

(CLASS ACTION)
SUPERIOR COURT

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

NO : 500-06-000070-983

CÉCILIA LÉTOURNEAU
Plaintiff

v.

IMPERIAL TOBACCO CANADA LIMITÉE
- and -
ROTHMANS, BENSON & HEDGES INC.
- and -
JTI-MACDONALD CORP.
Defendants

NO : 500-06-000076-980

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
Representative - Plaintiff

- and -

JEAN-YVES BLAIS
Designated member

v.

JTI-MACDONALD CORP.
- and -
IMPERIAL TOBACCO CANADA LIMITÉE
- and -
ROTHMANS, BENSON & HEDGES INC.
Defendants

PLEA OF DEFENDANT ROTHMANS, BENSON & HEDGES INC.

FOR PLEA TO THE PLAINTIFFS' MOTIONS TO INSTITUTE PROCEEDINGS, DEFENDANT ROTHMANS, BENSON & HEDGES INC. RESPECTFULLY STATES THE FOLLOWING:

A. LÉTOURNEAU CLASS ACTION

1. Defendant Rothmans, Benson & Hedges Inc. ("RBH") admits paragraphs 1 to 3 and 47 of the *Motion to Institute Proceedings of a Class Action* of plaintiff Cécilia Létourneau ("Létourneau");
2. RBH admits paragraphs 23, 24, 25, 26, 27 and 29 of the *Motion to Institute Proceedings of a Class Action* of Létourneau, but RBH adds that 100% of the shares of Rothmans Inc. have been public since 2000;
3. RBH denies paragraphs 5, 6, 7, 8, 9, 11, 12, 43, 45, 52, 55, 60, 61, 64, 70, 72, 74, 75, 76, 77, 78, 79, 80, 81, 93, 94, 99, 100, 105, 106, 107, 109, 110, 111, 112, 114, 115, 116, 117, 118, 120, 121, 124, 126, 128, 129, 130, 134, 137, 138, 139, 140, 141, 142, 144, 147, 148, 149, 150, 152, 153, 155, 156, 159, 160, 161, 163, 164, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190 and 191 of the *Motion to Institute Proceedings of a Class Action* of Létourneau;
4. RBH denies as drafted paragraphs 4, 10, 44, 46, 48, 50, 51, 54, 58, 62, 68, 73, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 95, 104, 113, 123, 131, 132, 143, 145, 146, 151, 154, 158, 168, 176, 177 and 178 of the *Motion to Institute Proceedings of a Class Action* of Létourneau;
5. RBH ignores paragraphs 13 to 22, 28, 30 to 42, 49, 53, 56, 57, 59, 63, 65, 66, 67, 69, 71, 96, 97, 98, 101, 102, 103, 108, 119, 122, 125, 127, 133, 135, 136, 157, 162, 165, 166, 167, 169, 170, 171, 172, 173, 174, 175, 179 and 180 of the *Motion to Institute Proceedings of a Class Action* of Létourneau;
6. In addition, with regards paragraphs 46, 68, 120, 122, 123 and 136 of the *Motion to Institute Proceedings of a Class Action* of Létourneau, RBH pleads that all references to testimonies before Parliament and its committees do not constitute evidence in the present file as these testimonies are subject to parliamentary immunity;

B- CQTS CLASS ACTION

7. RBH admits paragraphs 1 to 3, 7, 9, 10 and 11 of the *Amended Motion to Institute Proceedings of a Class Action* of plaintiff Conseil québécois sur le tabac et la santé ("CQTS") and designated member Jean-Yves Blais ("Blais");
8. RBH admits paragraphs 31, 32, 33, 34, 35 and 38 of the *Amended Motion to Institute Proceedings of a Class Action* of the CQTS, but RBH adds that 100% of the shares of Rothmans Inc. have been public since 2000;

9. RBH denies paragraphs 5,6, 21, 52, 55, 59, 60, 61, 62, 63, 64, 65, 66, 69, 70, 71, 72, 75, 76, 77, 78, 82, 83, 84, 85, 86, 88, 95, 97, 104, 105, 107, 109, 110, 111, 112, 116, 117, 120, 121, 122, 123, 124, 130, 131, 132, 133, 134, 136, 138, 139, 140, 141, 150, 151, 152, 155, 156, 157, 158, 161, 162, 163, 164, 165, 166, 167, 168, 169, 171, 172, 173, 174, 175, 176, 177, 178, 179 and 180 of the *Amended Motion to Institute Proceedings of a Class Action* of the CQTS;
10. RBH denies as drafted paragraphs 4, 57, 58, 79, 87, 94, 101, 106, 108, 113, 114, 115, 118, 119, 125, 126, 127, 128, 129, 135, 137, 142, 149, 153, 154, 159 and 160 of the *Amended Motion to Institute Proceedings of a Class Action* of the CQTS;
11. RBH ignores paragraphs 8, 12, 13, 14, 15, 16, 17, 18, 20, 22 to 30, 36, 37, 39 to 51, 53, 54, 56, 67, 68, 73, 74, 80, 81, 89, 90, 91, 92, 93, 96, 98, 99, 100, 102, 103, 143, 144, 145, 146, 147, 148 and 170 of the *Amended Motion to Institute Proceedings of a Class Action* of the CQTS;
12. As regards paragraph 19 of the *Amended Motion to Institute Proceedings of a Class Action* of the CQTS, RBH refers the Court to the hospital file of Blais at Hôpital Hôtel-Dieu of Montreal and denies everything which is not in conformity with the contents of that file;
13. In addition, with regards paragraphs 87, 115 and 125 of the *Amended Motion to Institute Proceedings of a Class Action* of the CQTS, RBH pleads that all references to testimonies before Parliament and its committees do not constitute evidence in the present file as these testimonies are subject to parliamentary immunity

AND, FOR FURTHER PLEA TO THE MOTIONS TO INSTITUTE PROCEEDINGS, DEFENDANT ROTHMANS, BENSON & HEDGES INC. RESPECTFULLY STATES:

A- INTRODUCTION

Létourneau class action

14. In her class action, Létourneau claims damages related to addiction allegedly caused by the nicotine in cigarettes;
15. In support of her claim, Létourneau alleges essentially that the defendants, knowing their product to be addictive because of its nicotine content, and knowing the health risks associated with tobacco consumption, failed to inform the public adequately about the dangers of smoking and used advertising to encourage smoking, thereby causing members of the group identical or similar moral addiction-related damages;
16. Létourneau alleges that she:
 - Began smoking in 1964 when she was 19 years old;
 - Quickly became addicted to cigarettes;

- Attempted to quit, without success, on a number of occasions beginning only a few years after she began smoking;
 - Suffered and continues to suffer moral damages due to the heightened risk of tobacco-related illness, loss of self-esteem, humiliation and social reprobation;
17. Létourneau never smoked any RBH products and her right of action against RBH rests on allegations that it conspired with other defendants whose products she has smoked;

CQTS class action

18. In its class action, CQTS claims damages from the defendants for four diseases allegedly caused by smoking the defendants' products;
19. In support of its claim, CQTS alleges essentially that the defendants, knowing their product to be addictive because of its nicotine content, and knowing the health risks of tobacco consumption, notably with regards to cancer of the lung, cancer of the larynx, cancer of the throat and emphysema, failed to inform the public adequately about the dangers of smoking and used advertising to encourage smoking, thereby causing members of the group non-pecuniary damages flowing from cancer of the lung, cancer of the larynx, cancer of the throat and/or emphysema;
20. As for designated member Blais, the CQTS alleges that:
- He began smoking in 1954 when he was 10 years old;
 - He was diagnosed with lung cancer 42 years later, in August 1997, and suffered the removal of half of his right lung;
 - He was unable to quit smoking;
 - Smoking caused or contributed to his lung cancer;
21. Blais never smoked any RBH products, either, and his right of action against RBH rests on allegations that it conspired with other defendants whose products he has smoked;

General position of RBH

22. RBH denies that, at any time relevant to either class action, it has breached the *Civil Code of Quebec* ("CCQ"), the *Civil Code of Lower Canada* ("CCLC"), the *Consumer Protection Act*, R.S.Q., c. P-40.1 ("CPA") and its regulations, and the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12 ("Quebec Charter");
23. No liability can be founded on the CPA for alleged breaches or prohibited practices that would have occurred before the relevant provisions of this statute came into force;
24. In particular, at all relevant times, RBH did not:

- manufacture, market or distribute a defective product or a product with a safety defect;
 - fail to warn;
 - unlawfully implement a policy of systematic non-disclosure with respect risks and dangers associated with smoking;
 - trivialize or deny these risks and dangers;
 - disseminate false information about cigarettes;
 - unlawfully sell a product that could create addiction;
 - unlawfully sell or market to children and adolescents;
 - make any misrepresentations;
 - contravene any consumer protection legislation;
 - deliberately infringe anyone's rights to life, security of the person and integrity; or
 - take part in any conspiracy, concerted action or common design;
25. The sale by RBH and consumption in the province of Quebec of cigarettes has always been at all relevant times to both class actions legal, both under Federal and Quebec provincial statutes and regulations;
26. Advertising and promotion of cigarettes in the province of Quebec has always been heavily regulated, including a total ban on product advertising from 1989 to 1995. RBH has always fully complied at all times relevant to both class actions with the statutes and regulations on advertising and promotion of cigarettes in the province of Quebec;
27. At all material times, Létourneau, Blais and the members of both classes were aware or could have been aware of the risks associated with the consumption of tobacco products;
28. The risks associated with smoking, including difficulty of quitting, have been widely known for over 50 years. Tobacco products, in addition, have carried a health warning since the early 1970s. Well before and well after, information about the risks of smoking was communicated by television and radio programs, magazines, newspaper and journal articles, government publications, anti-smoking advocates, parents, physicians, teachers and religious leaders. Class members, including Létourneau and Blais, attached great credibility to these sources;
29. RBH's knowledge about risks was no greater than the Federal Government and the public;

30. To the extent RBH made any inaccurate statements about the risks, which is denied, class members were rarely aware and likely never relied on them;

B- POSITION OF RBH ON THE EIGHT CERTIFIED QUESTIONS

QUESTION #1: Did the defendants manufacture, market and distribute a dangerous product, one that is hazardous to the health of consumers?

31. “Dangerous” (“dangereux”) or “hazardous” (“nocif”) products are unknown concepts under the CCQ, CCLC, CPA and the Quebec Charter;
32. RBH states that its products were free of latent defect and fit for the purpose for which they were intended;
33. RBH admits that there are risks associated with the consumption of tobacco products;
34. RBH adds that at all relevant times to both class actions it did not:
- manufacture, market or distribute a defective product or a product with a safety defect under the CCQ, CCLC and CPA;
 - fail to warn;
35. Even if RBH were found to have manufactured, marketed or distributed a defective product or a product with a safety defect, or failed to warn, which is denied, Létourneau, Blais and the members of both classes were aware or could have been aware at all material times of the risks associated with the consumption of tobacco products;
36. Furthermore, even if the Court were to give an affirmative answer to Question #1, no finding of liability would be justified since such an answer cannot address in any fashion the issues of damages and causation;

QUESTION #2: Did the defendants know, or could they be presumed to have known, the risks and dangers associated with the use of their products?

37. According to the relevant provisions of the CCQ, CCLC and CPA:
- The manufacturer, distributor or supplier of a movable property is not liable for injury caused by a safety defect the victim knew or could have known of the defect, or could have foreseen the injury;
 - Nor is he liable if, according to the state of knowledge at the time that he manufactured, distributed or supplied the property, the existence of the defect could not have been known, and that he was not neglectful of his duty to provide information when he became aware of the defect;
38. Even if RBH were presumed to have known the risks and dangers associated with the use of its products, it is not liable since Létourneau, Blais and the members of both classes

were aware or could have been aware at all material times of the risks associated with the consumption of tobacco products;

39. Furthermore, even if the Court were to give an affirmative answer to Question #2, no finding of liability would be justified since such an answer cannot address in any fashion the issues of damages and causation;
40. Most of the substances listed in paragraphs 53, 55 and 56 of the *Amended Motion to Institute Proceedings of a Class Action* of the CQTS, which have been identified in cigarette smoke, though in many cases those substances are found in trace amounts measured in billionths of a gram, are present in the environment and in commonly consumed products to which non-smokers are also exposed in equal or greater amounts;

QUESTION #3: Did the defendants implement a policy of systematic non-disclosure with respect to these risks and dangers?

41. RBH denies that it has implemented a policy of systematic non-disclosure with respect to the risks and dangers associated with smoking;
42. Even if RBH were found to have implemented a policy of systematic non-disclosure with respect to the risks and dangers associated with smoking, which is denied, Létourneau, Blais and the members of both classes were aware or could have been aware at all material times of the risks associated with the consumption of tobacco products so that any such policies had no effect whatever;
43. Furthermore, even if the Court were to give an affirmative answer to Question #3, no finding of liability would be justified since such an answer cannot address in any fashion the issues of damages and causation;

QUESTION #4: Did the defendants trivialize or deny these risks and dangers?

44. RBH denies that it has trivialized or denied the risks and dangers associated with smoking;
45. Even if RBH were found to have trivialized or denied the risks and dangers associated with smoking, which is denied, Létourneau, Blais and the members of both classes were aware or could have been aware at all material times of the risks associated with the consumption of tobacco products so that any such trivialization or denial had no effect whatever;
46. Furthermore, even if the Court were to give an affirmative answer to Question #4, no finding of liability would be justified since such an answer cannot address in any fashion the issues of damages and causation;

QUESTION #5: Did the defendants orchestrate marketing strategies which disseminated false information about the products being sold?

47. RBH denies that it has orchestrated marketing strategies which disseminated false information about the products being sold;
48. Even if RBH were found to have orchestrated marketing strategies which disseminated false information, which is denied, Létourneau, Blais and the members of both classes were aware or could have been aware at all material times of the risks associated with the consumption of tobacco products so that any such strategies had no effect whatever;
49. Even if the Court were to give an affirmative answer to Question #5, no finding of liability would be justified since such an answer cannot address in any fashion the issues of damages and causation;
50. Furthermore, Létourneau and Blais were never aware of, let alone acted upon, any representations made by RBH;
51. Neither Létourneau nor Blais were ever aware of any of RBH's marketing activities;
52. Since 1989, RBH has been effectively prohibited from conducting any product advertising (except during a brief period following the 1995 Supreme Court of Canada's decision striking down portions of legislation which prohibited that advertising), but was permitted to advise its sponsorship of certain events, until October 1st, 2003 following an amendment to the *Tobacco Act*;
53. RBH's marketing activities, during the times relevant to both class actions and otherwise, were only designed to gain market share from its competitors by either persuading current smokers of RBH products not to switch to competitors' brands and/or persuading smokers of products marketed by competitors to switch to an RBH product;
54. RBH pleads that all at material times it was the independently arrived at position of the Federal Government that lower tar cigarettes ("light" and "mild" cigarettes) were less hazardous than high tar cigarettes, and the Federal Government directed RBH and the other members of the Canadian tobacco industry to manufacture lower tar cigarettes ("light" and "mild" cigarettes) cigarettes and encouraged RBH to market and promote them so as to persuade consumers to switch to such cigarettes;
55. The Federal Government engaged in promoting lower tar cigarettes ("light" and "mild" cigarettes) as being safer;

QUESTION #6: Did the defendants knowingly market a product which resulted in addiction, and did they deliberately refrain from using tobacco products which contained so little nicotine that it would have ended the addiction of many smokers?

56. Question #6 is comprised of two sub-questions, namely:
 - a) Did the defendants knowingly market a product which resulted in addiction?

b) Did the defendants deliberately refrain from using tobacco products which contained so little nicotine that it would have ended the addiction of many smokers?

a) Did the defendants knowingly market a product which resulted in addiction?

57. Over many generations, there has been widespread belief and acceptance that those who start smoking may well have difficulty quitting;

58. There has been no constant definition of "addiction" over time. Nevertheless, using common parlance, many smokers often refers to themselves as being "addicted". RBH acknowledges that smoking can be difficult to quit for some people;

59. Nevertheless, the existence of notions such as "addiction", "dependence" or "difficulty to quit" do not prevent people from quitting, as millions of ex-smokers have successfully stopped smoking. Neither "addiction" nor "dependence" deprives anyone of their free will or impairs their ability to stop smoking;

60. Létourneau, Blais and the members of both classes were aware or could have been aware at all material times of the risks associated with the consumption of tobacco products, including the difficulty of stopping smoking for some people;

61. Even if the Court were to give an affirmative answer to Question #6a), no finding of liability would be justified since such an answer cannot address in any fashion the issues of damages and causation;

62. RBH denies that Létourneau and Blais and for that matter all members of both classes have been "unable" to quit smoking since they commenced and continued to smoke as a matter of personal choice and could have quit if they had really chosen to do so;

63. RBH recognizes that people smoke or continue to smoke for various reasons including but not limited to nicotine, taste, pleasure, ritual and social reasons. The decision to smoke or to continue to smoke is made for various reasons and is a matter for individual assessment;

64. Accordingly, RBH denies that any difficulty in quitting is necessarily caused by the nicotine in the cigarette;

b) Did the defendants deliberately refrain from using tobacco products which contained so little nicotine that it would have ended the addiction of many smokers?

65. RBH admits that cigarettes are made from tobacco which contains naturally occurring nicotine;

66. Officials from the Federal Government working with tobacco growers concluded that it would be in the best interests of both the farmers and smokers if farmers grew varieties of tobacco which had a higher content of nicotine than previous varieties. The Federal Government developed these varieties and then licensed them to the growers. RBH then

purchased tobacco leaves from the growers, through the Canadian Tobacco Marketing Boards;

67. Using leaves purchased from growers, RBH manufactured a range of products in an attempt to respond to consumer demand. According to testing protocols developed by the Federal Government, some of RBH's products yielded a nicotine level of greater than 1 mg while others yielded a nicotine level as low as 0.09 mg;
68. RBH denies that its conduct with respect to the purchase of leaves and the manufacturing of products was in breach of any obligation imposed by law;
69. Even if the Court were to give an affirmative answer to Question #6b), no finding of liability would be justified since such an answer cannot address in any fashion the issues of damages and causation;

QUESTION #7: Did the defendants conspire to present a common front in order to prevent their consumers from learning about the inherent dangers associated with tobacco smoking?

70. RBH denies that it ever conspired with anyone to present a common front in order to prevent consumers from learning about the dangers associated with tobacco smoking;
71. RBH denies the existence of any conspiracy or of any concerted action as alleged in either Motion to Institute Proceedings;
72. Even if RBH were found to have conspired in order to prevent consumers from learning about the dangers associated with tobacco smoking, which is denied, Létourneau, Blais and the members of both classes were aware or could have been aware at all material times of the risks associated with the consumption of tobacco products so that any such conspiracy had no effect whatever;
73. Furthermore, even if the Court were to give an affirmative answer to Question #7, no finding of liability would be justified since such an answer cannot address in any fashion the issues of damages and causation;

QUESTION #8: Did the defendants deliberately infringe the group members' rights to life, security of the person and integrity?

74. There is no breach by RBH of the group members' rights to life, security of the person and integrity under the Quebec Charter;
75. RBH has committed no fault in this regard and, accordingly, there can be no breach of the group members' rights to life, security of the person and integrity under the Quebec Charter;
76. Even if RBH were found to have committed any fault, which is denied, there is no causation or damage as Létourneau, Blais and the members of both classes were aware or

could have been aware at all material times of the risks associated with the consumption of tobacco products;

77. No compensatory damages under s. 49 of the Quebec Charter can therefore be awarded;
78. Regarding punitive damages under s. 49 of the Quebec Charter or s. 272 of the CPA, they cannot be awarded as:
 - No punitive damages can be awarded without first the existence of compensatory damages;
 - In any event, if the Court were to find that punitive damages can be awarded without first the existence of compensatory damages, which would be an error, RBH denies any unlawful and intentional interference with any group members' rights to life, security of the person and integrity or any breach of the CPA, and accordingly no punitive damages can be awarded to them;

C- **PRESCRIPTION AND AWARENESS**

79. The personal claim of Létourneau and those of all the Létourneau class is prescribed by virtue of it being commenced more than three years after warnings were placed on Canadian cigarette packages in September 1994 which included a warning on addiction;
80. The individual claim of Létourneau is also unfounded in law on the basis of her admissions with respect to awareness of the risks associated with the consumption of tobacco, including addiction;
81. In addition to having no valid claim, Létourneau's personal action constitutes an abuse of process, since, in 1998, Létourneau's lawsuit against Imperial Tobacco Ltée for refund of the cost of nicotine patches that she alleged that she had to buy to stop smoking, was dismissed by the Quebec Court, Small Claims Division;
82. From at least the 1950's, television and radio programs, magazines, newspaper and journal articles, government publications, anti-smoking advocates, parents, physicians, teachers, religious leaders and word-of-mouth fed public awareness about the risks associated with smoking, including cancer and the risk that smoking could be difficult to quit;
83. Furthermore, Health Canada has since 1972 directed and then legislated the placement of health warnings on RBH products;
84. The recourses of Létourneau, Blais and the members of both classes are unfounded in law as they were aware or could have been aware at all material times of the risks associated with the consumption of tobacco products;
85. In the CQTS class action, the legal recourses, if any, of all persons who were already suffering from one the four diseases (cancer of the lung, cancer of the larynx, cancer of

the throat and emphysema) before November 1995 are prescribed so they cannot be member of the CQTS class;

86. Finally, any claim of both class members for alleged prohibited practices under the CPA, if this statute applies, which is not admitted, is prescribed;

D- ABSENCE OF FAULT, DAMAGE AND CAUSATION – NO COLLECTIVE RECOVERY POSSIBLE – THE CLASS ACTIONS ARE AN INAPPROPRIATE PROCEDURAL VEHICLE

87. As stated above, RBH has committed no fault or breach of any statutory obligation;

88. Even if RBH were found to have committed fault or a breach of any statutory obligation, which is denied, there is no causation or damages as Létourneau, Blais and the members of both classes were aware or could have been aware at all material times of the risks associated with the consumption of tobacco products;

89. As a result, no damages can be awarded;

90. Furthermore, RBH denies that the damages suffered by Létourneau, if any, and/or Blais, if any, as alleged in their respective Motions to Institute Proceedings resulted from them smoking RBH products;

91. RBH pleads that Létourneau and Blais breached their duty to mitigate their damages when, being aware of the risks of smoking, they chose not to stop or even reduce their smoking, though they could have done either;

92. RBH pleads that any damage allegedly suffered by Létourneau, Blais or the members of both classes were caused by their own acts and their voluntary choice to smoke and to continue to smoke notwithstanding the public and/or personal awareness of the risks associated with smoking, including the package warnings;

93. Létourneau, Blais and the members of both classes voluntarily assumed the risks associated with smoking and breached their duty to mitigate their damages when they voluntarily chose to smoke and continued to smoke when they were aware or could have been aware of the risks associated with smoking;

94. In any event, the damages claimed by Létourneau, Blais and the members of both classes are excessive, remote and not recoverable at law;

95. Subsidiarily, if this Court comes to the opinion that RBH committed a fault, which is denied, no collective recovery is possible as the evaluation of damages and of causation, both necessary to a finding of liability, is inherently different for every individual class members in both class actions;

96. The two class actions raise innumerable individual issues for which the assessment of causation of damages can only be dealt with on an individualized basis that they are not suitable for a class actions procedural vehicle;

97. Not only do people smoke for different reasons, but each member of both classes has smoked differently and has smoked different brands of cigarettes in different quantities during different period of times, some having stopped smoking and others not having done so for various individual reasons;
98. As for the four diseases (cancer of the lung, cancer of the larynx, cancer of the throat and emphysema) covered by the CQTS class action:
- Each of these diseases' etiology is complex and multifactorial;
 - While some smokers will develop one of these diseases, not all smokers will. Even non-smokers can develop one of these diseases;
 - Smoking in certain instances may only be one of many risk factors and in other instances it may not be the cause at all;
 - In order to determine a cause or several causes of any of these four diseases, it is absolutely necessary to proceed to an individual in depth examination of each member of the class since epidemiological studies cannot establish individual causation;
99. Finally, with regards the Létourneau class action, the claim of damages made at paragraphs 82 to 94 and 181 of the *Motion to Institute Proceedings of a Class Action*, related to an increased risk of developing health problems, is unfounded in law and cannot be allowed under Quebec civil law;

E- CONCLUSION

100. RBH reiterates that, at all relevant times to both class actions, it did not breach the CCQ, CCLC, CPA and the Quebec Charter;
101. RBH reserves its right not only to amend the present plea but also to present a motion so both classes be decertified under Art. 1022 CCP;
102. The present plea is well founded in fact and in law;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

Létourneau class action

MAINTAIN the present plea of defendant Rothmans, Benson & Hedges Inc.;

DISMISS the class action of plaintiff Cécilia Létourneau;

DISMISS the individual action of plaintiff Cécilia Létourneau;

THE WHOLE with costs, including all expert fees and the costs of all notices.

COTS class action

MAINTAIN the present plea of defendant Rothmans, Benson & Hedges Inc.;

DISMISS the class action of plaintiff Conseil québécois sur le tabac et la santé;

DISMISS the individual action of designated member Jean-Yves-Blais;

THE WHOLE with costs, including all expert fees and the costs of all notices.

MONTREAL, FEBRUARY 29, 2008

(s) / (sgd.) McCarthy Tétrault S.E.N.C.R.L., s.r.l., LLP

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