

2004 01T 2716 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

VICTOR TODD SPARKES

PLAINTIFF

AND:

IMPERIAL TOBACCO CANADA LIMITED

FIRST DEFENDANT

AND:

IMPERIAL TOBACCO COMPANY LIMITED

SECOND DEFENDANT

AND:

THE ATTORNEY GENERAL OF CANADA

THIRD PARTY

BROUGHT UNDER THE CLASS ACTIONS ACT
BEFORE THE HONOURABLE MR. JUSTICE ADAMS,
CASE MANAGEMENT JUDGE

INTERLOCUTORY APPLICATION FOR CLASS CERTIFICATION
(Inter Partes)

SUMMARY OF CURRENT DOCUMENT	
Court File Number:	2004 01T 2716 CP
Date of Filing of Document:	June , 2006
Name of Filing Party or Person:	Plaintiff
Application to which Document being filed relates:	Application of Plaintiff for certification as a class action.
Statement of purpose in filing:	To support application.

CHES CROSBIE BARRISTERS
Solicitors for the Plaintiff
169 Water Street, 4th Floor
St. John's, NL A1C 1B1
Attention: Chesley F. Crosbie, Q.C.

TO: MCINNES COOPER
Solicitors for the First and Second Defendants
10 Fort William Place, PO Box 5939
St. John's, NL A1C 5X4
Attention: J. David B. Eaton, Q.C.

TO: THIRD PARTY
DEPARTMENT OF JUSTICE
Suite 1400, Duke Tower, 5251 Duke Street
Halifax, NS B3J 1P3
Attention: M. Kathleen McManus

INTERLOCUTORY APPLICATION
FOR CLASS CERTIFICATION
(Inter Partes)

INDEX

Tab

1	Interlocutory Application for Class Certification (Inter Partes)
2	Affidavit of Victor Todd Sparkes
3	Affidavit of Shawn Lewis
4	Affidavit of Aaron Felt
5	Notice
6	Affidavit of Service

2004 01T 2716 CP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

VICTOR TODD SPARKES

PLAINTIFF

AND:

IMPERIAL TOBACCO CANADA LIMITED

FIRST DEFENDANT

AND:

IMPERIAL TOBACCO COMPANY LIMITED

SECOND DEFENDANT

AND:

THE ATTORNEY GENERAL OF CANADA

THIRD PARTY

BROUGHT UNDER THE *CLASS ACTIONS ACT*
BEFORE THE HONOURABLE MR. JUSTICE ADAMS,
CASE MANAGEMENT JUDGE

INTERLOCUTORY APPLICATION FOR CLASS CERTIFICATION
(Inter Partes)

SUMMARY OF CURRENT DOCUMENT

Court File Number:	2004 01T 2716 CP
Date of Filing of Document:	June , 2006
Name of Filing Party or Person:	Plaintiff
Application to which Document being filed relates:	Application of Plaintiff for certification as a class action.
Statement of purpose in filing:	To support application.

THE PLAINTIFF will apply to the Court, on a date to be fixed.

PROPOSED METHOD OF HEARING:

The application is to be heard orally.

THE APPLICATION IS FOR:

CERTIFICATION

1. An Order certifying this action as a Class proceeding;

CLASS AND CLASS REPRESENTATIVE

2. An Order describing as a "Class":

"Natural persons, resident in Newfoundland and Labrador, who, during the Class Period, purchased the Defendant's Light, Extra Light or Mild brands of cigarettes in Newfoundland and Labrador for personal, family or household use. The Defendant's light and mild brands of cigarettes include the following brands: Player's Light, Player's Light Smooth, Player's Extra Light, du Maurier Light, du Maurier Extra Light, du Maurier Ultra Light, du Maurier Special Mild, Matinee Extra Mild, Matinee Ultra Mild and Cameo Extra Mild.

The Class Period is the period from June 30, 1998 with respect to the First Defendant, and from November 30, 1998, with respect to the Second Defendant, up to the opt-out date set by the Court in this proceeding.

Excluded from the class are directors, officers and employees of the Defendants."

3. An Order appointing Victor Todd Sparkes as the representative plaintiff of the Class;
4. An Order appointing the firm of Ches Crosbie Barristers as counsel to the Class ("Class Counsel");

NATURE OF THE CLAIMS

5. An Order stating the nature of the claims asserted on behalf of the Class to be unfair trade practices contrary to the *Trade Practices Act*, R.S.N.L. 1990, c.T-7 (the "TPA").

RELIEF SOUGHT

6. An Order stating the relief sought by the Class members to be:
 - (a) all issues of the Defendants' liability under the TPA; and
 - (b) remedies available under the TPA.

COMMON ISSUES

7. An Order stating the "Common Issues" to be:
 - (a) Are the sales of the Defendants' light and mild brands of cigarettes to class members for the class members' personal; family or household use, "consumer transactions" as defined in the TPA?
 - (b) Is one or both of the Defendants a "supplier" as defined in the TPA?
 - (c) Are the class members "consumers" as defined in the TPA?
 - (d) Did the Defendants engage in unfair trade practices in the offer, advertisement or sale of their light and mild brands of cigarettes contrary to the TPA as alleged in the Amended Statement of Claim?
 - (e) If the Court finds that one or both of the Defendants have engaged in unfair trade practices contrary to the TPA, should an injunction be granted restraining one or both of the Defendants from continuing those acts or practices?
 - (f) If the Court finds that one or both of the Defendants have engaged in unfair trade practices contrary to the TPA, should Defendant be required to advertise the Court's judgment, declaration, order or injunction and, if so, on what terms or conditions?

- (g) If the Court finds that one or both of the Defendants have engaged in unfair trade practices contrary to the TPA, should a monetary award be made in favour of the class and, if so, in what amount?
- (h) If the Court finds that one or both of the Defendants have engaged in unfair trade practices contrary to the TPA, should punitive or exemplary damages be awarded against one of both of the Defendants and, if so, in what amount?
- (i) Whether the Defendants' interactions with the Government of Canada constitute a defence to claims under the TPA?
- (j) Whether the doctrine of *volenti non fit injuria* constitutes a defence to claims under the TPA?
- (k) Whether the provisions of the *Contributory Negligence Act*, RSNL 1990, c. C-33, have any application to a claim under the TPA?

NOTICE

- 8. An Order approving the form and content of notice to the Class (the "Notice").
- 9. An Order specifying that the following means shall be used to publish the Notice:
 - (a) the Notice shall be forwarded by Class Counsel to any person who requests it;
 - (b) the Notice shall be published in newspapers as agreed to by the parties, or failing agreement, as determined by the Court; and
 - (c) posted on Class Counsel's web site.
- 10. An Order requiring the Defendants to pay the cost of the Notice Programme.

OPT-OUTS

- 11. An Order specifying that class members may opt out of this Class proceeding by sending a written election by mail to Class Counsel before a date to be fixed by the Court.

THE GROUNDS FOR THE APPLICATION ARE:

12. The *Class Actions Act*;
13. The Court should certify this proceeding as a class proceeding because the statement of claim discloses a cause of action, there is an identifiable class of two or more persons, there are Common Issues raised in the pleadings, a class proceeding is the preferable procedure, and the proposed representative plaintiff fairly and adequately represents the interests of the Class, has produced a workable plan for advancing this litigation and notifying other class members, and does not have an interest in conflict with the interests of other Class members;
14. Rule 7A.01(4) of the *Rules of the Supreme Court*;
15. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (i) The pleadings;
- (ii) The affidavits of Victor Todd Sparkes, Shawn Lewis, and Aaron Felt; and
- (iii) such further and other evidence as counsel may advise and this Honourable Court permit.

DATED at St. John's, in the Province of Newfoundland and Labrador, this 30th day of June, 2006.

CHES CROSBIE BARRISTERS
 Solicitors for the Plaintiff
 169 Water Street, 4th Floor
 St. John's, NL A1C 1B1
 Attention: Chesley F. Crosbie, Q.C.

TO: MCINNES COOPER
Solicitors for the First and Second Defendants
10 Fort William Place
PO Box 5939
St. John's, NL A1C 5X4
Attention: J. David B. Eaton, Q.C.

TO: THIRD PARTY
DEPARTMENT OF JUSTICE
Suite 1400, Duke Tower
5251 Duke Street
Halifax, NS B3J 1P3
Attention: M. Kathleen McManus

ISSUED at St. John's, in the Province of Newfoundland and Labrador, this *27* day of June, 2006.

sg Tamara Church
Court Officer