) The Industry Conspiracy is Hatched**

151. The Conspiracy or concert of action secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco (Investments) Limited), American Tobacco

Company, Lorillard Tobacco Company and the public relations firm, Hill & Knowlton. At least two of these meetings were held at the Plaza Hotel in New York on December 15 and 28, 1953. These companies agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking
  - (b) make no statement or admission that smoking caused disease
  - (c) orchestrate a public relations program on smoking and health issues with the object of:
    - i. promoting cigarettes
    - ii. protecting cigarettes from attack based upon health risks
    - iii. reassuring the public that smoking was not hazardous (sometimes referred to as the campaign of reassurance).
- (ii) **Use of Research Organizations in Furtherance of the Conspiracy**

152. Between late 1953 and the early 1960s, the Lead Companies of each of the Groups formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964, both referred to herein as TIRC), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Manufacturers' Standing Committee (the "TMSC", renamed the Tobacco Research Council in 1963 and renamed the Tobacco Advisory Council in 1978, collectively referred to herein as TMSC) and Verband der Cigarettenindustrie ("Verband").

153. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, CORESTA, TMSC and Verband, would objectively conduct research and gather data concerning the link between smoking and disease and would publicize the results of this research throughout the world. Particulars of these misrepresentations are within the knowledge of the Defendants but include:
- i. The issuance of the TIRC's 1954 "Frank Statement to Cigarette Smokers" which received coverage in the Canadian press
  - ii. Statements made to the Canadian Medical Association in May 1963
  - iii. November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare
  - iv. May 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs
  - v. Statements to the national press and news organizations in Canada
  - vi. Communications through the Canadian Tobacco Manufacturers' Council in Canada, including to the federal Department of Health and Welfare
  - vii. As to British American Tobacco p.l.c. and the Philip Morris Group in particular, misleading statements on environmental tobacco smoke.
154. From 1953, the Lead Companies conspired with the TIRC, CORESTA, TMSC and Verband to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Defendants misled the public and the Province, into believing that there was a medical or scientific controversy about

whether smoking is addictive and causes disease. The Defendants' position and policy has been that causation remains an "open question." As described below, this policy was enforced through ICOSI and the Canadian Tobacco Manufacturers' Council.

155. In 1963 and 1964 the Lead Companies and the Defendants agreed to co-ordinate their research with research conducted by the TIRC in the United States, for the purpose of suppressing any findings which might indicate that cigarettes are harmful and dangerous. In particular, the Lead Companies contributed to research and vetted and selected the persons who were to conduct such research.
156. In April and September 1963, the Lead Companies, and in particular, British American Tobacco (Investments) Limited, through its agent Brown & Williamson Tobacco Corporation, and Imperial Tobacco Canada Limited, Philip Morris U.S.A. Inc. and R.J. Reynolds Tobacco Company, together with TIRC and Hill & Knowlton, agreed to develop a public relations campaign to counter the Royal College of Physicians Report in England, the forthcoming Surgeon General's Report in the United States and a Report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes. This public relations campaign was part of the broader ongoing public relations campaign which continues to the present to reassure the public and to suppress information.
157. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease unless and until they were forced to do so by government action.
158. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes and risks of smoking, including research

funded by British American Tobacco (Investments) Limited at Harrogate Labs in England. In particular, the Lead Companies agreed to suppress and conceal all information which confirmed scientific work on the carcinogenicity of tobacco smoke condensate, and to avoid reference to nicotine, nicotine dependence and nicotine pharmacology in the development of research proposals.

**(iii) Operation Berkshire and the Establishment of ICOSI**

159. By the mid-1970s, the Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups decided that an increased international misinformation campaign ("Operation Berkshire") was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease could lead to a "domino effect" to the detriment of the industry world-wide.
160. Through Operation Berkshire, the Defendants further advanced their campaign of misinformation. Operation Berkshire was aimed at Canada and other major markets and led by both the Philip Morris Group in concert with the Rothmans Group and the BAT Group.
161. Operation Berkshire was implemented as a scheme among the Defendants. This scheme involved an agreement among the Defendants not to make concessions voluntarily and to oppose, through legal or other means, the imposition of anti-smoking legislation. The Defendants also agreed not to concede that adverse health effects had been linked to smoking and, instead, agreed to create "controversy" concerning any research or studies suggesting otherwise.



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162. In June, 1977, Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Rothmans International, as Lead Companies of each of the four Groups and acting on behalf of the members of those Groups, met in England to establish ICOSI.
163. The primary objective of ICOSI was to implement the Conspiracy. The smoking and health scheme denying the relationship between smoking and disease was directed at major international markets, including Canada. This scheme included an agreement by all members that the issue of causation remains controversial and unresolved and that warning notices would be strenuously resisted with all means at their disposal.
164. On June 2 and 3, 1977 and November 11 and 12, 1977, the founding members of ICOSI, including Philip Morris U.S.A. Inc., the R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Rothmans International, adopted a position paper and then a revised version thereof, developed jointly by the BAT and Philip Morris Groups. The position paper and the revised version required that the tobacco industry as a whole take the position that there was "medical controversy" regarding the relationship between smoking and disease.
165. Through ICOSI, the Defendants resisted attempts by governments to provide warnings about smoking and disease and sought to attribute warnings to governments. In furtherance of the Conspiracy, all of the Defendants pledged to:
  - (a) jointly disseminate false and misleading information regarding the risks of smoking
  - (b) make no statement or admission that smoking caused disease

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- (c) suppress research regarding the risks of smoking
- (d) resist government attempts to restrict advertising, sponsorship and smoking in public places
- (e) not compete with each other by making health claims with respect to their cigarettes – in other words, not advertise "safer" cigarettes - and thereby avoid direct or indirect admissions about the risks of smoking
- (f) attribute quotes on smoking and health to "appropriate non-ICOSI sources"
- (g) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring smokers, the public and authorities in Prince Edward Island and other jurisdictions that smoking was not hazardous.

166. In and after 1977 the members of ICOSI, including the Lead Companies of each of the Groups, in furtherance of the Conspiracy, agreed orally and in writing, to ensure that:

- (a) the members of their respective Groups, including those in Canada, would act in accordance with the ICOSI position on smoking and health (as described in paragraph 165), including the decision to mislead the public about the link between smoking and disease
- (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, the Canadian Tobacco Manufacturers' Council, to ensure compliance in the various tobacco markets worldwide

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- (c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves
- (d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.

167. In 1980, ICOSI was renamed the International Tobacco Information Centre/Centre International d'Information du Tabac – INFOTAB. In 1992, INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are referred to collectively as ICOSI). The objectives of ICOSI have remained the same notwithstanding these name changes and the Defendants maintained and have continued their Conspiracy to commit tobacco-related wrongs.

**(iv) ICOSI and the Canadian Tobacco Manufacturers' Council**

168. At all times from 1977 onward, the policies of ICOSI were identical to the policies of the NMAs, including the Canadian Tobacco Manufacturers' Council, and were presented as the policies and positions of the NMAs, including the Canadian Tobacco Manufacturers' Council and its member companies, so as to conceal from the public and from governments the existence of the Conspiracy or concert of action. ICOSI organized conferences of the NMAs, including the Canadian Tobacco Manufacturers' Council, to ensure compliance with ICOSI initiatives.

169. The Lead Companies were members of the Canadian Tobacco Manufacturers' Council through their respective operating companies in Canada, the predecessors of the

defendants Imperial Tobacco Canada Limited, JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Rothmans Inc. The Canadian Tobacco Manufacturers' Council was an allied member of ICOSI.

170. In particular, the ICOSI and the Canadian Tobacco Manufacturers' Council position papers were essentially identical in most respects and include the false and misleading positions that:

- i. No causal relationship between smoking and disease exists
- ii. No persuasive scientific evidence exists to support the contention that non-smokers are harmed by the tobacco smoke of others
- iii. Laws and regulations banning smoking are an unwarranted intrusion into the lives and rights of citizens.

171. At all material times, the Lead Companies conspired or acted in concert to ensure that manufacturers complied with, and did not deviate from, the official ICOSI position on the adverse health effects of smoking. In particular, "Issues Binders" were prepared so that ICOSI affiliates, including the Defendants in Canada, would speak with one voice on key issues such as addiction, advertising and sponsorship, the public smoking issue, smoking and health, social costs and warning labels. The Lead Companies instructed their respective Group companies to conform their policies to those of ICOSI. ICOSI developed workshops for the training of NMA personnel, including personnel of the Canadian Tobacco Manufacturers' Council.

172. The Defendants conspired or acted in concert in committing the tobacco-related wrongs particularized in Part IV. The Defendants have continued the Conspiracy or have

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continued to act in concert to commit tobacco-related wrongs. The Defendants have continued to maintain that environmental tobacco smoke is not harmful, have continued to create doubt and controversy regarding the health effects of exposure to cigarette smoke. The Defendants also have continued to oppose, delay and negate attempts by all levels of government, including municipal governments, and by health authorities, to provide health warnings or to otherwise limit or control cigarette smoking and exposure to cigarette smoke.

173. The Defendants' Conspiracy or concert of action has continued for more than thirty years since the inception of ICOSI. Further particulars of the manner in which the Conspiracy or concert of action was entered into and continued, and of the breaches of duty committed in furtherance of the Conspiracy or concert of action, are within the knowledge of the Defendants.

**B. Conspiracy and Concerted Action in Canada**

**(i) Canadian Tobacco Manufacturer's Council**

174. In furtherance of the Conspiracy, from 1953, the Defendants conspired or acted in concert with one another and within each Group to prevent the Province and persons in Prince Edward Island and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and to commit the tobacco-related wrongs described in Part IV. The Defendants conspired or acted in concert in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the Conspiracy or concert of action.
175. The Conspiracy or concert of action was continued in Canada when:

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- (a) In 1962, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited secretly agreed not to compete with each other by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of smoking.
- (b) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease.
- (c) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, incorporated as the Canadian Tobacco Manufacturers' Council in 1982 and collectively referred to as the Canadian Tobacco Manufacturers' Council) in order to maintain a united front on smoking and health issues and to respond to what the Defendants viewed as an increasingly vocal anti-tobacco lobby.
- (d) In May 1969, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited, through the Canadian Tobacco Manufacturers' Council, misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.
- (e) The Lead Companies of each of the Groups recruited, approved and coordinated the witnesses who presented the positions and misrepresentations of the Canadian tobacco industry.

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176. Upon its formation in 1963 and at all material times thereafter, the Canadian Tobacco Manufacturers' Council provided a means and method to continue the Conspiracy or concert of action in Canada. From its inception, the Canadian Tobacco Manufacturers' Council agreed, adopted and participated in the Conspiracy or concert of action.
177. Through meetings, presentations and position papers, the Canadian Tobacco Manufacturers' Council has maintained that smoking was not the cause of any disease and has misrepresented the risks of smoking to governments and regulatory agencies throughout Canada. Through its misrepresentations and delay tactics, the Canadian Tobacco Manufacturers' Council has opposed or negated government restrictions on the tobacco industry.
178. In accordance with the position of the Lead Companies and its members, the Canadian Tobacco Manufacturers' Council has maintained that smoking is not the cause of any disease and misrepresented the risks of smoking to the Canadian public.
179. Since 1963, the Canadian Tobacco Manufacturers' Council has co-ordinated with its co-Defendants and international tobacco industry associations the Canadian tobacco industry's positions on smoking and health issues. At all material times, the Canadian Tobacco Manufacturers' Council acted as agent for each of its co-Defendants.
180. In furtherance of the Conspiracy or concert of action, the Canadian Tobacco Manufacturers' Council:
  - (a) Disseminated false and misleading information regarding the risks of smoking, including making false and misleading submissions to governments and withheld

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from the federal government research relating to carbon monoxide, addiction, smoker compensation and warnings

- (b) Refused to admit that smoking caused disease
- (c) Suppressed research regarding the risks of smoking
- (d) Participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link between smoking and disease
- (e) Misled governments in order to delay and minimize government initiatives with respect to smoking and health
- (f) Characterized anyone who disagreed with the Canadian tobacco industry on the issue of smoking and health as uninformed, misinformed or extremist
- (g) Participated in coordinated tobacco industry efforts in Canada to dismiss or minimize the risk of exposure to smoke.

**(ii) The Conspiracy in Canada Among the Groups**

181. As to the Philip Morris Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. Philip Morris Conference on Smoking and Health in June 1976
- ii. International Conference on Smoking Behaviour in November – December 1977



- iii. Conference on May 9, 1978 designed to change public opinion by developing policies to challenge and fight anti-smoking efforts
- iv. Tobacco Technology Group Meetings
- v. Corporate Affairs World Conference
- vi. Philip Morris International Legal Conference
- vii. Philip Morris International Corporate Affairs Presentation
- viii. Meetings of the Canadian Tobacco Manufacturers' Council
- ix. Meetings of ICOSI
- x. Position Papers of the Canadian Tobacco Manufacturers' Council
- xi. Direction by the Lead Companies to Rothmans, Benson & Hedges Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
- xii. The Canadian Tobacco Manufacturers' Council and Rothmans, Benson & Hedges Inc. acting as agents for the Lead Companies in the Philip Morris Group
- xiii. Requests by Rothmans, Benson & Hedges Inc. to the Canadian Tobacco Manufacturers' Council and ICOSI to respond to anti-tobacco campaigns
- xiv. Public statements about the Philip Morris Group's continued efforts, in concert with the other Defendants, to present the smoking and health issue to the public

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- xv. Philip Morris Group and tobacco industry meetings relating to environmental tobacco smoke.
182. As for the RJR Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:
- i. Hounds Ears and Sawgrass conferences
  - ii. Meetings of the Canadian Tobacco Manufacturers' Council
  - iii. Meetings of ICOSI and in particular, the Social Acceptability Working Party chaired by the RJR Group
  - iv. Smoking Issues Coordinator meetings
  - v. Position Papers of the Canadian Tobacco Manufacturers' Council
  - vi. Direction by the Lead Companies to JTI-Macdonald Corp. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research and the importance of maintaining the right to veto any particular research proposal
  - vii. The Canadian Tobacco Manufacturers' Council and JTI-Macdonald Corp. acting as agents for the Lead Companies in the RJR Group
  - viii. RJR Group and tobacco industry meetings relating to environmental tobacco smoke.

183. As for the BAT Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. BAT Group Smoking and Health Policy Meetings, including Chairman's Advisory Conferences and BAT Group Smoking Behaviour Conferences
- ii. Smoker Reassurance Campaigns, including Project Viking and the September 1976 campaign
- iii. BAT Group document destruction meetings, including on January 8, 1990, June 21-22, 1990, August 1990 and September 1991
- iv. Imperial Tobacco Canada Limited's retention of Hill & Knowlton in 1962 to combat certain Health Canada information
- v. Meetings of the Canadian Tobacco Manufacturers' Council, including those dealing with the threshold nicotine content, procrastination in relation to carbon monoxide warnings and environmental tobacco smoke
- vi. The Canadian Tobacco Manufacturers' Council Position Papers
- vii. Meetings of ICOSI at which Imperial Tobacco Canada Limited was present or represented
- viii. Direction by the Lead Companies to Imperial Tobacco Canada Limited regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research

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- ix. The Canadian Tobacco Manufacturers' Council and Imperial Tobacco Canada Limited acting as agents for the Lead Companies in the BAT Group
  - x. Direction by the Lead Companies to Imperial Tobacco Canada Limited regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
  - xi. Provision of personnel from the Lead Companies to assist Imperial Tobacco Canada Limited in responding to federal government inquiries
  - xii. BAT Group and tobacco industry meetings relating to environmental tobacco smoke.
184. As for the Rothmans Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:
- i. November 22, 1976 meeting among the Philip Morris Group, the BAT Group and Carreras Rothmans Limited relating to the smoker reassurance campaign
  - ii. Meetings of ICOSI
  - iii. Meetings of the Canadian Tobacco Manufacturers' Council
  - iv. Position Papers of the Canadian Tobacco Manufacturers' Council
  - v. Pooling of resources with other companies in the tobacco industry to fund studies intended to generate data that supported the industry's position that environmental tobacco smoke is not a health risk

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- vi. Direction by Carreras Rothmans Limited to Rothmans Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
- vii. The Canadian Tobacco Manufacturers' Council and Rothmans Inc. acting as agents for Carreras Rothmans Limited
- viii. Rothmans Group and tobacco industry meetings relating to environmental tobacco smoke.

185. Further particulars of the manner in which the Conspiracy or concert of action was entered into or continued, and of the tobacco-related wrongs committed by the Defendants in furtherance and as a result of the Conspiracy or concert of action, are within the knowledge of the Defendants.

**C. Joint and Several Liability**

186. The Province states that by reason of the facts pleaded, all of the Defendants are jointly and severally liable for the Province's aggregate cost of health care benefits equal to the Defendants' combined market share in cigarettes.

187. The Province also states that by reason of the facts pleaded, the Defendants within each Group are jointly and severally liable.

188. The Province pleads and relies on subsections 1(6) and 3(3) and section 4 of the Act.

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**VI. SERVICE OUT OF THE JURISDICTION**

189. This Statement of Claim is being served outside Prince Edward Island without leave of the court pursuant to Rule 17.02(h), (n), (o) and by analogy, (g).
190. The Province proposes that this action be tried at Charlottetown, Queens County, Prince Edward Island.

**DATED** at the City of Charlottetown, in the Province of Prince Edward Island, this 17<sup>th</sup> day of October, 2012.

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J. Gordon MacKay, Q.C.  
Solicitors for the Plaintiff, Her Majesty  
the Queen in right of the Province  
of Prince Edward Island

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Virtue

# Tab J

2011 01G. No.  
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

BETWEEN:

ATTORNEY GENERAL OF NEWFOUNDLAND  
AND LABRADOR

PLAINTIFF

AND:

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

DEFENDANTS

AMENDED STATEMENT OF CLAIM

I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

1. The Plaintiff, the Attorney General of Newfoundland and Labrador (the "Province"), provides health care services to a population of insured persons who suffer from tobacco related disease or who are at risk of suffering from tobacco related disease as a result of the wrongs committed by the Defendants.
2. Pursuant to Section 4 of the *Tobacco Health Care Costs Recovery Act*, S.N.L. 2001, c. T-4.2 (the "*Act*") the Province in its own right and not on the basis of a subrogated claim, claims against the Defendants for recovery of the cost of health care services that it has provided and will continue to provide to insured persons who have suffered or are suffering or are at risk of suffering from tobacco related disease, namely:



- (a) the present value of the total expenditure by the Province for health care services that it has 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 Province for health care services that it could reasonably be expected the Province will be required to provide for insured persons resulting from tobacco related disease or the risk of tobacco related disease,
- that have been caused or contributed to by the tobacco related wrongs committed by the Defendants.

3. The words and terms used in this Statement of Claim, including;

- (i) cost of health care services;
- (ii) disease;
- (iii) exposure;
- (iv) health care services;
- (v) insured person;
- (vi) joint venture;
- (vii) manufacture;
- (viii) manufacturer;
- (ix) person;
- (x) promote;
- (xi) promotion;
- (xii) tobacco product;
- (xiii) tobacco related disease;
- (xiv) tobacco related wrong;
- (xv) type of tobacco product; and
- (xvi) related person

have the meanings ascribed to them in Sections 2 and 3 of the *Act*.

**B. The Defendants**

4. The Defendant, Rothmans Inc., ~~formerly Rothmans of Pall Mall Canada Limited~~, is a company incorporated pursuant to the laws of Canada with its registered office located at 1500 Don Mills Road, Toronto, Ontario, Canada.
5. The Defendant, Rothmans Benson & Hedges Inc. which was established through the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited, is a company incorporated pursuant to the laws of Canada with its registered office located at 1500 Don Mills Road, North York, Ontario, Canada.
6. The Defendant, Carreras Rothmans Limited, **formerly known as John Sinclair, Limited**, is a company incorporated pursuant to the laws of the United Kingdom with its registered office located at Globe House, 1 Water Street, London, England.
7. The Defendant, Altria Group, Inc., formerly Philip Morris Companies Inc., is a company incorporated pursuant to the laws of Virginia, in the United States of America with its registered office located at 6601 Broad Street, Richmond, Virginia, in the United States of America.
8. The Defendant, Philip Morris USA Inc., **formerly known as Philip Morris Incorporated**, is a company incorporated pursuant to the laws of Virginia, in the United States of America with its registered office located at 6601 Broad Street, Richmond, Virginia in the United States of America.
9. The Defendant, Philip Morris International Inc., is a company incorporated pursuant to the laws ~~if~~ **of** Virginia, in the United States of America with its registered office located at 120 Park Ave., New York, New York, United States of America.

10. The Defendant, JTI-Macdonald Corp., formerly RJR-Macdonald Corp., ~~and~~ RJR Macdonald Inc., **and Macdonald Tobacco Inc.**, is a company incorporated pursuant to the laws of Nova Scotia with a registered office located at 5151 George Street, Box 247, Halifax, Nova Scotia, Canada.
11. The Defendant, R.J. Reynolds Tobacco Company, is a company incorporated pursuant to the laws of North Carolina, in the United States of America with its principal office located at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America.
12. The Defendant, R.J. Reynolds Tobacco International, Inc., is a company incorporated pursuant to the laws of Delaware with its principal office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America.
13. The Defendant, Imperial Tobacco Canada Limited which was established through the amalgamation of, *inter alia*, Imperial Tobacco Limited and Imasco Ltd., is a company incorporated pursuant to the laws of Canada with its registered office located at 3371 St. Antoine Street, Montreal, Quebec, Canada.
14. The Defendant, British American Tobacco P.L.C., is a company incorporated pursuant to the laws of the United Kingdom with its registered office located at Globe House, 4 Temple Place, London, England. **British American Tobacco P.L.C. is a successor in interest to the Defendants, B.A.T. Industries P.L.C. and British American Tobacco (Investments) Limited.**
15. The Defendant, B.A.T. Industries P.L.C., formerly B.A.T. Industries Limited and the Tobacco Securities Trust Company Limited, is a company incorporated pursuant to the laws of the United Kingdom with its registered office located at Globe House, 4 Temple Place, London, England, **B.A.T. Industries P.L.C. is a**

**successor in interest to the Defendant, British American Tobacco (Investments) Limited.**

16. The Defendant, British American Tobacco (Investments) Limited, formerly British-American Tobacco Company Limited, is a company incorporated pursuant to the laws of the United Kingdom with its registered office located at Globe House, 1 Water Street, London, England.
17. Each and every one of the Defendants referenced in Paragraphs 4 through and including 16 of this Statement of Claim and/or their predecessors in interest for whom they are in law responsible are “manufacturers” pursuant to the *Act* by reason of one or more of the following:
- (a) they manufacture, or have manufactured, tobacco products, including cigarettes;
  - (b) they cause or have caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of tobacco products, including cigarettes;
  - (c) they engage in, or have engaged in, or cause, or have caused, directly or indirectly, other persons to engage in, the promotion of tobacco products themselves, including cigarettes; or
  - (d) for one or more of the material fiscal years, each has derived at least ten percent (10%) of its revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products, including cigarettes, by itself or by other persons.
18. The Defendant, the Canadian Tobacco Manufacturers’ Council (“CTMC”), is a company incorporated pursuant to the laws of Canada with its registered office located at 1808 Sherbrooke St. West, Montreal, Quebec, Canada. CTMC is the trade association of the Canadian tobacco industry, **particulars of which are set out in paragraph 116 through and including paragraph 122 herein.**

19. CTMC is also a “manufacturer” pursuant to the *Act* by reason of its having been primarily engaged in one or more of the following activities:

- (a) the advancement of the interests of manufacturers;
- (b) the promotion of tobacco products, and
- (c) causing, directly or indirectly, other persons to engage in the promotion of tobacco products.

**particulars of which are set out in paragraph 116 through and including paragraph 122 herein.**

## II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN THE PROVINCE OF NEWFOUNDLAND AND LABRADOR

### A. Canadian Tobacco Enterprises

#### 1. The Defendant - Rothman’s Inc.

20. Rothmans Inc. **and its predecessor corporations, have** ~~has~~ been involved in the Canadian tobacco industry for over one hundred (100) years. Its predecessor companies include Rothmans of Pall Mall Canada Limited which was incorporated in Canada in 1956. Subsequently in 1985, Rothmans of Pall Mall Canada Limited changed its name to Rothmans Inc. **Rothmans Inc. was then incorporated in 2000 as an amalgamation of Rothmans Inc., Rothmans of Canada Ltd., and Rothmans Partnership in Industry Canada Limited.**

21. Rothmans Inc. has engaged either directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.

#### 2. The Defendant - Rothman’s, Benson & Hedges Inc.

22. Rothmans of Pall Mall was originally incorporated **pursuant to the laws of Canada in 1980** ~~in the United Kingdom in 1960~~. In 1985 Rothmans of Pall Mall

acquired a portion of the tobacco related business operations of Rothmans Inc. and until it amalgamated with Benson & Hedges (Canada) Inc. in 1986 to form Rothmans, Benson & Hedges Inc., engaged either directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.

23. Benson & Hedges (Canada) Inc. was incorporated in 1934 and until 1986 when it amalgamated with Rothmans of Pall Mall Limited to form Rothmans, Benson & Hedges Inc., engaged either directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.
24. Rothmans, Benson & Hedges Inc. was established in 1986 through the amalgamation of Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc. It has engaged either directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador, **including tobacco products manufactured by the Defendant, Philip Morris USA Inc. who along with its predecessors, also engaged directly or indirectly in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.**
25. Rothmans, Benson & Hedges Inc. manufactures and promotes tobacco products sold in the Province of Newfoundland and Labrador and throughout Canada under several brand names, including Rothmans and Benson & Hedges.
26. Rothmans, Benson & Hedges Inc. is owned sixty percent (60%) by Rothmans Inc. and forty percent (40%) by FTR Holding S.A., a Swiss company. FTR Holding S.A. is a subsidiary of the Defendant, Philip Morris International Inc. and was, at one time, also a subsidiary of the Defendant, Altria Group Inc. It is now affiliated with the Defendant, Philip Morris U.S.A. Inc.

3. The Defendant – JTI-MacDonald Corp.

27. In 1858, MacDonald Brothers and Company Tobacco Merchants commenced its business operations. This company was renamed W. C. MacDonald Incorporated, Tobacco Merchant and Manufacturer and then renamed again as W. C. MacDonald Incorporated in 1930. ~~carried on business operations in Montreal from 1858 until its incorporation in 1930. In 1957 it~~ once again changed its name, this time, to Macdonald Tobacco Inc. In 1974~~3~~ Macdonald Tobacco Inc. became a wholly owned subsidiary of the Defendant, R.J. Reynolds Tobacco Company, a company that has engaged directly or indirectly in the manufacture and promotion of cigarettes and tobacco products sold in the Province of Newfoundland and Labrador.

28. In 1978, R. J. Reynolds Tobacco Company incorporated a wholly owned subsidiary known as RJR-Macdonald Inc. to which it sold all ~~or substantially all~~ of the assets and liabilities of its other wholly owned subsidiary, Macdonald Tobacco Inc. RJR-Macdonald Inc. continued the business of manufacturing, promoting and selling tobacco products previously conducted by Macdonald Tobacco Inc. RJR-Macdonald Inc. subsequently became a wholly owned subsidiary of RJR Nabisco Holdings Corp., which was the ultimate parent company of R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International. In March 1999, RJR Nabisco Holdings Corp. sold R.J. Macdonald Corp, a company formed through the amalgamation of RJR-Macdonald Inc. and a subsidiary of RJR-Macdonald Inc. to Japan Tobacco Inc. As a result of this transaction, the name of the RJR-Macdonald Corp.~~Inc.~~ was changed to JTI-Macdonald Corp.

29. JTI-Macdonald Corp. and its predecessors including, Macdonald Tobacco Inc. ~~and~~ RJR-Macdonald Inc., and RJR Macdonald Corp., all of whom JTI-Macdonald Corp. is responsible for at law, has engaged either directly or indirectly, in the manufacture and promotion of tobacco products sold in the

Province of Newfoundland and Labrador, **including those tobacco products manufactured by the Defendant, R.J. Reynolds Tobacco Company.**

30. JTI-Macdonald Corp. manufactures and promotes the sale of tobacco products in the Province of Newfoundland and Labrador and throughout Canada under several brand names including, Export “A” and Vantage.
31. On August 24, 2004, JTI-Macdonald Corp. sought protection from the Ontario Superior Court of Justice under the *Companies Creditor Arrangements Act*, R.S.C. 1985, c. C-36, as amended (“*CCAA*”). On April 16, 2010, the protection order under the *CCAA* was terminated by the Ontario Superior Court of Justice. Specifically, the Ontario Superior Court of Justice ordered, amongst other things, that “*all proceedings by or against JTI-Macdonald may continue without effect by those stays of proceedings*” and “*JTI-Macdonald shall be entitled to carry on business irrespective of the CCAA proceedings and the Orders made therein.*”

#### **4. The Defendant – Imperial Tobacco Canada Limited**

32. Imperial Tobacco Company of Canada Limited was incorporated in 1912. Effective December 01, 1970, Imperial Tobacco Company of Canada Limited changed its name to Imasco Limited.
33. In or about 1970 a portion of the tobacco related business of Imasco Limited was acquired by Imperial Tobacco Limited, its wholly owned subsidiary.
34. In or about February 2000, **fifty-eight percent (58%) of the issued and outstanding shares of** Imasco Limited **were acquired by British American Tobacco (Canada) Limited, a wholly owned subsidiary of British American Tobacco P.L.C., a company who, at that time, already owned forty-two percent (42%) of the issued and outstanding shares of** amalgamated with its subsidiaries including, Imperial Tobacco Limited, and continued its operations



~~and those of its subsidiaries under the name~~ Imasco Limited. ~~In a second amalgamation, also in or about February 2000,~~ Imasco Limited **then** amalgamated with its parent company, British American Tobacco **(Canada) Limited P.L.C.**, to form Imperial Tobacco Canada Limited (“Imperial”).

35. Imperial is **therefore** a wholly owned subsidiary of the Defendant, British American Tobacco P.L.C.
36. Imperial and its predecessor corporations have engaged, directly or indirectly, in the manufacture and promotion of tobacco products sold in the Province of Newfoundland and Labrador.
37. Imperial manufactures and promotes tobacco products sold in the Province of Newfoundland and Labrador and throughout Canada under several brand names, including Player’s and duMaurier.

#### **B. Multinational Tobacco Enterprises**

**38** 37. There are four (4) multinational tobacco enterprises (“Groups”) whose member companies engage, either directly or indirectly, in the manufacture, promotion and sale of tobacco products in the Province of Newfoundland and Labrador and throughout the world. The four (4) Groups are:

- a. Rothmans;
- b. Philip Morris;
- c. RJR; and
- d. BAT.

**39** 38. At all times material to this action, tobacco products sold in the Province of Newfoundland and Labrador have been manufactured and promoted by manufacturers who are, or were, members of one (1) of these four (4) Groups **as set forth in paragraph 20 through and including paragraph 37 herein.**

40 39. The manufacturers within each of these four (4) Groups have developed and implemented common policies relating to smoking and health which policies have been directed and/or coordinated by one or more of the Defendants within each of these four (4) Groups (“Lead Companies”) or their predecessors in interest for whom they are in law responsible. **Particulars of the common policies and the manner in which they were implemented by the Groups are set forth in paragraph 91 through and including paragraph 149 herein.**

41 40. At all material times, Lead Companies of the four (4) Groups were as follows:

Group	Lead Companies
Rothmans Group	Carreras Rothmans Limited <b><u>[1949 to present]</u></b> Rothmans Inc. Rothmans, Benson & Hedges Inc.
Philip Morris Group	Altria Group, Inc. (formerly Philip Morris Companies Inc.) <b><u>[1985 to present]</u></b> Philip Morris USA Inc. <b><u>[1949 to present]</u></b> Philip Morris International, Inc. <b><u>[1987 to present]</u></b>
RJR Group	R.J. Reynolds Tobacco Group <b><u>[1875 to present]</u></b> R.J. Reynolds Tobacco International, Inc. <b><u>[1976 to present]</u></b>
BAT Group	British American Tobacco P.L.C. <b><u>[1998 to present]</u></b> B.A.T. Industries P.L.C. (formerly B.A.T. Industries Limited and before that Tobacco Securities Trust Limited) <b><u>[1976 to present]</u></b> British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited) <b><u>[1902 to present]</u></b>

42 41. The members of the Rothmans Group have included the following companies:

- (a) Rothmans, Benson & Hedges Inc. **(federally incorporated in Canada) [1986 to 2009];**
- (b) Rothmans Inc. **(federally incorporated in Canada) [2000 to 2009];**
- (c) Rothmans of Pall Mall Limited **(incorporated in the United Kingdom) [1960 to present];** and

- (d) John Sinclair, Limited (incorporated in the United Kingdom) [1905 to 1972] and later renamed Carreras Rothmans Limited [1972 to present];
- (e) Carreras, Limited (incorporated in the United Kingdom) [1903 to 1972], and later renamed Rothmans International Limited [1972 to 1981], Rothmans International P.L.C. [1981 to 1993] and Ryeseckks P.L.C. [1993];
- (f) Rothmans of Pall Mall Canada Limited (federally incorporated in Canada) [1956 to 1985] and later renamed Rothmans Inc. [1985 to 2000];
- (g) Rothmans of Canada Kings Limited (federally incorporated in Canada) [1980 to 1985] and later renamed Rothmans of Pall Mall Limited [1985 to 1986]; and
- (h) Lintpenny Limited (incorporated in the United Kingdom) [1986], and later renamed Rothmans International Services Limited [1986 to 1991], Rothmans International Tobacco Limited [1991 to 1993] and then Rothmans International Services Limited [1993 to present]

43 42. The members of the Philip Morris Group have included the following companies:

- (a) Philip Morris Companies Inc. incorporated in Virginia, in the United States of America) [1985 to 2003] and later renamed Altria Group, Inc. [2003 to present];
- (b) Philip Morris USA Inc.;
- (c) Philip Morris International, Inc.;
- (d) Rothmans Benson & Hedges Inc.; and
- (e) Benson & Hedges (Canada) Inc.

44 43. The members of the RJR Group have included the following companies:

- (a) R.J. Reynolds Tobacco Company [1875 to present];

- (b) R.J. Reynolds Tobacco International, Inc. [1976 to 1999];
- (c) ~~JTI-Macdonald Corp.~~; and
- ~~(c)~~(d) Macdonald Tobacco Inc. [1974 to 1979];
- ~~(d)~~(e) RJR-Macdonald Inc. [1978 to 1999]; and
- ~~(e)~~(f) RJR-Macdonald Corp. [1999], later renamed JTI-Macdonald Corp. [1999 to present]

45 44. The members of the BAT Group have included the following companies:

- (a) Imperial Tobacco Company of Canada, Limited (federally incorporated in Canada) [1912 to 1966], later renamed Imperial Tobacco Company of Canada Limited [1966 to 1970], and then Imasco Limited [1970 to 2000] and Imperial Tobacco Limited (now Imperial Tobacco Canada Limited);
- (b) B.A.T. Industries P.L.C. [1976 to present].;
- (c) British American Tobacco (Investments) Limited [1902 to present];  
and
- (d) British American Tobacco P.L.C. [1998 to present];
- ~~(e)~~ Imperial Tobacco Canada Limited (incorporated in Canada) [2000 to present];
- ~~(f)~~ Imperial Tobacco Sales Company of Canada Limited (incorporated in Canada) [1931 to 1966], later renamed Imperial Tobacco Sales Limited [1966 to 1969], Imperial Tobacco Products Limited [1969 to 1974], and Imperial Tobacco Limited [1970 to 2000];
- ~~(g)~~ Brown & Williamson Tobacco Corporation [1927 to 2004]; and
- ~~(h)~~ American Tobacco Company [1944 to present].

### III. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS

#### 1. The Defendants' Knowledge

**46** 45. The Defendants, **R.J. Reynolds Tobacco Company, Rothmans Inc., Rothmans, Benson & Hedges Inc., Philip Morris USA Inc., JTI-Macdonald Corp., Imperial Tobacco and their predecessor corporations, (the “Direct Breach Defendants” or “DBD”) all** designed and manufactured tobacco products **sold in the Province of Newfoundland and Labrador** to deliver nicotine to smokers.

**47** 46. Nicotine is an addictive drug that affects the brain and central nervous system, the cardiovascular system, the lungs, other organs and body systems and endocrine function. Addicted smokers physically and psychologically crave nicotine.

**48** 47. Smoking and exposure to second hand smoke cause or contribute to diseases including, but not limited to:

- (a) chronic obstructive pulmonary disease and related conditions, including but not limited to:
  - (i) emphysema;
  - (ii) chronic bronchitis;
  - (iii) chronic airways obstruction; and
  - (iv) asthma;
- (b) cancer, including but not limited to:
  - (i) cancer of the lung;
  - (ii) cancer of the lip, oral cavity and pharynx;
  - (iii) cancer of the larynx;
  - (iv) cancer of the esophagus;
  - (v) cancer of the bladder;
  - (vi) cancer of the kidney;
  - (vii) cancer of the pancreas; and
  - (viii) cancer of the stomach;
- (c) circulatory system diseases, including but not limited to:
  - (i) coronary heart disease;
  - (ii) pulmonary circulatory disease;

- (iii) vascular disease; and
- (iv) peripheral vascular disease;
- (d) increased morbidity and general deterioration of health; and
- (e) fetal harm.

49 48. The Defendants have been aware, **since in or about 1949, or from the date of their incorporation if subsequent to that date,** that, when smoked and consumed as intended, tobacco products:

- (a) contain substances which can cause or contribute to disease;
- (b) produce by-products which can cause or contribute to disease; and
- (c) cause or contribute to addiction.

50 49. By ~~1950~~ **in or about 1949, or from the date of the Defendants' incorporation if subsequent to that date,** and at all times thereafter which are material to this action the Defendants knew or ought to have known, **based on research on smoking and health that was known to them,** that:

**(a)** ~~(d)~~ smoking and consuming tobacco products could cause or contribute to **the diseases referenced in paragraph 48 herein; and**

**(b)** ~~(e)~~ nicotine present in tobacco products is addictive.

51 50. In the alternative, at all times material to this action the Defendants knew or ought to have known that:

- (a) nicotine is an active ingredient in tobacco products;
- (b) smokers crave nicotine; and
- (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.

52 51. By in or about 1970, **or from the date of the Defendants' incorporation if subsequent to that date,** and at all times thereafter material to this action, the Defendants knew or ought to have known **based on research on smoking**

and health that was known to them, that exposure to second hand smoke could cause or contribute to disease.

#### A. Breaches of Common Law, Equitable and Statutory Duties and Obligations

~~53~~ 52. The Province states that the Defendants have committed tobacco related wrongs as defined in the *Act*. In particular, the Defendants have committed breaches of common law, equitable or statutory duties and obligations owed by the Defendants to persons in the Province of Newfoundland and Labrador who have been exposed to or might become exposed to a tobacco product manufactured by them and offered for sale in Newfoundland and Labrador.

~~53.~~ The Defendants have also committed torts in the Province of Newfoundland and Labrador which constitute tobacco related wrongs pursuant to the *Act*.

54. As a result of these tobacco related wrongs, insured persons in the Province of Newfoundland and Labrador have suffered tobacco related disease or the risk of tobacco related disease and the Province has incurred and will continue to incur expenditures for health care benefits provided to these insured persons.

##### 1. Breach of Duty – Design and Manufacture

55. At all times material to this action, and since at least 1949, the Defendants owed a duty of care to persons exposed to cigarettes and other tobacco products manufactured by them to design and manufacture a reasonably safe product which would not cause addiction and disease, and to take all reasonable measures to eliminate, minimize, or reduce the risks of addiction and disease from smoking the cigarettes and consuming other tobacco products that they manufactured and promoted.

56. The **Direct Breach** Defendants have breached and continue to breach these duties, **since at least 1949**, by failing to design, **manufacture, promote and sell** a reasonably safe product **which would not cause addiction and disease**, and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of **addiction and disease from** smoking and consuming other tobacco products **designed, manufactured and promoted by them**.
57. The **Direct Breach** Defendants, in the design, manufacture and promotion of their tobacco products, created, and continue to create, an unreasonable risk of harm to the public **from addiction and disease as a result of smoking or exposure to second hand smoke** from which they have failed to protect the public **as set out in paragraph 58 through and including paragraph 60 herein**.
58. The **Direct Breach** Defendants increased the risks of **addiction and disease from** smoking by manipulating the level and bio-availability of nicotine in their tobacco products **or more particularly, the biological availability of nicotine in the body from smoking or consuming their tobacco products, for the purpose of maintaining and increasing the sales of their cigarettes and tobacco products**, particulars of which include, **but are not limited to**:
- (d) special blending of tobacco;
  - (e) adding nicotine or substances containing nicotine;
  - (f) introducing substances, including ammonia, to enhance the bio-availability of nicotine to smokers; and
  - (g) such further and other actions, the particulars of which are known to the Defendants.
59. The **Direct Breach** Defendants increased the risks of **addiction and disease from** smoking by adding ineffective filters to their cigarettes **when the Defendants knew or ought to have known, based upon research on smoking practices available to them and not to the consumer and through other particulars known only to the Defendants, that smokers would fully**



compensate for the presence of these filters by taking deeper inhalations of smoke and/or blocking the air holes in the filter and despite this knowledge by the Defendants, as more particularly set out in paragraph 63 herein, by misleading the public and government agencies into believing that these filters made smoking safer.

60. From in or about 1949, through marketing and advertising campaigns which conveyed information to the public which was contrary to the knowledge of the DBDs, ¶the Direct Breach Defendants further misled the public by misrepresenting, in written and visual material that certain filter cigarettes, including but not limited to “mild”, “low tar”, and “light” cigarettes were healthier for the public than regular cigarettes, particulars of which are set out in paragraph 63 herein.

60.1. The DBDs were aware of methods by which the consumer could use their “mild”, “light and “low tar” cigarettes that would have made these cigarettes less dangerous to the public, but did not offer this information to consumers in the Province of Newfoundland and Labrador through marketing and advertising campaigns or any other distribution methods.

61. As a result of these tobacco related wrongs, persons in the Province of Newfoundland and Labrador commenced smoking or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke or consumed tobacco products and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

2. Breach of Duty - Misrepresentation

62. As manufacturers of tobacco products, the DBDs owed a duty of care to persons in the Province of Newfoundland and Labrador who consumed, or were exposed to, smoke from cigarettes and tobacco products manufactured

by them and sold in Newfoundland and Labrador. The DBDs ought reasonably to have foreseen that persons in Newfoundland and Labrador who smoked would rely upon representations made by them with respect to the risk of addiction and disease from smoking and the risk of disease from exposure to second hand smoke. Such reliance by persons in Newfoundland and Labrador was reasonable given that the DBDs took steps to assure persons in Newfoundland and Labrador of the truth of their misrepresentations and to conceal from them the true extent of the risks of smoking and exposure to second hand smoke. As a result, since in or about 1949, ¶the Direct Breach Defendants owed a duty to the public not to misrepresent the risks of addiction and disease associated with the use of tobacco products and of disease from exposure to second hand smoke as these risks were known or ought to have been known by them, based upon research into smoking and health which was known to them.

63. The Direct Breach Defendants, with full knowledge of the risks of addiction and disease, misrepresented the risks of smoking and exposure to second hand smoke since in or about 1949 by denying any link between smoking and addiction and disease and denying any link between exposure to second hand smoke and disease, contrary to research on smoking and health which was known or ought to have been known by them. and, ~~i~~In particular, and without limiting the generality of the foregoing, since in or about 1949 the DBDs misrepresented to persons in Newfoundland and Labrador that:

- (a) ~~(e)~~ smoking and exposure to second hand smoke had not been shown to cause any known diseases;
- (b) ~~(f)~~ they were not aware of any research, or any credible research, establishing a link between smoking or exposure to second hand smoke and disease;
- (c) ~~(g)~~ many diseases shown to have been caused by smoking tobacco or exposure to second hand smoke were in fact caused by other environmental or genetic factors;

- ~~(d)~~ (h) cigarettes were not addictive;
- ~~(e)~~ (i) they were not aware of any research, or any credible research, that established that smoking is addictive;
- ~~(f)~~ (j) smoking is merely a habit or custom;
- ~~(g)~~ (k) they did not manipulate nicotine levels in their cigarettes;
- ~~(h)~~ (l) they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;
- ~~(i)~~ (m) the intake of tar and nicotine associated with smoking their cigarettes was less than they knew or ought to have known it to be;
- ~~(j)~~ (n) certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes;
- ~~(k)~~ (o) smoking is consistent with a healthy lifestyle; and
- ~~(l)~~ (p) the risks of smoking and exposure to second hand smoke were less serious than they knew them to be.

**63.1. These misrepresentations were conveyed to persons in Newfoundland and Labrador by the DBDs:**

- (a) in cigarette brand advertising and related marketing and promotional materials in all media, including radio, television, billboards, bus shelters, posters, displays, signs, print media and various electronic media including the internet. Advertising includes commercials, posters, print ads, new releases, press kits, contest materials, coupons, brand merchandising materials, sampling items and activities, discounting, and other marketing activities;**
- (b) on cigarette packaging, including carton wrappings;**
- (c) at cigarette brand-promoting activities, including cultural, sporting and other events and activity sponsorships, and in promotional materials prepared in relation to such activities, including new releases, press kits, contests, coupons, brand**

- merchandising materials, sampling items and activity materials, discounting and other marketing activities;
- (d) in paid advocacy carried out in media including the major Provincial and community newspapers, magazines, radio, television, and the internet paid for in whole or in part by the Defendants;
- (e) in research results presented to the public, governments, news and information media and other organizations as objective and independent when in fact these results were not and the research itself had been funded by the Defendants;
- (f) in media interviews, public announcements, correspondence and other materials prepared on behalf of, and discussions, speeches and presentations given by, company officials, tobacco industry spokespersons acting on behalf of the Defendants directly or indirectly (such as CTMC lobbyists, and public relations experts), to persons in Newfoundland and Labrador, elected officials, government bureaucrats, medical, health and scientific organizations and bodies, conferences, columnists and journalists, writers, media editors, publishers and scientists;
- (g) via company or tobacco industry spokespersons who did not represent themselves as such at the time or who held themselves out as “independent” of the Defendants’ interests, but who were in fact acting as agents for the Defendants, having received money or money’s worth from the Defendants, directly or indirectly. These individuals communicated to, and corresponded with, and provided information to the public, members of the news and information media, elected officials, government officials, members of scientific and health promotion and research entities as well as members of the general public; and
- (h) by all other methods of communication available to and employed by the industry.

63.2 Since in or about 1949, Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors, as members of the Rothmans Group in Canada, have made all of the misrepresentations set out in paragraph 63 above. These misrepresentations have been repeated continually by Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors through a variety of means, including, but not limited to, the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and the National Association of Tobacco and Confectionary Distributors Convention (October 1969);
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), and with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981);
- (c) full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart “vital information” as soon as available; (d) public and media statements to Canadian newspapers and on national television (including the Toronto Daily Star (September 1962, June 1989) and in the Globe and Mail (June 1967) and other Provincial and community newspapers and publications in the Province of Newfoundland and Labrador);
- (d) advertising, marketing and promotional campaigns; and

- (e) other methods of communication outside of advertising and promotion, including, but not limited to public announcements, press conferences, and meetings with government officials.

63.3 Since in or about 1949, Rothmans, Benson & Hedges Inc. and its predecessors, as members of the Philip Morris Group in Canada, have made all of the misrepresentations set out in paragraph 63 above. These misrepresentations have been repeated continually by Rothmans, Benson & Hedges Inc. and its predecessors through a variety of means, including, but not limited to, the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988);
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);
- (c) public and media statements to Canadian newspapers and on North American television (including a statement in the Toronto Daily Star (September 1967) and a speech in Halifax (June 1978));



- (d) Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.);
- (e) publications (including in the 1978 Booklet “The Facts” published by Benson & Hedges (Canada) Inc.); and
- (f) advertising, marketing and promotional campaigns and other methods of communication outside of advertising and promotion, including, but not limited to public announcements, press conferences, and meetings with government officials.

63.4 Since in or about 1949, R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors, as members of the RJR Group in Canada, have made all of the misrepresentations set out in paragraph 63 above. These misrepresentations have been repeated continually by R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors through a variety of means, including, but not limited to, the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988);
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with



- federal Minister of Health and Welfare Jake Epp (September 1986);
- (c) publications (including “R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina” in The Tobacco Industry in Transition);
  - (d) speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts);
  - (e) public statements (including the 1983 Revised Mission Statement on Smoking and Health); and
  - (f) advertising, marketing and promotional campaigns and methods of communication outside of advertising and promotion, including, but not limited to public announcements, press conferences, and meetings with government officials..

63.5 Since in or about 1949, Imperial Tobacco Canada Limited and its predecessors, as members of the BAT Group in Canada, have made all of the misrepresentations set out in paragraph 63 above. These misrepresentations have been repeated continually by Imperial Tobacco Canada Limited and its predecessors through a variety of means, including, but not limited to, the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969), the National Association of Tobacco and Confectionery Distributors Convention (October 1969), federal Legislative Committees (including in November 1987 and January 1988) and the House of Commons Standing Committee on Health (December 1996);

- (b) meetings with federal Minister of Health, Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare, Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare, Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare, Jake Epp (September 1986);
- (c) Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited);
- (d) public and media statements to Canadian newspapers and on national television, (including CBC television (December 1969) and in the Toronto Daily Star (June 1971), as well as major Provincial and community newspapers in the Province of Newfoundland and Labrador;
- (e) publications (including on the topics of smoking and health and “habit or addiction”); and
- (f) advertising, marketing and promotional campaigns and methods of communication outside of advertising and promotion, including, but not limited to public announcements, press conferences, and meetings with government officials.

64. The Defendants suppressed and manipulated scientific and medical data, which was known or ought to have been known by them based upon research on smoking and health known to them which revealed the serious health risks associated with smoking, second hand smoke, and the use of other tobacco products, from persons in Newfoundland and Labrador, for the purpose of continuing to misrepresent and conceal the risks of addiction and disease from smoking, exposure to second hand smoke, and the use of other tobacco products.

64.1 Particulars of this suppression and manipulation of scientific and medical data by Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors, as members of the Rothmans Group, include but are not limited to the following:

- (a) agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake; and
- (b) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

64.2 Particulars of this suppression and manipulation of scientific and medical data and research by Rothmans, Benson & Hedges Inc. and its predecessors, as members of the Philip Morris Group, including but are not limited to the following:

- (a) agreeing with British American Tobacco (Investments) Limited and the RJR Group to suppress scientific and medical findings relating to work that was funded in the United Kingdom;
- (b) destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group;
- (c) closing research laboratories and destroying related scientific information;
- (d) withdrawing internal research relating to nicotine from peer review;
- (e) destroying internal research relating to nicotine;
- (f) prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the addictive effect of smoking; and
- (g) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

64.3 Particulars of this suppression and manipulation of scientific and medical data by R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and

their predecessors, as members of the RJR Group, include but are not limited to the following:

- (a) agreeing with British American Tobacco (Investments) Limited and the Philip Morris Group to suppress scientific and medical findings relating to work that was funded in the United Kingdom;
- (b) ceasing research on the effects of smoke because of its potential bearing on product liability;
- (c) imposing restrictions on the use of terms, including “drug,” “marketing,” and “dependency,” in scientific studies;
- (d) invalidating and destroying research reports;
- (e) terminating and destroying research associated with R.J. Reynolds Tobacco Company’s “The Mouse House” experiments; and
- (f) participating in ICOSI’s total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

64.4 Particulars of this suppression and manipulation of scientific and medical data by Imperial Tobacco Canada Limited and its predecessors, as members of the BAT Group, include but are not limited to the following:

- (a) agreeing with Philip Morris and RJR Groups to suppress scientific and medical findings relating to work that was funded in the United Kingdom;
- (b) agreeing with Rothmans Group to suppress research relating to carbon monoxide and smoke intake;
- (c) implementing a policy to avoid written documentation on issues relating to smoking and health;
- (d) agreeing within the BAT Group not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the BAT Group;
- (e) destroying research reports indicating the adverse health effects of smoking and exposure to second hand smoke (1992);

- (f) suppressing information and developments relating to potentially safer products; and
- (g) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

65. The **Direct Breach** Defendants misinformed the public **in Newfoundland and Labrador, particulars of which are set out in paragraph 63,** as to the harm of both smoking and of exposure to cigarette smoke, **which was known or ought to have been known by them based on research on smoking and health which was known to them.**
66. The **Direct Breach** Defendants participated in a misleading campaign, **particulars of which are set out in paragraph 63,** to enhance their own credibility and diminish the credibility of health authorities and anti-smoking groups for the purpose of reassuring the public, **contrary to what they knew or which was known or ought to have been known by them based upon research on smoking and health known to them,** that cigarettes were not as dangerous as the health authorities and anti-smoking groups were saying.
67. The **Direct Breach** Defendants intended that these misrepresentations be relied upon by individuals in Province of Newfoundland and Labrador for the purpose of inducing them to use tobacco products and in particular, to commence smoking or to continue to smoke. **It was reasonably foreseeable that persons in Newfoundland and Labrador would and they did, in fact, rely upon these misrepresentations made by the DBDs for the purpose of persuading persons in Newfoundland and Labrador to purchase cigarettes and other tobacco products manufactured by them.**
68. As a result of these tobacco-related wrongs **misrepresentations, which were either made fraudulently (contrary to their actual knowledge of the risks of addiction and disease from smoking or exposure to second hand smoke) or**

recklessly (without any reasonable basis or belief in their truth) or, in the alternative, negligently (with total disregard for research into smoking and health which was available to them and which was known or should have been known by them), persons in the Province of Newfoundland and Labrador purchased and used tobacco products and in particular, commenced or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke from such cigarettes, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

### 3. Breach of Duty - To Warn of Risks

69. At all times material to this action, and in particular, since in or about 1949, the Direct Breach Defendants knew or ought to have known that their tobacco products, when smoked or consumed as intended, were addictive and could cause or contribute to disease, and as manufacturers of cigarettes and tobacco products sold to persons in Newfoundland and Labrador, the Direct Breach Defendants owed a duty of care to warn public who smoked cigarettes, used other tobacco products or might become exposed to cigarette smoke of the risks of addiction and disease inherent in smoking, exposure to cigarette smoke, and the use of their tobacco products, as was known, or ought to have been known by them based on research on smoking and health which was known to them.

70. The Direct Breach Defendants breached their duty to the public in Newfoundland and Labrador prior to 1972 by failing to provide any warning whatsoever and thereafter any adequate warning of the risks to the public associated with the use of tobacco products including, but not limited to:

(a) (e) tobacco related disease; or

(b) (f) addiction to the nicotine contained in their tobacco products;

which was known to them or ought to have been known by them based upon research into smoking and health which was known to them.

71. Any warnings that were provided to the public in Newfoundland and Labrador by the Direct Breach Defendants were inadequate and ineffective in that they:

- (a) ~~(s)~~ failed to warn of the actual and known risks of addiction and disease from smoking;
- (b) ~~(t)~~ were insufficient to give users, prospective users, and the public a true indication of the risks of addiction and disease from smoking or exposure to cigarette smoke;
- (c) ~~(u)~~ were introduced for the purpose of delaying more accurate government-mandated warnings of the risks of addiction and disease from smoking or exposure to cigarette smoke; and
- (d) ~~(v)~~ failed to make clear, credible, complete and current disclosure of the risks of addiction and disease inherent in the ordinary use of their cigarettes and therefore failed to permit free and informed decisions concerning smoking; and
- (e) failed to inform persons who might become exposed to cigarette smoke of the risks of disease from such exposure so that they could take measures to limit or eliminate such exposure;
- (f) did not accurately reveal the true extent of what the DBDs knew or should have known of addiction and disease from smoking or exposure to cigarette smoke based upon research on smoking and health that was known to them.

72. The Direct Breach Defendants knew or ought to have known, based on research known by them since in or about 1949, that children under the age of thirteen (13) years and adolescents under the age of nineteen (19) years in the Province of Newfoundland and Labrador were using or might use tobacco products, but failed to provide accurate information as to the risks of addiction and disease or even warnings sufficient to inform children and adolescents of the risks of addiction and disease.

73. The **Direct Breach** Defendants engaged in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of the stated warnings placed on packages of tobacco products and in particular, cigarette packaging. These activities by the Defendants were intended to affect the import to the public of the warnings contained in advertising and given by governments and other agencies concerned with public health, **by mischaracterizing any health concerns relating to smoking, either with respect to addiction or disease, or attempts at regulation by health authorities or governments, as unproven, controversial, extremist, authoritarian, and an infringement of liberty.**
74. **As directed by their Lead Companies, the Direct Breach** Defendants suppressed information **which was known to them or ought to have been known by them based on research conducted by them, by their Lead Companies or by others on their behalf,** regarding the risks of **addiction and disease from** smoking and **the risks of disease from** exposure to second hand smoke, **the particulars of which are set out in paragraph 91 through and including paragraph 113 herein.**
75. The **Direct Breach** Defendants misinformed and misled the public about the risks of **addiction and disease from** smoking and the risks of **disease from** exposure to second hand smoke, **the particulars of which are set out in paragraph 63 herein.**
76. As a result of these tobacco related wrongs, persons in the Province of Newfoundland and Labrador commenced or continued to use tobacco products and, in particular, to smoke cigarettes, manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and increased risk of tobacco related disease.



4. Breach of Duty – Manufacturing or Promoting Tobacco Products for Children and Adolescents

77. Further to the duty of care alleged in paragraph 62 herein, At all times material to this action, and in particular since at least 1949, the Direct Breach Defendants, as manufacturers of cigarettes sold in Newfoundland and Labrador, owed a duty of care to children and adolescents in the Province of Newfoundland and Labrador to take all reasonable measures to prevent them from commencing or continuing to smoke.

78. The Defendants' own research revealed that the vast majority of smokers commenced smoking and were addicted to tobacco products before they reached the age of nineteen (19) years.

79. The Direct Breach Defendants knew or ought to have known that children and adolescents in the Province of Newfoundland and Labrador were smoking or might commence to smoke prior to reaching the age of nineteen (19) years and that it was contrary to law, or public policy to sell cigarettes and other tobacco products to children and adolescents or to promote the use of tobacco products and in particular, smoking by such persons.

80. The Direct Breach Defendants knew or ought to have known, based on research on smoking and health known to them that children and adolescents in the Province of Newfoundland and Labrador who used their tobacco products and in particular, smoked their cigarettes were at risk of becoming addicted to cigarettes and would suffer tobacco related disease.

81. The Direct Breach Defendants failed to take reasonable and appropriate measures to prevent children and adolescents from commencing or continuing to smoke or to use other tobacco products manufactured by them and sold in Newfoundland and Labrador.

82. The **Direct Breach** Defendants targeted children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents in the Province of Newfoundland and Labrador to commence or continue to smoke or to use tobacco products.
83. The **Direct Breach** Defendants, in further breach of their duty **of care failed to take all reasonable measures to prevent children and adolescents from starting or continuing to smoke and** undermined government initiatives and legislation which were intended to prevent children and adolescents in the Province of Newfoundland and Labrador from commencing or continuing to smoke or to use tobacco products.
84. As a result of these tobacco related wrongs, children and adolescents in the Province of Newfoundland and Labrador commenced to or continued to smoke cigarettes or to use tobacco products manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

**B. Other Breaches of Common Law, Equitable and Statutory Duties and Obligations**

85. As manufacturers of a product intended for human use and consumption the **Direct Breach** Defendants were under a legal, equitable and statutory obligation and duty to ensure that their tobacco products and, in particular, cigarettes, were reasonably safe for that purpose. By their actions in the manufacture and promotion of their tobacco products and, in particular, their cigarettes, the Defendants either expressly or impliedly, warranted to the public that their products were reasonably safe for human use and consumption.

86. As the **Direct Breach** Defendants knew or ought to have known that their tobacco products and, in particular, their cigarettes, were addictive and could cause or contribute to tobacco related disease, **these** Defendants intentionally inflicted harm to the public in the Province of Newfoundland and Labrador by their manufacture, promotion and sale of their tobacco products and, in particular, their cigarettes, for profit with complete disregard for public health **and with knowledge of the risks of addiction and disease and failed to disclose and, in fact, suppressed this information from the public as particularized herein.**

87. **These** Defendants engaged in unconscionable acts and/or practices which did or had the intention of exploiting the vulnerabilities of children and adolescents and other persons addicted to nicotine **from smoking cigarettes**, the particulars of which include, but are not limited to the following:

- (a) manipulating the level and bio-availability of nicotine in their cigarettes by:
  - (i) sponsoring or engaging in selective breeding and/or genetic engineering of tobacco plants with the intention of producing a tobacco plant which contained increased levels of nicotine;
  - (ii) deliberately increasing the level of nicotine in tobacco products and, in particular, cigarettes by blending different tobaccos;
  - (iii) deliberately increasing the level of nicotine in tobacco products and, in particular, cigarettes by adding additional nicotine or other substances containing nicotine to their tobacco products and, in particular, cigarettes;
- (b) adding ineffective filters to cigarettes and misleading the public into believing that these filters made smoking safer ;
- (c) failing to disclose to consumers the inherent risks of **addiction and disease and addiction** which are associated with the use of tobacco products and, in particular, smoking, **which was known or ought to**

**have been known by them based on research on smoking and health which was available to and known to them;**

- (d) engaging in collateral marketing, promotion and public relation activities intended to neutralize or negate the effectiveness of safety warnings **regarding the risks of addiction and disease from smoking** issued by government agencies and anti-smoking groups to the public;
- (e) suppressing or concealing scientific and medical information relating to the risks of **addiction and disease from** consumption of tobacco products and, in particular, smoking;
- (f) **engaging in** marketing and promoting smoking in a manner designed to mislead the public into believing that cigarettes contain performance enhancing characteristics, ingredients, uses and benefits that they did not contain;
- (g) using innuendo, exaggeration and ambiguity with the intention of misinforming and misleading the public about the inherent risks of **addiction and disease from** consumption of tobacco related products and, in particular, **from smoking** cigarettes;
- (h) failing to undertake any reasonable measures to prevent children and adolescents from commencing or continuing to smoke or use tobacco products;
- (i) targeting children and adolescents in their **communications activities including but not limited to** advertising, promotional and marketing activities, with the intention of inducing children and adolescents to commence or continue smoking or to use tobacco products;
- (j) manufacturing, marketing, distributing and selling tobacco products and, in particular, cigarettes, which they knew or ought to have known are unjustifiably hazardous and likely to cause or contribute to tobacco related disease or death when used as intended **by consumers of cigarettes and persons exposed to cigarette smoke and provide no benefit to either class of persons;**

- (k) misrepresenting to, amongst others, the public, government agencies and anti-smoking groups that:
  - (i) smoking and exposure to second hand smoke had not been shown to cause any known disease;
  - (ii) they were not aware of any research, or credible research that linked smoking to a tobacco related disease;
  - (iii) many of the diseases which were alleged to have been caused by smoking were caused instead by other environmental or genetic factors;
  - (iv) cigarettes are not addictive;
  - (v) smoking is merely a habit or custom as opposed to an addiction;
  - (vi) they did not manipulate nicotine levels;
  - (vii) they did not include substances in their cigarettes designed or intended to increase the bio-availability of nicotine;
  - (viii) machine measurements of tar and nicotine were representative of actual intake by consumers;
  - (ix) “filter”, “mild”, “low tar” and “light tar” tobacco products were safer than other tobacco products;
  - (x) smoking is consistent with a healthy lifestyle;
  - (xi) the risks of smoking were less serious than they knew them to be;
- (l) failing to correct statements regarding the risks of smoking which they knew or ought to have known were false, incorrect or inaccurate and by their omission or silence, misrepresenting the risks of smoking;
- (m) misrepresenting the characteristics of their cigarettes without proper testing, investigation or research concerning:
  - (i) risk of disease;
  - (ii) risk of addiction to nicotine;
  - (iii) feasibility of eliminating or minimizing these risks

- (n) misrepresenting as safer tobacco products, cigarettes with filters and “mild”, “low tar” or “low nicotine” tobacco, all of which would have been revealed to be an ineffective safeguard to the health of smokers had adequate or proper testing been conducted of the tobacco product;
- (o) failing to provide clear, credible, complete and current disclosure of the inherent risks of smoking and the use of tobacco products;
- (p) misleading the public as to the risks associated with the consumption of tobacco products and, in particular, smoking;
- (q) deliberately and unconscionably attempting to discredit various test results and research which disclosed a link between the consumption of tobacco products and, in particular, smoking, and tobacco related diseases and addiction; and
- (r) such further and other particulars known to the Defendants.

88. In making these representations or by misrepresenting the information and research which was known or ought to have been known to them these Defendants knew or ought to have known that:

- (a) consumers may not be reasonably able to protect their own interests because of the failure of the Defendants to disclose its research results;
- (b) consumers may not be reasonably able to protect their own interests because of disability, ignorance, illiteracy or similar factors.

89. These Defendants have breached their legal, equitable and statutory duties and obligations, both provincially and federally. Specifically they have breached the provisions of the *Combines Investigation Act*, R.S.C. 1952 (supp), c.314, as amended by the *Criminal Law Amendment Act*, S.C. 1968-1969, c. 38 ~~C-34~~, **section 116**, as amended, **and subsequently the *Competition Act*, R.S.C. 1985, c. C-34, sections 52(1), 52(4), 74.1 and 74.03, as amended. The Defendants also breached** and the statutory and regulatory obligations of the Province of Newfoundland and Labrador, **including the *Consumer Protection Act*, R.S.N.L. 1990, c. C-31, the *Trade Practices Act*, R.S.N.L. 1990, c. C-31, ss. 5-6, and**

successor legislation the *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, ss. 7-8, as amended.

90. As a result of these tobacco related wrongs **by the Direct Breach Defendants**, persons in the Province of Newfoundland and Labrador commenced or continued to consume tobacco products and, in particular, cigarettes, manufactured and promoted by the Defendants or were exposed to cigarette smoke thereby resulting in persons suffering from tobacco related disease and an increased risk of tobacco related disease.

#### IV. CONSPIRACY, CONCERT of ACTION, AND COMMON DESIGN

##### A. Role of the Lead Companies

91. At all times material to this action the Defendants conspired and acted in concert in committing **the tobacco related wrongs alleged in paragraphs 53 through and including paragraph 84 herein and paragraph 85 through and including paragraph 90 herein, the particulars of which are set out below. The Defendants are accordingly all deemed to have jointly breached the duties alleged in paragraph 53 through and including paragraph 84 and paragraph 85 through and including paragraph 90 herein, and under section 6 of the Act.**
92. ~~At various times after~~ **Commencing** in or about 1953, in response to mounting publicity and public concern about the link between smoking and disease, ~~some or all of the Lead Companies of the four (4) Groups or their predecessors in interest for whom the Lead Companies are in law responsible, and some or all of the remaining Defendants,~~ conspired and acted in concert to prevent the Province and persons in the Province of Newfoundland and Labrador and other jurisdictions from acquiring knowledge of the harmful and addictive properties of tobacco products and, in particular, cigarettes, in circumstances where they knew or ought to have known that their actions would cause increased health care costs.

93. This conspiracy, concert of action and common design secretly originated in or about 1953 and ~~early 1954~~ **thereafter** in a series of meetings and communications amongst Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco Company Limited **through meetings it attended on behalf of and as directed by its parent corporation British American Tobacco Company Limited**), and American Tobacco Company. These companies, on their own behalf and on behalf of their respective Groups, **contrary to their knowledge**, agreed, **amongst other things**, to:

- a. jointly disseminate false and misleading information regarding the risks of **addiction and disease from smoking cigarettes**;
- b. make no statement or admission that smoking caused disease;
- c. suppress or conceal research **that was known or should have been known to them** regarding the risks of **addiction and disease from smoking cigarettes**; and
- d. **conduct research on the risks of smoking and disease other than in their own facilities; and**
- e. orchestrate a public relations program on smoking and health issues with the object of:
  - i. promoting cigarettes;
  - ii. protecting cigarettes from attack based upon health risks **that were known or should have been known to them**; and
  - iii. reassuring the public that smoking was not hazardous.

94. This conspiracy, concert of action and common design of the Defendants was continued at secret committees, conferences and meetings involving senior personnel of the Lead Companies and through written and oral directives **issued by the Lead Companies to members of their Groups who manufactured cigarettes sold in Newfoundland and Labrador.**



95. Between in or about late 1953 and the early 1960s, the Lead Companies formed or joined several research organizations including **but not limited to** the Tobacco Industry Research Council (the “TIRC”, renamed the Council for Tobacco Research in 1964 (the “CTR”)), the Centre for Co-operation in Scientific Research Relative to Tobacco (“CORESTA”), **the Tobacco Institute (“TI”)**, and the **Tobacco Manufacturers’ Standing Committee, (renamed the Tobacco Research Council (“TRC”) and then the Tobacco Advisory Council), collectively referred to as TRC, and Verband der Cigarettenindustrie (“Verband”), which was the German equivalent of the Tobacco Institute to which the Lead Companies were affiliated.**

96. The Lead Companies publicly misrepresented that they or members of their respective Groups, along with the TIRC, the CTR, CORESTA, the TRC, **CTMC, TI, Verband,** and similar organizations, would objectively conduct research and gather data concerning the link between smoking and disease and would publicize the results of this research throughout the world. **Particulars of these misrepresentations are within the knowledge of the Defendants but include:**

- (a) The issuance of the TIRC’s 1954 “Frank Statement to Cigarette Smokers” which received coverage in the Canadian press;**
- (b) Statements made to the Canadian Medical Association in May 1963;**
- (c) November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare;**
- (d) May 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs;**
- (e) Statements to the national press and news organizations in Canada; and**
- (f) Communications through the CTMC in Canada, including to the federal Department of Health and Welfare.**

97. In reality, the Lead Companies conspired with the TIRC, the CTR, CORESTA, the TRC, **CTMC, TI, Verband**, and similar organizations, to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Defendants **Lead Companies** intended to mislead the public **persons in Newfoundland and Labrador** and the Province into believing that, **contrary to their knowledge**, there was a real medical or scientific controversy as to whether the consumption of tobacco products and, in particular, smoking caused addiction and disease.
98. In or about 1963 and 1964, the Lead Companies ~~and some or all of the Defendants~~ agreed to co-ordinate their research with research conducted by the TIRC in the United States of America (“USA”) for the purpose of suppressing any findings which might indicate that cigarettes were a harmful and dangerous product.
99. In or about April and September 1963, the Lead Companies, **contrary to their knowledge**, agreed to jointly develop a public relations campaign intended to counter the report of the Royal College of Physicians in England, the then forthcoming report of the Surgeon General in the USA and a report of the Canadian Medical Association for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes.
100. In or about September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease **which was known or ought to have been known by them based upon research on smoking and health that was known to them**, unless and until they were forced to do so by government.
101. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of tobacco products and, in particular,

cigarettes, which was known or ought to have been known by them based upon research on smoking and health that was known to them.

102. By in or about the mid-1970s, the Lead Companies, ~~and some or all of the Defendants~~ determined that the international component of their misinformation campaign was required to be increased in an effort to protect the interests of the tobacco industry from any disclosures or admissions which might suggest a link between the consumption of tobacco products and, in particular, cigarettes, and tobacco related disease, which was known or ought to have been known by them based upon research on smoking and health that was known to them. The Defendants feared that any such disclosure or admission would create a “domino effect” which would be a significant detriment to the industry world-wide.

102.1. In 1974, the Lead Companies as members of TI formed a Research Review Committee which became known as the Research Liaison Committee, to develop a coordinated approach to all industry research into smoking and health. In 1978, the Research Liaison Committee was replaced with the Industry Research Committee.

103. As a result of these intentions and with the specific purpose of ensuring a continued and effective international component to their misinformation campaign, in or about June, 1977, the Lead Companies, ~~and some or all of the Defendants with international interests,~~ met in England to establish the International Committee on Smoking Issues (“ICOSI”).
104. Through ICOSI, the Defendants Lead Companies resisted attempts by governments, including the Canadian Government, to provide or require the Defendants to provide adequate warnings as to the link between the consumption of tobacco products and, in particular, cigarettes, and disease, including the effects of second hand smoke, and pledged to:

- (a) jointly disseminate false and misleading information regarding the risks of **addiction and disease from** smoking;
- (b) make no statement or admission that smoking caused disease;
- (c) suppress research **that was known or ought to have been known to them** regarding the risks of **addiction and disease from** smoking;
- (d) not compete with each other by making health claims with respect to their tobacco products and, in particular, cigarettes, and thereby avoid direct or indirect admissions about the risks of **addiction and disease from** smoking; and
- (e) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring smokers, the public and authorities in the Province of Newfoundland and Labrador and other jurisdictions that smoking was not hazardous;

**(the “ICOSI policies and position on smoking”).**

105. In and after 1977, the members of ICOSI, including each of the Lead Companies, agreed orally and in writing, to ensure that:
- (a) the members of their respective Groups, including **the Direct Breach Defendants** ~~those in Canada~~, would act in accordance with the ICOSI position on smoking and health **set out above**, including the decision to mislead the public about the link between smoking and disease;
  - (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers’ associations (“NMAs”) including, in Canada, CTMC, to ensure compliance in the various tobacco markets world wide;
  - (c) when it was not possible for NMAs to carry out ICOSI’s initiatives they would be carried out by the groups comprising the Lead Companies or by the Lead Companies themselves; and

(d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.

106. In or about the late 1970s, the Defendants **Lead Companies** launched “Operation Berkshire”, which was directed at Canada and other major markets and was intended to further advance their campaign of misinformation and to promote smoking. Operation Berkshire was ~~lead~~ **led** by **the Lead Companies of the Philip Morris Group in concert with the Rothmans Group and by the BAT Group with assistance from some or all of the Defendants.**
107. In or about 1980, ICOSI was renamed the International Tobacco Information Centre/Centre International d’Information du Tabac - INFOTAB (“INFOTAB”). INFOTAB changed its name to the Tobacco Documentation Centre (“TDC”) (ICOSI, INFOTAB and TDC are hereinafter collectively referred to as “ICOSI”).
108. At all times material to this action the policies of ICOSI were identical to the policies of the NMAs including CTMC, and were presented as the policies and positions of the NMAs and their member companies. The basis or rationale for these policies was to conceal from the public and from governments, **including the Canadian Government,** the existence of the conspiracy, concert of action and common design of the Defendants.
109. At all times material to this action the Lead Companies acted to ensure that **the manufacturers of cigarettes sold in Newfoundland and Labrador within their Group** complied with and did not deviate from the official ICOSI position on the adverse health effects of the consumption of tobacco products and, in particular, cigarettes **as more particularly set out in paragraph 126 through and including paragraph 143 herein.**

110. In addition to the foregoing, the Defendants **Lead Companies** specifically engaged in a conspiracy, concert of action and common design with respect to the issue of second hand smoke **as set out below**.
111. In or about the early 1970s, the Defendants ~~and/or related and affiliated companies~~ **Lead Companies** began to specifically combine their resources and coordinate their activities with respect to the issue of second hand smoke. In 1975, the Defendants ~~and/or related and affiliated companies~~ **Lead Companies** formed the first of several committees to specifically address second hand smoke, **which they also referred to as Environmental Tobacco Smoke (ETS) and passive smoking. The first committee, sometimes referred to as the Public Smoking Committee or Advisory Group, met under the direction of the Research Liaison Committee.** Although the Defendants ~~and related companies~~ **Lead Companies** claimed that the Committees were formed to conduct “sound science” regarding the emerging issue of second hand smoke, their actual purpose was to fund projects that would counter the public’s growing concern regarding the harmful effects of second hand smoke, despite the knowledge amongst the Defendants **Lead Companies** of its harmful effects. **The Committee formed in 1975 and its various successors, including the Tobacco Institute Advisory Committee (“TI-ETSAG”) founded in 1984 and the Committee for Indoor Air Research (“CIAR”) founded in 1988** ~~1987~~, carried out ~~their~~ **the** mandate **of the Lead Companies** of challenging the growing consensus that second hand smoke was harmful by:
- (a) coordinating and funding efforts to generate evidence to support the notion that there remained an “open controversy” as to the health implications of second hand smoke;
  - (b) leading the attack on government efforts to act on evidence linking second hand smoke to disease; ~~and~~
  - (c) acting as a “front” organization for flowing tobacco industry funds to research projects so that the various committees appeared to be independent organizations and the role of the tobacco industry was hidden;

- (d) in the case of TI-ETSAG, meeting monthly to propose, review, and manage scientific projects approved for funding;
  - (e) in 1988 when it was formed, the Chairman of the CIAR Board told the TI that the purpose of CIAR was providing ammunition for the tobacco industry on the ETS battlefield;
  - (f) from 1988 until its dissolution in 1999, funding of 150 projects by CIAR at 75 institutions resulting in 250 peer reviewed publications, in addition to special studies on the effects of second hand smoke, 18 of which were released;
  - (g) creating a consultancy program in June 1987 at a conference called “Operation Down Under” to train and deploy scientists worldwide;
  - (h) in 1988 forming and funding of the Association for Research on Indoor Air (ARIA) by the Defendants’ consultants on second hand smoke; and
  - (i) in 1989, forming of the Indoor Air International (IAI), a group to address scientific issues related to indoor air quality that the Defendants promoted publicly as learned societies dedicated to promote indoor air quality but failed to disclose that they were funded by the tobacco industry.
- (the “CIAR policies and position on second hand smoke”).

112. At all times material to this action the Defendants conspired and acted in concert and with common design to commit tobacco related wrongs.
113. Further particulars of the manner in which the conspiracy, concert of action and common design were entered into or continued and of the breaches of duty committed in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Defendants.

#### **B. Conspiracy and Concerted Action in Canada**

114. At all times material to this action and, in particular, since in or about 1949, the Defendants, in furtherance of the conspiracy and concerted action within the

International Tobacco Industry and within their particular Corporate Groups, conspired and acted in concert to prevent the Province and the public in the Province of Newfoundland and Labrador ~~and in other jurisdictions~~ from acquiring knowledge of the harmful and addictive properties of tobacco products and, in particular, cigarettes. The Defendants committed tobacco related wrongs, as set out above in paragraph 53 through and including paragraph 84 herein and in paragraph 85 through and including paragraph 90 herein, in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of their conspiracy, concert of action and common design.

115. This conspiracy, concert of action and common design was entered into or continued at or through committees, conferences and meetings established, organized and convened by ~~some or all of~~ the Defendants Rothmans Inc., Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp. and Imperial Tobacco Canada Limited and their predecessors in interest for whom they are liable, hereinafter referred to as the Canadian Tobacco Company Defendants ~~in Canada,~~ and attended by their senior personnel and also through written and oral directives and communications amongst ~~some or all of~~ the Defendants.
116. The conspiracy, concert of action and common design was continued when, contrary to their knowledge:
- (a) in or about 1962, the Canadian Tobacco Company Defendants ~~in Canada~~ agreed not to compete with each other by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of addiction and disease from smoking;
  - (b) in or about 1953, some or all of the Defendants developed and implemented a public relations plan to create controversy as to whether there was a causal connection between smoking and disease;



~~(c)~~ (b) in or about 1963, ~~some or all of the~~ Canadian Tobacco Company Defendants misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease;

~~(d)~~ (e) in or about 1963, ~~some or all of the~~ Canadian Tobacco Company Defendants formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, and incorporated as CTMC in 1982) in order to maintain a united front on smoking and health issues (the Ad Hoc Committee on Smoking and Health, the pre-incorporation Canadian Tobacco Manufacturers' Council and CTMC are hereinafter collectively referred to as "CTMC"); and

~~(e)~~ (d) in or about 1969, ~~some or all of the~~ Canadian Tobacco Company Defendants misrepresented to the House of Commons and the Standing Committee on Health, Welfare and Social Affairs that there was no causal connection between smoking and disease.

117. Upon its formation, and at all material times thereafter material to this action, CTMC provided a means and method to continue the conspiracy, concert of action and common design and, upon its incorporation, agreed, adopted and participated in the conspiracy, concert of action and common design.
118. In furtherance of the conspiracy, concert of action and common design, CTMC has lobbied governments and regulatory agencies throughout Canada, on behalf of and as agent for their members which included all of the Canadian Tobacco Company Defendants, since in or about 1963 on matters of interest to, or related to, the tobacco industry, including delaying and minimizing government initiatives in respect of warnings to be placed on cigarette packages and imposing limitations on smoking in public places, and has also, through these lobbying efforts, misrepresented the risks of addiction and disease from smoking to the Canadian public, in accordance with the tobacco industry's position, which is the same as the ICOSI policies and position on smoking

particularized in paragraph 104 herein and the CIAR policies and position on second hand smoke particularized in paragraph 111 herein.

119. CTMC, in concert with ~~some or all of~~ the Canadian Tobacco Company Defendants and the international tobacco industry associations ICOSI and INFOTAB, through its membership in these organizations, has coordinated the Canadian cigarette industry's positions on smoking and health issues.
120. In furtherance of the conspiracy, concert of action and common design ~~of the Defendants,~~ CTMC on behalf of and as agent for their members which included all of the Canadian Tobacco Company Defendants,:
- (a) disseminated false and misleading information regarding the risks of addiction and disease from smoking including making false and misleading submissions to governments denying any connection contrary to its knowledge;
  - (b) refused to admit that smoking caused disease, contrary to its knowledge;
  - (c) suppressed research regarding the risks of addiction and disease from smoking, which was known or should have been known to them;
  - (d) participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes sales and protecting cigarettes and smoking from attack by misrepresenting the link, which was known or should have been known to them, between smoking and disease; and
  - (e) lobbied governments in order to delay and minimize government initiatives with respect to smoking and health, including initiatives to place warnings on cigarette packaging and limiting smoking in public places contrary to its knowledge;-
  - (f) in a 1963 presentation to the Conference on Smoking and Health of the Department of National Health and Welfare, the Ad Hoc Committee of the Canadian Tobacco Industry (the predecessor to the CTMC) claimed

- that the evidence that tobacco causes disease was inconclusive and used this to undermine the scientific case against tobacco;
- (g) stated in a 1968 paper that there is no established proof that tobacco causes harm;
- (h) in June 1969 made a statement to the House of Commons Standing Committee on Health and Welfare denying that smoking is a major cause of illness or death;
- (i) at a 1971 meeting of technical representatives of the members of CTMC called by the head of the CTMC, representatives of the CTMC and the Canadian tobacco companies noted the need for minimum nicotine levels in cigarettes;
- (j) denied at a 1971 press conference that tobacco causes disease;
- (k) in a 1977 Position Paper, stated that there is no persuasive scientific evidence to support the contention that the non-smoker is harmed by the tobacco smoke of others;
- (l) in a 1987 Position Statement, stated that:
- (i) smoking had not been proven to cause disease;
  - (ii) smoking is not addictive; and
  - (iii) there was no conclusive evidence that second hand smoke causes adverse health effects and stated that the scientific community holds the view that there are no proven health consequences to exposure to second hand smoke;
- (m) in a 1987 press release denied that second hand smoke is harmful to health;
- (n) in 1987 advised a House of Commons Legislative Committee that there was uncertainty regarding the role of smoking in causing disease;
- (o) in a 1990 letter wrote to the Canadian government to voice the Industry's opposition to the federal government's proposed amendments to the Tobacco Products Regulations which would require, *inter alia*, the placing of addiction warnings on cigarette

packages. In its letter, the CTMC questioned whether smoking was addictive and whether second hand smoke was dangerous; and  
 (p) engaged in other activities in furtherance of the conspiracy, concert of action and common design which are within the knowledge of CMTC and the Canadian Tobacco Company Defendants.

121. At all times material to this action CTMC has acted as the agent of ~~some or all of~~ the Canadian Tobacco Company Defendants, as members of the CTMC, and as agent of the Lead Companies through its membership with them in the International Associations, ICOSI and INFOTAB. In 1982 CTMC became an associate member of INFOTAB and was a full participant from 1982 to 1989.
122. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued, and of the tobacco related wrongs committed by the Defendants in Canada and, in particular in the Province of Newfoundland and Labrador, in furtherance of the conspiracy, concert of action and common design are within the knowledge of these Defendants and the CTMC.

### C. Joint Liability

123. The Province states that the Defendants, including CTMC, are jointly and individually liable for the cost of health care services which the Province has incurred and which it will continue to incur as a result of tobacco related disease caused by the tobacco related wrongs of the Defendants.
124. In the alternative, the Province states that the Defendants within each of the four (4) Groups are jointly and individually liable for the cost of health care services which the Province has incurred and which it will continue to incur as a result of tobacco related disease caused by the tobacco related wrongs of the Defendants.

125. The Province pleads and relies upon the provisions of the *Act* and, in particular, section 6 thereof.

1. **The Rothman's Group**

126. **In or about 1953, the M**members of the Rothmans Group entered into the conspiracy, concert of action and common design referred to above and continued the conspiracy, concert of action and common design **within the International Tobacco Industry and the Canadian Tobacco Industry** at or through committees, conferences and meetings established, organized, convened and attended by senior personnel of members of the Rothmans Group including senior personnel of **Rothmans International Limited**, Rothmans Inc., Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, Carreras Rothmans Limited and the Philip Morris Group. The members of the Rothman's Group also entered into and continued the conspiracy, concert of action and common design through written and oral directives and communications amongst its members.

127. Carreras Rothmans Limited and its affiliated companies were involved in directing or coordinating the common policies on smoking and health of the Rothmans Group by preparing and distributing statements which set out the Rothmans Group's position on smoking and health issues. **Rothmans International Limited functioned as a central body to coordinate and establish policies for all Rothmans Group members worldwide, creating an International Advisory Board for this particular purpose. These positions were then adopted by member companies.**

**127.1 From 1949 onwards, Rothmans Group policies included denying the existence of any relationship between smoking and adverse health effects, and strenuously opposing the introduction of warning labels on tobacco products. From 1960 onwards, these policies included denying or minimizing**

the relationship between exposure to cigarette smoke, including second hand smoke, and adverse health effects.

127.2 Rothmans International Limited and Carreras Rothmans Limited directed Rothmans Inc. (and its predecessor corporations) to maintain the Rothmans Group's position that more research was required to determine whether cigarettes cause disease, and instructed Rothmans Inc. to resist cautionary warnings in advertising. Carreras Rothmans Limited also directed Rothmans Inc. (and its predecessor corporations) on how to vote at CTMC meetings on issues relating to smoking and health, including the approval and funding of research. Rothmans Inc. (and its predecessor corporations) acted as an agent for and as directed by Carreras Rothmans Limited.

127.3 Within the Rothmans Group, scientists worked collaboratively, exchanged research results, and advised senior management of the companies that were part of the Rothmans Group from time to time, through specific committees. From 1978 to 1986, Carreras Rothmans Limited and its research division were designated responsibility for providing direction on tobacco-related health issues and for coordinating the Rothmans Group's research strategy, Rothmans Inc. (and its predecessor corporations) in particular relied on Carreras Rothmans Limited's expertise and direction on smoking-related health issues. Rothmans Group companies also held meetings on issues related to second-hand smoke. Through its conferences, meetings, directives and policies. Carreras Rothmans Limited directed the Rothmans Group to take the same positions on smoking and health as the ICOSI policies and position on smoking particularized in paragraph 104 herein and the CIAR policies and position on second hand smoke particularized in paragraph 111 herein.

128. Carreras Rothmans Limited and its affiliated companies were also involved in directing or coordinating the smoking and health policies of Rothmans, Benson &

Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc. **and its predecessor corporations**, by influencing or advising each of these companies how they should vote in committees of Canadian manufacturers **of cigarettes and other tobacco products sold in Newfoundland and Labrador** and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.

129. Further particulars of the manner in which the conspiracy, concert action and common design was entered into or continued and of the tobacco related wrongs committed by Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc. **and its predecessor corporations**, in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Rothmans Group members.

2. **The Philip Morris Group**

130. **In or about 1953**, the members of the Philip Morris Group entered into the conspiracy, concert of action and common design referred to above and continued the conspiracy, concert of action and common design **within the International Tobacco Industry and the Canadian Tobacco Industry** at or through committees, conferences and meetings established, organized and convened by Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc. and attended by senior personnel of the Philip Morris Group companies, including senior personnel of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd. The members of the Philip Morris Group also entered into and continued the conspiracy, concert of action and common design through written and oral directives and communications amongst its members.

131. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. used committees including the Committee on Smoking Issues and Management and the Corporate Products Committee to direct or coordinate the common policies on smoking and health of the Philip Morris Group.
132. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. used conferences including the Conference on Smoking and Health and the Corporate Affairs World Conference to direct or coordinate the common policies on smoking and health of the Philip Morris Group.
133. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International Inc. further directed or coordinated the common policies on smoking and health of the Philip Morris Group through their respective Corporate Affairs and Public Affairs Departments which directed or advised various departments of the other members of the Philip Morris Group, including Rothmans, Benson & Hedges Inc., and its amalgamating company Benson & Hedges (Canada) Ltd., concerning the position of the Philip Morris Group on smoking and health issues.
134. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or coordinated the common policies of the Philip Morris Group on smoking and health by preparing and distributing to the members of the Philip Morris Group including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., written directives and communications including “*Smoking and Health Quick Reference Guides*” and “*Issues Alerts*”. Information on the position of the Philip Morris Group on smoking and health issues were contained within these directives and communications which were distributed amongst the members of the Philip Morris Group, including Rothmans, Benson & Hedges Inc., and its amalgamating company Benson & Hedges (Canada) Ltd., to ensure that their personnel understood and disseminated the position of the Philip Morris Group, **which was the same as the ICOSI policies and position on smoking particularized in**



**paragraph 104 herein and the CIAR policies and position on second hand smoke particularized in paragraph 111 herein.**

135. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or coordinated the smoking and health policies of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., in committees of Canadian manufacturers and at meetings of CTMC by influencing or advising each of these companies how they should vote on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers **of cigarettes and other tobacco products sold in Newfoundland and Labrador** and by CTMC.

**135.1 In furtherance of the conspiracy, concert of action and common design, Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc., and Rothmans Benson & Hedges Inc., as their predecessor corporations, participated in the establishment and operation of INBIFO, a research facility in Europe. At INBIFO, research was carried out into the health effects of both smoking and second hand smoke. When the research indicated that smoking and second hand smoke was harmful to health, the research was suppressed and/or destroyed.**

136. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed by Rothmans, Benson & Hedges Inc., its amalgamating company Benson & Hedges (Canada) Inc., and by Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Philip Morris Group members.

### 3. The RJR Group

137. In or about 1953, mMembers of the RJR Group entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized and convened by R. J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc., that were attended by senior personnel of the RJR Group Members, including those of JTI-Macdonald Corp. and its predecessor corporations. ~~company Macdonald Tobacco Inc.~~ The members of the RJR Group also entered into and continued the conspiracy, concert of action and common design through written and oral directives and communications amongst its members.
138. R.J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc. used meetings including the Winston-Salem Smoking Issues Coordinator Meetings to direct or coordinate the common policies on smoking and health of the RJR Group.
139. The conferences used by R. J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. used conferences including the “*Hound Ears*” and “*Sawgrass*” conferences to direct or coordinate the common policies on smoking and health of the RJR Group.
140. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc., further directed or coordinated the common policies of the RJR Group on smoking and health by establishing a reporting system throughout its member companies which required each global “Area” to have a “smoking issue designee” who was then supervised by representatives of R.J. Reynolds Tobacco International, Inc. The “smoking issue designee” was required to report to the Manager of Science Information at R.J. Reynolds Tobacco Company, Canada

was designated as global “Area II” and from in or about 1974 its’ “smoking issue designee” was a senior executive of Macdonald Tobacco Inc. and later of JTI-Macdonald Corp. **and its predecessor corporations.**

141. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or coordinated the common policies on smoking and health of the RJR Group by preparing and distributing to its member companies including JTI-Macdonald Corp. and its predecessor **corporations,** ~~company~~ ~~Macdonald Tobacco Inc.~~ written directives and communications including an “*Issues Guide*” **and a “Media Guide”.** ~~These directives and communications set out the common policy of the RJR Group on smoking and health issues and were intended to ensure that personnel of the companies within the RJR Group including JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc. understood and disseminated the position of the RJR Group.~~

142. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or coordinated the common smoking and health policies of JTI-Macdonald Corp. and its predecessor **corporations** ~~company~~ ~~Macdonald Tobacco Inc.~~ by directing, influencing or advising each of these companies how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC **and maintaining the right to veto any particular research proposal.**

**142.1 The direction and co-ordination of the RJR Lead Companies over the RJR Group was also carried out by:**

- (a) Developing an action plan which set out the RJR Group’s position on smoking and health issues to ensure that the personnel in the RJR Group companies, including its Canadian subsidiaries, understood and disseminated the RJR Group’s position;**

- (b) Taking a leadership role in the International Committee to Smoking Issues (ICOSI), particularly in relation to Canada and coordinating CTMC's positions to align with those of ICOSI as particularized in paragraph 104 herein, as well as the CIAR policies on second hand smoke particularized in paragraph 111 herein;
- (c) Placing senior executives of the Lead Companies as senior executives of the Canadian subsidiaries;
- (d) Advising the RJR Group's sales representatives that cigarettes did not pose a health hazard to the non-smoker;
- (e) Making public statements on behalf of the entire Group denying or marginalizing the link between health and second hand smoke;
- (f) Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department;
- (g) Providing technical expertise, including information and knowledge on the manufacture of cigarettes, the use of substitutes and additives, the use of pH controls, the appropriate levels of tar and nicotine and the type and mixture of tobacco used in the manufacture of cigarettes; and
- (h) Holding RJR Group and tobacco industry meetings relating to environmental tobacco smoke.

142.2 These directives and communications set out the RJR Group's position on smoking and health issues, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 104 herein and the CIAR policies and position on second hand smoke particularized in paragraph 111 herein. These directives and communications were meant to ensure that the personnel of the RJR Group companies, including those of JTI-Macdonald Corp. and its predecessor corporations, understood and disseminated the RJR Group's position.

**142.3 In furtherance of the conspiracy, concert of action and common design, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., and JTI-Macdonald Corp. and its predecessor corporations, participated in the removal and destruction of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina and destroyed research relating to the biological activity of cigarettes manufactured and promoted by members of the RJR Group for sale in Newfoundland and Labrador.**

143. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed by JTI-Macdonald Corp., **and** its predecessor **corporations**, ~~company Maedonald Tobacco Inc.~~ and the Defendants, **R.J. Reynolds Tobacco International and** R.J. Reynolds Tobacco Company, in furtherance of the conspiracy, concert of action and common design are within the knowledge of the RJR Group members.

### **The BAT Group**

144. **In or about 1953,** ~~m~~Members of the BAT Group entered into the conspiracy, concert or action and common design referred to above and continued the conspiracy, concert of action and common design **within the International Tobacco Industry and the Canadian Tobacco Industry** at or through committees, conferences and meetings established, organized and convened by British American Tobacco (Investments) Limited, B.A.T. Industries P.L.C. and British American Tobacco P.L.C. that were attended by senior personnel of the BAT Group members, including those of Imperial Tobacco Limited and Imasco Limited. The members of the BAT Group also entered into and continued the conspiracy, concert of action and common design through written and oral directives and communications amongst is members.

144.1 The Lead Companies of the BAT Group have consistently and publicly held the BAT Group out to be a single corporate entity and a tobacco enterprise, that has been in operation continuously since 1902. British American Tobacco P.L.C., like B.A.T. Industries P.L.C. before it, has represented to the public in its annual financial statements and otherwise, that it has been in existence since 1902, employing tens of thousands of people and is one of the largest tobacco companies in the world. As a result thereof, each of the Lead Companies, by its words and conduct, continued and thereby adopted and assumed the benefits and the liabilities of its predecessors including those attributable to conspiracy and acting in concert within the International Tobacco Industry, the Canadian Tobacco Industry and its own Group. British American Tobacco P.L.C. stands where its predecessors stood, as head of the BAT Group, representing a continuity of control, purpose and policies for more than 100 years or more. British American Tobacco P.L.C. has continued the BAT Group's practice of misleading the public and governments about the dangers of smoking and the risks of second hand smoke.

145. British American Tobacco (Investments) Limited, British American Tobacco P.L.C. and B.A.T. Industries P.L.C. ~~or either of them~~ used committees to direct and/or co-ordinate the common policies on smoking and health of the BAT Group including the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board, the Tobacco Executive Committee, and the Tobacco Strategy Review Team (later changing its name to the Tobacco Strategy Group).

146. The Defendants, British American Tobacco (Investments) Limited, British American Tobacco P.L.C. and B.A.T. Industries P.L.C. used conferences, including the Chairman's Advisory Conferences, BAT Group Research Conferences, and BAT Group Marketing Conferences, to direct or co-ordinate the

common policies on smoking and health of the BAT Group include. Some of these conferences took place in Canada.

147. British American Tobacco (Investments) Limited, British American Tobacco P.L.C. and B.A.T. Industries P.L.C. further directed or coordinated the common policies on smoking and health of the BAT Group, **which policies were the same as the ICOSI policies and position on smoking particularized in paragraph 104 herein and the CIAR policies and position on second hand smoke particularized in paragraph 111 herein**, by **creating a Tobacco Strategy Review Team (TSRT) and** preparing and distributing to the members of the BAT Group, including Imperial Tobacco Limited and Imasco Limited, written directives and communications including “*Smoking Issues: Claims and Responses*”, “*Consumer Helplines: How to Handle Questions on Smoking and Health and Product Issues*”, **that addressed *inter alia* second hand smoke**, “*Smoking and Health: The Unresolved Debate*”, “*Smoking: The Scientific Controversy*”, “*Smoking: Habit or Addiction?*”, and “*Legal Considerations on Smoking and Health Policy*”, **“Smoking and Health – Assumptions – Policy – Guidelines”, “Environmental Tobacco Smoke – Improving the Quality of Public Debate, Smoking and Health – The End Result Debate”, and “Answering the Critics”**. These directives and communications set out the position on smoking and health issues of the BAT Group, **which was the same position as the ICOSI policies and position on smoking particularized in paragraph 104 herein and the CIAR policies and position on second hand smoke particularized in paragraph 111 herein** and were intended to ensure that personnel of the BAT Group of companies, including the personnel of Imperial Tobacco Limited and Imasco Limited, understood and disseminated the position of the BAT Group.

**147.1 Direction, to this end, was further provided at meetings of the Tobacco Strategy Review Team and recorded in notes of meetings of the Tobacco Strategy Review Team. This strategy for the BAT Group was further set out**

in corporate documents such as the Listing Particulars of British American Tobacco P.L.C. in 1998, the statement of Policy of the Group on Regulatory and Taxation Issues and through various websites operated by the Lead Companies from and after 1998, including statements made by British American Tobacco P.L.C. on its website in 2003 and thereafter questioning research that exposure to second hand smoke causes disease.

148. British American Tobacco (Investments) Limited, British American Tobacco P.L.C. and B.A.T. Industries P.L.C. further directed or coordinated the smoking and health policies of Imperial Tobacco Limited and Imasco Limited, by directing or advising how they should vote in committees of the Canadian manufacturers of cigarettes and tobacco products sold in Newfoundland and Labrador and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.
149. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed in furtherance of the conspiracy, concert of action and common design are within the knowledge of the BAT Group members.

## V. SERVICE OF DOCUMENTS

150. In accordance with Rule 6.07 (3) of the *Rules of the Supreme Court, 1986* the within Statement of Claim is to be served upon the Defendants outside of the Province of Newfoundland and Labrador pursuant to Rule 6.07(1)(h) and Rule 6.07(1)(o) by virtue of the facts pled and relied upon by the Plaintiff herein.

## VI. RELIEF SOUGHT

151. The Province has provided and will continue to provide health care services for insured persons as defined in Section 2(e) of the *Act*, who have suffered or are



suffering or are at risk of suffering from tobacco related disease as a result of the tobacco related wrongs committed by the Defendants. The Plaintiff therefore claims against each of the Defendants, both jointly and individually, the following:

- (a) the present value of the total expenditure by the Province for health care services that it has 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 Province for health care services that it could reasonably be expected the Province will be required to provide for insured persons resulting from tobacco related disease or the risk of tobacco related disease; and
- (c) all costs of this proceeding, including but not limited to pre-trial discoveries, applications and hearings; and
- (d) Interest pursuant to the *Judgment Interest Act*, R.S.N. 1990, c.J-2;
- (e) Such further and other relief as this Honourable Court shall deem mete.

**ISSUED** at the City of St. John's, in the Province of Newfoundland and Labrador, the 8<sup>th</sup> day of February, 2011, by Court Officer Linda Boyles.

**AMENDED** at the City of St. John's, in the Province of Newfoundland and Labrador, this 4th day of June, 2014.



**ROEBOTHAN, McKAY, MARSHALL**

Solicitors for the Plaintiff

Whose address for service is:

34 Harvey Road

5<sup>th</sup> Floor, Paramount Building

P.O. Box 5236

St. John's, NL. A1C 5W1

Per: Glenda C. Best, Q.C.

**TO:****The Supreme Court of Newfoundland and Labrador – Trial Division (General)**

309 Duckworth Street  
P.O. Box 937  
St. John's, NL., A1C 5M3

**AND TO:****Rothman's Inc.**

1500 Don Mills Road  
Toronto, ON

**Rothman's Benson & Hedges Inc.**

1500 Don Mills Road  
Toronto, ON

**Carreras Rothman's Limited**

Globe House  
1 Water Street  
London, England

**Altria Group Inc.**

6601 Broad Street  
Richmond, Virginia, USA

**Philip Morris USA Inc.**

6601 Broad Street  
Richmond, Virginia, USA

**Philip Morris International Inc.**

120 Park Avenue  
New York, New York, USA

**JTI-MacDonald Corp.**

5151 George Street  
P.O. Box 247  
Halifax, NS

**R.J. Reynold's Tobacco Company**

401 North Main Street  
Winston-Salem, North Carolina, USA

**R.J. Reynold's Tobacco International, Inc.**

401 North Main Street

Winston-Salem, North Carolina, USA

**Imperial Tobacco Canada Limited**

3711 St. Antoine Street  
Montreal, QB

**British American Tobacco P.L.C.**

Globe House  
4 Temple Place  
London, England

**B.A.T. Industries P.L.C.**

Globe House  
4 Temple Place  
London, England

**British American Tobacco (Investments) Limited**

Globe House  
1 Water Street  
London, England

**Canadian Tobacco Manufacturers' Council**

1808 Sherbrooke St. West  
Montreal, QB.

2011 01G. No. 0826  
 IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
 TRIAL DIVISION (GENERAL)

**BETWEEN:**

**ATTORNEY GENERAL OF NEWFOUNDLAND  
 AND LABRADOR**

**PLAINTIFF**

**AND:**

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

**DEFENDANTS**

**NOTICE TO DEFENDANT(S)**

You are hereby notified that the Plaintiff(s) may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within 30 days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at St. John's a defence and unless within same time a copy of your defence is served upon the plaintiff(s) or the plaintiff(s) solicitor(s) at the plaintiff's solicitor(s) stated address(es) for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the plaintiff(s) or the plaintiff's solicitors within ten (10) days from the service of this notice upon you, then this proceedings will be stayed.

**TO:**

**Rothman's Inc.**  
 1500 Don Mills Road  
 Toronto, ON

**Rothman's Benson & Hedges Inc.**  
 1500 Don Mills Road  
 Toronto, ON

**JTI-MacDonald Corp.**

5151 George Street

P.O. Box 247

Halifax, NS

**Imperial Tobacco Canada Limited**

3711 St. Antoine Street

Montreal, QB

**Canadian Tobacco Manufacturers' Council**

1808 Sherbrooke St. West

Montreal, QB.

2011 01G. No. 0826  
 IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
 TRIAL DIVISION (GENERAL)

**BETWEEN:**

**ATTORNEY GENERAL OF NEWFOUNDLAND  
 AND LABRADOR**

**PLAINTIFF**

**AND:**

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

**DEFENDANTS**

**NOTICE TO DEFENDANT(S)**

You are hereby notified that the Plaintiff(s) may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within 45 days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at St. John's a defence and unless within same time a copy of your defence is served upon the plaintiff(s) or the plaintiff(s) solicitor(s) at the plaintiff's solicitor(s) stated address(es) for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the plaintiff(s) or the plaintiff's solicitors within ten (10) days from the service of this notice upon you, then this proceedings will be stayed.

**TO:**

**Altria Group Inc.**  
 6601 Broad Street  
 Richmond, Virginia, USA

**Philip Morris USA Inc.**  
 6601 Broad Street

Richmond, Virginia, USA

**Philip Morris International Inc.**

120 Park Avenue

New York, New York, USA

**R.J. Reynold's Tobacco Company**

401 North Main Street

Winston-Salem, North Carolina, USA

**R.J. Reynold's Tobacco International, Inc.**

401 North Main Street

Winston-Salem, North Carolina, USA

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 CARRERAS ROTHMANS LIMITED, ALTRIA GROUP, INC., PHILIP  
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 INDUSTRIES P.L.C., BRITISH AMERICAN TOBACCO  
 (INVESTMENTS) LIMITED, and CANADIAN TOBACCO  
 MANUFACTURERS' COUNCIL**

**DEFENDANTS**

**NOTICE TO DEFENDANT(S)**

You are hereby notified that the Plaintiff(s) may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the Plaintiff is entitled to, without any further notice to you unless within 60 days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at St. John's a defence and unless within same time a copy of your defence is served upon the plaintiff(s) or the plaintiff(s) solicitor(s) at the plaintiff's solicitor(s) stated address(es) for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the plaintiff(s) or the plaintiff's solicitors within ten (10) days from the service of this notice upon you, then this proceedings will be stayed.

**TO:**

**Carreras Rothman's Limited**  
 Globe House  
 1 Water Street  
 London, England

**British American Tobacco P.L.C.**  
 Globe House



4 Temple Place  
London, England

**B.A.T. Industries P.L.C.**

Globe House  
4 Temple Place  
London, England

**British American Tobacco Investments) Limited**

Globe House  
1 Water Street  
London, England

2011 01G. No. 0826  
 IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
 TRIAL DIVISION (GENERAL)

**BETWEEN:**

**ATTORNEY GENERAL OF NEWFOUNDLAND  
 AND LABRADOR**

**PLAINTIFF**

**AND:**

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

**DEFENDANTS**

**Affidavit Of Service**

I, \_\_\_\_\_, of \_\_\_\_\_, make oath and say  
 as follows:

**(Personal Service)**

1. On \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_ at \_\_\_\_\_  
 I served \_\_\_\_\_ with the  
 within Statement of Claim \_\_\_\_\_ by leaving a copy  
 with \_\_\_\_\_ him/her  
 at \_\_\_\_\_  
 (Where the rules provide for personal service on a corporation, etc. by  
 leaving a copy of the document with another person, substitute: by leaving  
 a \_\_\_\_\_ copy \_\_\_\_\_ with \_\_\_\_\_  
 at \_\_\_\_\_.

2. I was able to identify the person (or corporation) by means of  
 \_\_\_\_\_.

**(Service by leaving a copy with an adult person in the same household as an**

**alternative to personal service)**

1. I served the \_\_\_\_\_ with the within Statement of Claim on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_ by leaving a copy with a person \_\_\_\_\_ who appeared to be an adult member of the same household in which \_\_\_\_\_ is residing, at \_\_\_\_\_, and by sending a copy by regular letter mail (*or* registered or certified mail) on \_\_\_\_\_ to \_\_\_\_\_ at the same address.
  
2. I ascertained that the person was an adult member of the household and/or a Director or representative of the corporation by means of \_\_\_\_\_.
  
3. Before serving the documents in this way, I made an unsuccessful attempt to serve \_\_\_\_\_ personally at the same address on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_. (If more than one attempt has been made, add: and again on \_\_\_\_\_.)

**(Service by registered mail as an alternate to personal service)**

1. On \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, I sent to \_\_\_\_\_ by registered mail with Canada Post Corporation item # \_\_\_\_\_ attached to the envelope, a copy of the within Statement of Claim.
  
2. Attached is the confirmation of delivery receipt obtained from Canada Post Corporation for item # \_\_\_\_\_ showing the envelope was delivered to \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_.
  
3. The item # \_\_\_\_\_ on the confirmation of delivery receipt is identical to the item number on the registered mail receipt obtained from Canada Post Corporation for the envelope sent to \_\_\_\_\_.

**(Service by certified mail as an alternative to personal service)**

1. On \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_ I sent to \_\_\_\_\_ by certified mail a copy of the within Statement of Claim.

2. I received the attached receipt card from Canada Post Corporation which indicates the documents were received on \_\_\_\_\_ and which bears a signature that purports to be the signature of \_\_\_\_\_.

**(Service by regular letter mail as an alternative to personal service)**

1. On \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_  
I sent to \_\_\_\_\_ by regular letter mail a copy of the \_\_\_\_\_ together with an acknowledgment of receipt form.
2. On \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_  
I received the attached acknowledgment of receipt form bearing a signature that purports to be the signature of \_\_\_\_\_.

**SWORN (OR AFFIRMED) to**  
at the \_\_\_\_\_ of \_\_\_\_\_  
in the \_\_\_\_\_ of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_,  
before me:

\_\_\_\_\_

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.

Court File No: CV-19-616779-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**RESPONDING MOTION RECORD  
(Sanction Order)  
(Returnable January 29, 2025)**

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