

*Freedom of expression*

December 13, 2002: **The Quebec Superior Court upheld the federal Tobacco Act against an industry claim of unconstitutionality. The law allows the federal government to regulate how cigarettes are labelled**

## CONCLUSIONS

- [1] The Court has done its utmost to address all the questions of law raised by the parties and offer its opinion, an opinion guided by the principle of the rule of law.
- [2] The rule of law comprises the guidelines we as human beings set for ourselves so that we can live together in relative, if not perfect, harmony.
- [3] Our concept of the rule of law is constantly evolving and is **rooted in common sense**. In 1904, a Quebec court ruled that Balzac's *La comédie humaine* was contrary to good morals.<sup>1</sup>[1] In 1960, the Court of the Sessions of the Peace in Montreal declared *Lady Chatterley's Lover* by D.H. Lawrence obscene. The decision was unanimously upheld by the Court of Appeal, but the Supreme Court of Canada overturned the lower court's decision in a five-to-four split decision, setting aside the obscenity charge.<sup>2</sup>[2]
- [4] The case at bar was demanding in every respect. The issues at stake are difficult ones that require us to plot a course between two perils: demagoguery on one side and naiveté on the other.
- [5] Smokers are not social outcasts. They should not be crucified for exercising their right to chose to smoke.
- [6] Tobacco companies have a right to produce and sell cigarettes.
- [7] However...
- [8] ...we must remind ourselves of what the evidence has shown and common sense dictates as this debate draws to a close. To do so is no affront to the rule of law.
- [9] **We live in a country where the state assumes the costs of health care. Such is not necessarily the case elsewhere in the world.**
- [10] Dr. Davis, former Surgeon General of Maryland and director of one of the largest private health-care centres in the United States, pointed out that, at this moment, 40 million Americans do not have access to health care because they cannot afford it. That is more people than the entire population of Canada.
- [11] Cigarettes kill 45,000 Canadians each year, more than the population of Drummondville, Quebec or Prince Albert, Saskatchewan.

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1[1] *Sutherland v. Gariépy* (1905), 11 R.J.Q. 314.

2[2] *R. v. Brodie*, [1961] B.R. 610, rev'd [1962] S.C.R. 681.

[12] The testimony of cardiologist Dr. Nancy-Michelle Robitaille was troubling. **Smokers die, on average, 15 years prematurely and enjoy a greatly diminished quality of life.** When we hear that one of her patients begged her to disconnect his heart monitor so he could go smoke a cigarette, we come to the realization that the fight to curb smoking is not a witch hunt; rather, it is a struggle against a very real social problem.

[13] **Nicotine is powerfully addictive. This is not mere conjecture. It is a fact.**

[14] When Dr. Robitaille spoke about the anguish of patients whose smoking had caused them to develop erectile dysfunctions, nobody was laughing.

[15] **The evidence shows that second-hand smoke harms everyone, both smokers and non-smokers, and that the children of smokers are particularly affected. This is not an attempt to lay blame. It is a fact.**

[16] **Fact: there is incontrovertible evidence that advertising and sponsorship encourage people, especially adolescents, to consume tobacco products.** Advertising is designed to reassure smokers and relies on associating cigarettes with a positive lifestyle.

[17] **Fact: the supposedly less-irritating cigarette is merely the creation of a tobacco company's marketing department; filters allow every single carcinogenic gas contained in cigarette smoke to pass through; and there is no such thing as a "light" or "healthier" cigarette.**

[18] **Fact:** tobacco companies "select" the tobacco leaves they use so that they can put less tobacco in their cigarettes while still maintaining the same levels of nicotine.

[19] **Fact:** tobacco companies have been aware of these facts for a long time, in some cases for over 50 years, and have always denied them or refused to disclose them to consumers.

[20] It should therefore come as no surprise that **the government, as fiduciary of public health,** would so doggedly pursue a comprehensive policy aimed at curbing smoking and informing Canadians about tobacco's effects. **In Canada, the health costs attributed to smoking are in the neighbourhood of \$15 billion, more than the entire national budget of several countries in the world.**

[21] This is not to suggest that freedom of expression can be bought off for a fistful of dollars. At issue is a painful social problem, as well as freedom of expression that, it must be said, has hitherto not been used appropriately.

[22] The tobacco companies are in a particularly difficult position. **They sell a harmful product and know it.** They have the right to sell it because outright prohibition would be **unrealistic.**

[23] They offer no evidence to rebut the claimed ill effects of cigarettes **because there is none.** Their evidence respecting the effects of advertising was unconvincing.

[24] **They are trying to save an industry in inevitable decline.** They have every right to do so.

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[25] Their rights, however, cannot be given the same legitimacy as the government's duty to protect public health.

[26] Parliament is seeking to prohibit tobacco advertising, with a few specific exceptions. This is part of a worldwide trend, one that is far from unreasonable.

[27] The evidence at trial compels the Court to exercise the degree of deference that common sense would dictate.

[28] Therefore, this Court dismisses plaintiffs' actions.

**Transcript**

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## SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-05-031299-975  
500-05-031306-978  
500-05-031332-974

DATE: DECEMBER 13, 2002

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THE HONOURABLE ANDRÉ DENIS, J.S.C., PRESIDING

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500-05-031299-975

**J.T.I. MACDONALD CORPORATION**  
Plaintiff

v.

**THE ATTORNEY GENERAL OF CANADA**  
Defendant

and

**THE CANADIAN CANCER SOCIETY**  
Intervener

500-05-031306-978

**ROTHMANS, BENSON & HEDGES INC.**  
Plaintiff

v.

**THE ATTORNEY GENERAL OF CANADA**