April 16, 2015

Dear [REDACTED]

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (Our File # JPS/004/2015)

On February 10, 2015, the Department of Justice and Public Safety (JPS) received your request for access to the following records/information:

"I am requesting under the Access to Information Act an update, as well as any briefing notes, information notes, etc., on the civil lawsuit against tobacco manufacturers to recover costs dating back to the 1950s."

On February 17, 2015, you were contacted by officials from my department for clarification of your request. At that time, you indicated you were looking for any updates, briefing notes, notes, and information notes, compiled in the last two years.

I am pleased to inform you that your request for access to these records has been granted in part. As required by subsection 7(2) of the Act, we have severed information that is exempted from disclosure and have provided you with as much information as possible. Access to the remaining records, and/or information contained within the records, has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

18. (1) In this section
(a) "cabinet record" means
(i) a discussion paper, policy analysis, proposal, advice or briefing material, including all factual and background material prepared for the Cabinet,

and

18 (2) The head of a public body shall refuse to disclose to an applicant a Cabinet record, including
(a) an official Cabinet record;
(c) a supporting Cabinet record.
21. The head of a public body may refuse to disclose to an applicant information:
(a) that is subject to solicitor and client privilege; or

23. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to:
(a) harm the conduct by the government of the province of relations between that government and the following or their agencies:
(i) the government of Canada or a province,

30. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party’s personal privacy.

Please note that pages 25 – 33 have been severed in their entirety in accordance with Section 18(1)(a)(iv) of ATIPPA. In all other respects, and in accordance with your request for a copy of the records, the appropriate copies have been enclosed.

Section 43 of the Act provides that you may ask the Information and Privacy Commissioner to review this partial refusal of access or you may appeal the refusal to the Supreme Court Trial Division. A request to the Information and Privacy Commissioner shall be made in writing within 60 days of the date of this letter or within a longer period that may be allowed by the Commissioner.

For records that are refused on the basis of section 21 (legal advice) you may appeal directly to the Supreme Court Trial Division within 30 days after you receive the decision of the public body, pursuant to section 60. You may also contact the Office of the Information and Privacy Commissioner who may decide to initiate an appeal pursuant to subsection 60(1.1).

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John’s, NL. A1B 3V8

Telephone: (709) 729-6309
Facsimile: (709) 729-6500

In the event that you choose to appeal to the Trial Division, you must do so within 30 days of the date of this letter. Section 60 of the Act sets out the process to be followed when filing such an appeal.

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Office of Public Engagement's website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.
If you have any further questions, please contact the ATIPP Coordinator, Neil Croke, at 709-729-7906, or ncroke@gov.nl.ca.

Sincerely,

Paul G. Noble, Q.C.
Deputy Minister
Title: Health Care Costs Recovery Act

Issue: Status of legal action against the Tobacco Companies

Background:

- In 2002 the Province retained the law firm of Humphrey, Farrington & McClain (the Firm) of Independence, Missouri, U.S.A. This Firm was chosen because of its extensive experience with tobacco litigation in the United States. The Firm’s lead counsel (Ken McClain) has a Foreign Consultants Permit from the Law Society of Newfoundland and Labrador which allows him to advise the Province on US law. Mr. McClain has completed a National Accreditation Program with the Federation of Law Societies of Canada and has received a Certificate of Qualification.

- The Health Care Costs Recovery Act (the Act) was proclaimed on 7 February 2011. The Act creates a new civil cause of action which allows the Province to directly recoup a cost incurred on behalf of others or “on an aggregate basis.”

- The Act creates new rules of evidence which allows the Province to prove its case based on statistical, epidemiological and sociological evidence without having to prove individual damages.
Current Status of Litigation:

- The Statement of Claim was issued on 8 February 2011 against fourteen (14) national and international tobacco companies with head offices in the following locations: Nova Scotia; Ontario; Montreal; Virginia USA; New York USA; North Carolina; London England; Switzerland.

- In its claim, the Province alleges: (1) that the tobacco companies committed “tobacco related wrongs” as defined in the Act; (2) that the tobacco companies breached common law, equitable or statutory duties and obligations owed to the people of the Province; and (3) that the tobacco companies conspired together to prevent the people of the Province acquiring knowledge of the harmful and addictive properties of tobacco products.

- Due to the complexity of the litigation, Mr. Justice Richard LeBlanc has been appointed case management judge.

- A number of the tobacco companies have filed applications seeking dismissal of the action claiming that the Court has no jurisdiction over them. They deny having conducted any business in the Province or profiting from any alleged act of conspiracy or misrepresentation.

- In its response to the applications, the Province, through affidavit evidence, outlined the history of tobacco litigation in Canada highlighting the Applicants’ control, influence, coordination and/or management of the marketing activities of their Canadian operation.

- Several of the tobacco companies challenged the form and content of these affidavits filed by the Province.

- On 11 January 2012 counsel for the Province acknowledged before the Supreme Court of Newfoundland and Labrador that there were certain minor technical deficiencies in the affidavits. Chief Justice Osborne stated that the Province need not seek leave to file new, amended affidavits.

- The Province subsequently filed new amended affidavits. The tobacco companies have again challenged the content of these amended affidavits.

- An application to determine the validity of these new amended affidavits is set to be heard on February 13th and 14th, 2013.

- No date for the jurisdictional applications has been set nor have any defences been filed pending the outcome of the applications described above.

Litigation preparation

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Next Steps:

- [ ]

Action Required:

- For information purposes

Prepared by: D. Ballard/D. Rodgers
Date: 24 January 2013
Title: Health Care Costs Recovery Act

Issue: Application to be heard in Supreme Court 20 and 21 June 2013

Background:

• In 2002 the Province retained the law firm of Humphrey, Farrington & McClain (the Firm) of Independence, Missouri, U.S.A. The Firm retained local counsel Robothan, McKay, and Marshall to assist with the litigation.

• To date the Province has spent over $700,000 in disbursements.

• The Health Care Costs Recovery Act (the Act) was proclaimed on 7 February 2011. The Act creates a new civil cause of action which allows the Province to directly recoup a cost incurred on behalf of others or “on an aggregate basis.”

• The Act creates new rules of evidence which allows the Province to prove its case based on statistical, epidemiological and sociological evidence without having to prove individual damages.

Current Status of Litigation:

• The Statement of Claim was issued on 8 February 2011 against fourteen (14) national and international tobacco companies with head offices in the following locations: Nova Scotia; Ontario; Montreal; Virginia USA; New York USA; North Carolina; London England; Switzerland.

• In its claim, the Province alleges: (1) that the tobacco companies committed “tobacco related wrongs” as defined in the Act; (2) that the tobacco companies breached common law, equitable or statutory duties and obligations owed to the people of the Province; and (3) that the tobacco companies conspired together to prevent the people of the Province acquiring knowledge of the harmful and addictive properties of tobacco products.
A number of the tobacco companies have filed applications seeking dismissal of the action claiming that the Court has no jurisdiction over them. They deny having conducted any business in the Province or profiting from any alleged act of conspiracy or misrepresentation.

In its response to the applications, the Province, through affidavit evidence, outlined the history of tobacco litigation in Canada highlighting the Applicants’ control, influence, coordination and/or management of the marketing activities of their Canadian operation.

Several of the tobacco companies challenged the form and content of these affidavits filed by the Province.

On 11 January 2012 counsel for the Province acknowledged before the Supreme Court of Newfoundland and Labrador that there were certain minor technical deficiencies in the affidavits. Chief Justice Orsborn stated that the Province need not seek leave to file new, amended affidavits.

The Province subsequently filed new amended affidavits. The tobacco companies have again challenged the content of these amended affidavits.

On 13 February 2013 the application challenging the validity of the new affidavits was called in Supreme Court. Chief Justice Orsborn, however, stated that he was not comfortable dealing the substantive evidentiary issues concerning the affidavits until he had clarity on some “preliminary jurisdictional” questions. He then posed five questions of law, all concerning jurisdiction, to counsel and asked that they prepare written submissions on these questions and that the matter be recalled in June for oral submissions.

On 20 June 2013, the application to deal with these preliminary jurisdictional questions was heard. Justice Orsborn reserved his decision. He indicated that his decision on these preliminary jurisdictional questions will form part of his final determination on jurisdiction when that application is fully heard.

No date for the jurisdictional applications has been set nor have any defences been filed pending the outcome of the applications described above.

**Action Required:**

- For information purposes

Prepared by: D. Ballard/D. Rodgers
Date: 20 June 2013
Title: Health Care Costs Recovery Act

Issue: Supreme Court Releases Decision on Preliminary Jurisdictional Issues in Tobacco Health Care Costs Recovery Litigation

Background:

- In 2002 the Province retained the law firm of Humphrey, Farrington & McClain (the Firm) of Independence, Missouri, U.S.A. The Firm retained local counsel Roebothan, McKay, and Marshall to assist with the litigation.

- To date the Province has spent over $700,000 in disbursements.

- The Health Care Costs Recovery Act (the Act) was proclaimed on 7 February 2011. The Act creates a new civil cause of action which allows the Province to directly recoup a cost incurred on behalf of others or “on an aggregate basis.”

- The Act creates new rules of evidence which allows the Province to prove its case based on statistical, epidemiological and sociological evidence without having to prove individual damages.

Current Status of Litigation:

- The Statement of Claim was issued on 8 February 2011 against fourteen (14) national and international tobacco companies with head offices in the following locations: Nova Scotia; Ontario; Montreal; Virginia USA; New York USA; North Carolina; London England; Switzerland.

- The other Canadian provinces have all filed similar statements of claim (with the exception of Nova Scotia whose legislation is not yet proclaimed). Representatives from all provinces and the territories meet on a regular basis at “National Strategy Meetings” to discuss how to strategically co-ordinate the claims against the tobacco companies to force them into a global
settlement. The last such meeting was held in Toronto in early November. Another meeting is scheduled for some time in the late spring/early summer in Montreal.

- In its claim, the Province alleges: (1) that the tobacco companies committed “tobacco related wrongs” as defined in the Act; (2) that the tobacco companies breached common law, equitable or statutory duties and obligations owed to the people of the Province; and (3) that the tobacco companies conspired together to prevent the people of the Province acquiring knowledge of the harmful and addictive properties of tobacco products.

- A number of the tobacco companies have filed applications seeking dismissal of the action claiming that the Court has no jurisdiction over them. They deny having conducted any business in the Province or profiting from any alleged act of conspiracy or misrepresentation.

- In its response to the applications, the Province, through affidavit evidence, outlined the history of tobacco litigation in Canada highlighting the Applicants’ control, influence, coordination and/or management of the marketing activities of their Canadian operation.

- Several of the tobacco companies challenged the form and content of these affidavits filed by the Province.

- On 11 January 2012 counsel for the Province acknowledged before the Supreme Court of Newfoundland and Labrador that there were certain minor technical deficiencies in the affidavits. Chief Justice Orsborn stated that the Province need not seek leave to file new, amended affidavits.

- The Province subsequently filed new amended affidavits. The tobacco companies have again challenged the content of these amended affidavits.

- On 13 February 2013 the application challenging the validity of the new affidavits was called in Supreme Court. Chief Justice Orsborn, however, stated that he was not comfortable dealing with the substantive evidentiary issues concerning the affidavits until he had clarity on some “preliminary jurisdictional” questions. He then posed five questions of law, all concerning jurisdiction, to counsel and asked that they prepare written submissions on these questions and that the matter be recalled in June for oral submissions.

- On 20 June 2013, the application to deal with these preliminary jurisdictional questions was heard. Justice Orsborn reserved his decision. He indicated that his decision on these preliminary jurisdictional questions will form part of his final determination on jurisdiction when that application is fully heard.

- On December 19th, 2013 Justice Orsborn released his decision on the preliminary jurisdictional questions.

- Justice Orsborn concluded that the court can assume jurisdiction over a foreign defendant if the defendant is present in the jurisdiction or there is a "real and substantial" connection between the jurisdiction and the defendant or as between the jurisdiction and the subject matter of the claim. Justice Orsborn found that affidavit evidence may be used by a defendant to rebut an assertion of a "real and substantial" connection by a plaintiff. If such evidence is
submitted, the plaintiff may submit affidavit evidence in response to

• Justice Orsborn goes on to conclude that a "properly pleaded" cause of action against a particular defendant is not necessary for the court to assume jurisdiction, nor must a plaintiff show a "good and arguable" case on the merits for the court to assume jurisdiction. Justice Orsborn summarizes his findings by stating that the court must satisfy itself that there is a "reasonable basis upon which to assume jurisdiction", and that once this finding is made it is final and binding on the parties, subject only to appeal.

Action Required:

• For information purposes

Prepared by: D. Rodgers
Date: 4 February 2014
Title: Health Care Costs Recovery Act

Issue: Update on status of Tobacco Litigation

Background:

- In 2002 the Province retained the law firm of Humphrey, Farrington & McClain (the Firm) of Independence, Missouri, U.S.A. The Firm retained local counsel Roebothan, McKay, and Marshall to assist with the litigation.

- To date the Province has spent over $700,000 in disbursements.

- The Health Care Costs Recovery Act (the Act) was proclaimed on 7 February 2011. The Act creates a new civil cause of action which allows the Province to directly recoup a cost incurred on behalf of others or “on an aggregate basis.”

- The Act creates new rules of evidence which allows the Province to prove its case based on statistical, epidemiological and sociological evidence without having to prove individual damages.

Current Status of Litigation:

- The Statement of Claim was issued on 8 February 2011 against fourteen (14) national and international tobacco companies with head offices in the following locations: Nova Scotia; Ontario; Montreal; Virginia USA; New York USA; North Carolina; London England; Switzerland.

- The other Canadian provinces have all filed similar statements of claim (with the exception of Nova Scotia whose legislation is not yet proclaimed). Representatives from all provinces and the territories meet on a regular basis at “National Strategy Meetings” to discuss how to strategically co-ordinate the claims against the tobacco companies to force them into a global settlement. The last such meeting was held in Montreal on June 19th, 2014.
• In its claim, the Province alleges: (1) that the tobacco companies committed “tobacco related wrongs” as defined in the Act: (2) that the tobacco companies breached common law, equitable or statutory duties and obligations owed to the people of the Province; and (3) that the tobacco companies conspired together to prevent the people of the Province acquiring knowledge of the harmful and addictive properties of tobacco products.

• A number of the tobacco companies have filed applications seeking dismissal of the action claiming that the Court has no jurisdiction over them. They deny having conducted any business in the Province or profiting from any alleged act of conspiracy or misrepresentation.

• In its response to the applications, the Province, through affidavit evidence, outlined the history of tobacco litigation in Canada highlighting the Applicants’ control, influence, coordination and/or management of the marketing activities of their Canadian operation.

• Several of the tobacco companies challenged the form and content of these affidavits filed by the Province.

• On 11 January 2012 counsel for the Province acknowledged before the Supreme Court of Newfoundland and Labrador that there were certain minor technical deficiencies in the affidavits. Chief Justice Orsborn stated that the Province need not seek leave to file new, amended affidavits.

• The Province subsequently filed new amended affidavits. The tobacco companies have again challenged the content of these amended affidavits.

• On 13 February 2013 the application challenging the validity of the new affidavits was called in Supreme Court. Chief Justice Orsborn, however, stated that he was not comfortable dealing with the substantive evidentiary issues concerning the affidavits until he had clarity on some “preliminary jurisdictional” questions. He then posed five questions of law, all concerning jurisdiction, to counsel and asked that they prepare written submissions on these questions and that the matter be recalled in June for oral submissions.

• On 20 June 2013, the application to deal with these preliminary jurisdictional questions was heard. Justice Orsborn reserved his decision. He indicated that his decision on these preliminary jurisdictional questions will form part of his final determination on jurisdiction when that application is fully heard.

• On December 19th, 2013 Justice Orsborn released his decision on the preliminary jurisdictional questions, in which the Province was largely successful.

• On May 1st, 2014 an Application was granted in Supreme Court to dismiss the jurisdictional applications without costs.
A case management meeting was held on May 28th, 2014 with Justice Goodrich (now the new case management judge in light of Justice Orsborne’s retirement). At this meeting a litigation schedule was given to the parties. The defendant Tobacco companies have until July 31st, 2014 to file their Demand for Particulars.

Approved by:

Todd Stanley
Assistant Deputy Minister
Courts and Legal Services

Approved by:

Paul Noble
Deputy Minister and
Deputy Attorney General

Approved by:

The Honourable Felix Collins
Attorney General

Prepared by: D. Rodgers
Date: 17 April 2014
Title: *Health Care Costs Recovery Act*

**Issue:** Update on status of Tobacco Litigation

**Background:**

- In 2002 the Province retained the law firm of Humphrey, Farrington & McClain (the Firm) of Independence, Missouri, U.S.A. The Firm retained local counsel Roebothan, McKay, and Marshall to assist with the litigation.

- To date the Province has spent over $700,000,000 in disbursements.

- The *Health Care Costs Recovery Act* (the Act) was proclaimed on 7 February 2011. The Act creates a new civil cause of action which allows the Province to directly recoup a cost incurred on behalf of others or “on an aggregate basis.”

- The Act creates new rules of evidence which allows the Province to prove its case based on statistical, epidemiological and sociological evidence without having to prove individual damages.

**Current Status of Litigation:**

- The Statement of Claim was issued on 8 February 2011 against fourteen (14) national and international tobacco companies with head offices in the following locations: Nova Scotia; Ontario; Montreal; Virginia USA; New York USA; North Carolina; London England; Switzerland.

- The other Canadian provinces have all filed similar statements of claim (with the exception of Nova Scotia whose legislation is not yet proclaimed). Representatives from all provinces and the territories meet on a regular basis at “National Strategy Meetings” to discuss how to strategically co-ordinate the claims against the tobacco companies to force them into a global settlement. The last such meeting was held in Montreal on June 19th, 2014.
• In its claim, the Province alleges: (1) that the tobacco companies committed "tobacco related wrongs" as defined in the Act: (2) that the tobacco companies breached common law, equitable or statutory duties and obligations owed to the people of the Province; and (3) that the tobacco companies conspired together to prevent the people of the Province acquiring knowledge of the harmful and addictive properties of tobacco products.

• A number of the tobacco companies filed applications seeking dismissal of the action claiming that the Court has no jurisdiction over them.

• In its response to the applications, the Province, through affidavit evidence, outlined the history of tobacco litigation in Canada highlighting the Applicants' control, influence, coordination and/or management of the marketing activities of their Canadian operation.

• Several of the tobacco companies challenged the form and content of these affidavits filed by the Province.

• On 11 January 2012 counsel for the Province acknowledged before the Supreme Court of Newfoundland and Labrador that there were certain minor technical deficiencies in the affidavits. Chief Justice Orsborn stated that the Province need not seek leave to file new, amended affidavits.

• The Province subsequently filed new amended affidavits. The tobacco companies have again challenged the content of these amended affidavits.

• On 13 February 2013 the application challenging the validity of the new affidavits was called in Supreme Court. Chief Justice Orsborn, however, stated that he was not comfortable dealing with the substantive evidentiary issues concerning the affidavits until he had clarity on some "preliminary jurisdictional" questions. He then posed five questions of law, all concerning jurisdiction, to counsel and asked that they prepare written submissions on these questions and that the matter be recalled in June for oral submissions.

• On 20 June 2013, the application to deal with these preliminary jurisdictional questions was heard.

• On 19 December 2013 Justice Orsborn released his decision on the preliminary jurisdictional questions, in which the Province was largely successful.

• On 1 May 2014 an Application was granted in Supreme Court to dismiss the jurisdictional applications without costs.

• Now that the jurisdictional applications have been dismissed,
• A case management meeting was held on 28 May 2014 with Justice Goodrich (now the new case management judge in light of Justice Orsborne’s retirement). At this meeting a litigation schedule was given to the parties. The defendant Tobacco companies have until July 31st, 2014 to file their Demand for Particulars. Dates were set for February 3rd, 4th and 5th, 2015 to hear applications in relation to these Demand for Particulars and any potential motions to strike brought by the Tobacco companies.

• On 5 June 2014 the Province filed an Amended Statement of Claim.

• On 11 June 2014 Justice received a letter from the Campaign for Justice on Tobacco Fraud. This national group has written all the provinces concerning the progression of their Tobacco Litigation. In the letter it is stated that they are writing to: 1) ensure that justice commensurate with the gravity of the alleged misbehaviour results from the litigation, 2) that health outcomes needed to repair the damage caused by the wrongful behaviour are key objectives of the litigation, 3) to ensure that the provinces recognize the inadequacies of previous tobacco settlements in 2008 and 2010 in relation to smuggling and 4) to ensure that the outcomes of any settlements are in the interest of justice and public health.

Approved by:  
Todd Stanley  
Assistant Deputy Minister  
Courts and Legal Services

Approved by:  
Paul Noble  
Deputy Minister and  
Deputy Attorney General

Approved by:  
The Honourable Felix Collins  
Attorney General

Prepared by: D. Rodgers  
Date: 10 July 2014
Title: *Health Care Costs Recovery Act*

Issue: Update on status of Tobacco Litigation

Background:
- The *Health Care Costs Recovery Act* (the *Act*) was proclaimed on 7 February 2011. The *Act* creates a new civil cause of action which allows the Province to directly recoup a cost incurred on behalf of others or “on an aggregate basis.”
- The *Act* creates new rules of evidence which allows the Province to prove its case based on statistical, epidemiological and sociological evidence without having to prove individual damages.

Current Status of Litigation:
- The Statement of Claim was issued on 8 February 2011 against fourteen (14) national and international tobacco companies with head offices in the following locations: Nova Scotia; Ontario; Montreal; Virginia USA; New York USA; North Carolina; London England; Switzerland.
- The other Canadian provinces have all filed similar statements of claim (with the exception of Nova Scotia whose legislation is not yet proclaimed). Representatives from all provinces and the territories meet on a regular basis at “National Strategy Meetings” to discuss how to strategically co-ordinate the claims against the tobacco companies to force them into a global settlement. The last such meeting was held in Montreal on June 19th, 2014.
- In its claim, the Province alleges: (1) that the tobacco companies committed “tobacco related wrongs” as defined in the *Act*: (2) that the tobacco companies breached common law, equitable or statutory duties and obligations owed to the people of the Province; and (3) that the tobacco companies conspired together to prevent the people of the Province acquiring knowledge of the harmful and addictive properties of tobacco products.
- A number of the tobacco companies filed applications seeking dismissal of the action claiming that the Court has no jurisdiction over them.
- In its response to the applications, the Province, through affidavit evidence, outlined the history of tobacco litigation in Canada highlighting the Applicants’ control, influence, coordination and/or management of the marketing activities of their Canadian operation.
- Several of the tobacco companies challenged the form and content of these affidavits filed by the Province.
- On 11 January 2012 counsel for the Province acknowledged before the Supreme Court of Newfoundland and Labrador that there were certain minor technical deficiencies in the affidavits. Chief Justice Orsborn stated that the Province need not seek leave to file new, amended affidavits.
- The Province subsequently filed new amended affidavits. The tobacco companies have again challenged the content of these amended affidavits.
• On 13 February 2013 the application challenging the validity of the new affidavits was called in Supreme Court. Chief Justice Orsborn, however, stated that he was not comfortable dealing with the substantive evidentiary issues concerning the affidavits until he had clarity on some “preliminary jurisdictional” questions. He then posed five questions of law, all concerning jurisdiction, to counsel and asked that they prepare written submissions on these questions and that the matter be recalled in June for oral submissions.

• On 20 June 2013, the application to deal with these preliminary jurisdictional questions was heard.

• On 19 December 2013 Justice Orsborn released his decision on the preliminary jurisdictional questions, in which the Province was largely successful.

• A case management meeting was held on 28 May 2014 with Justice Goodrich (now the new case management judge in light of Justice Orsborn’s retirement). At this meeting a litigation schedule was given to the parties. The defendant Tobacco companies have until July 31st, 2014 to file their Demand for Particulars. Dates were set for February 3rd, 4th and 5th, 2015 to hear applications in relation to these Demand for Particulars and any potential motions to strike brought by the Tobacco companies.

• On 5 June 2014 the Province filed an Amended Statement of Claim.

• Once the applications concerning the Demand for Particulars are dealt with,

• On 11 June 2014 Justice received a letter from the Campaign for Justice on Tobacco Fraud. This national group has written all the provinces concerning the progression of their Tobacco Litigation. In the letter it is stated that they are writing to: 1) ensure that justice commensurate with the gravity of the alleged misbehaviour results from the litigation. 2) that health outcomes needed to repair the damage caused by the wrongful behaviour are key objectives of the litigation. 3) to ensure that the provinces recognize the inadequacies of previous tobacco settlements in 2008 and 2010 in relation to smuggling and 4) to ensure that the outcomes of any settlements are in the interest of justice and public health.

Province’s Counsel and Issues

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To date the Province has spent over $700,000 in disbursements.

Approved by: Todd Stanley
Assistant Deputy Minister
Courts and Legal Services

Approved by: Paul Noble
Deputy Minister and
Deputy Attorney General

Approved by: The Honourable Felix Collins
Attorney General

Prepared by: D. Rodgers
Date: 10 July 2014
Title: Health Care Costs Recovery Act

Issue: Application to be heard in Supreme Court 13 and 14 February 2013

Background:

- In 2002 the Province retained the law firm of Humphrey, Farrington & McClain (the Firm) of Independence, Missouri, U.S.A. The Firm retained local counsel Robothan, McKay, and Marshall to assist with the litigation.

- To date the Province has spent over $700,000 in disbursements.

- The Health Care Costs Recovery Act (the Act) was proclaimed on 7 February 2011. The Act creates a new civil cause of action which allows the Province to directly recoup a cost incurred on behalf of others or “on an aggregate basis.”

- The Act creates new rules of evidence which allows the Province to prove its case based on statistical, epidemiological and sociological evidence without having to prove individual damages.

Current Status of Litigation:

- The Statement of Claim was issued on 8 February 2011 against fourteen (14) national and international tobacco companies with head offices in the following locations: Nova Scotia; Ontario; Montreal; Virginia USA; New York USA; North Carolina; London England; Switzerland.

- In its claim, the Province alleges: (1) that the tobacco companies committed “tobacco related wrongs” as defined in the Act; (2) that the tobacco companies breached common law, equitable or statutory duties and obligations owed to the people of the Province; and (3) that the tobacco companies conspired together to prevent the people of the Province acquiring knowledge of the harmful and addictive properties of tobacco products.
• A number of the tobacco companies have filed applications seeking dismissal of the action claiming that the Court has no jurisdiction over them. They deny having conducted any business in the Province or profiting from any alleged act of conspiracy or misrepresentation.

• In its response to the applications, the Province, through affidavit evidence, outlined the history of tobacco litigation in Canada highlighting the Applicants' control, influence, coordination and/or management of the marketing activities of their Canadian operation.

• Several of the tobacco companies challenged the form and content of these affidavits filed by the Province.

• On 11 January 2012 counsel for the Province acknowledged before the Supreme Court of Newfoundland and Labrador that there were certain minor technical deficiencies in the affidavits. Chief Justice Osborne stated that the Province need not seek leave to file new, amended affidavits.

• The Province subsequently filed new amended affidavits. The tobacco companies have again challenged the content of these amended affidavits.

• An application to determine the validity of these new amended affidavits is set to be heard on February 13th and 14th, 2013.

• No date for the jurisdictional applications has been set nor have any defences been filed pending the outcome of the applications described above.

Action Required:

• For information purposes

Prepared by: D. Ballard/D. Rodgers
Date: 11 February 2013

Approved by:

Donita Ballard
Assistant Deputy Minister

Approved by:

Paul Noble
Deputy Minister and
Deputy Attorney General (A)

Approved by:

Thomas Marshall, Q.C.
Attorney General
Title: *Health Care Costs Recovery Act*

Issue: Supreme Court Releases Decision on Preliminary Jurisdictional Issues in Tobacco Health Care Costs Recovery Litigation

Background:

- In 2002 the Province retained the law firm of Humphrey, Farrington & McClain (the Firm) of Independence, Missouri, U.S.A. The Firm retained local counsel Roebothan, McKay, and Marshall to assist with the litigation.

- To date the Province has spent over $700,000 in disbursements.

- The *Health Care Costs Recovery Act* (the *Act*) was proclaimed on 7 February 2011. The *Act* creates a new civil cause of action which allows the Province to directly recoup a cost incurred on behalf of others or "on an aggregate basis."

- The *Act* creates new rules of evidence which allows the Province to prove its case based on statistical, epidemiological and sociological evidence without having to prove individual damages.

Current Status of Litigation:

- The Statement of Claim was issued on 8 February 2011 against fourteen (14) national and international tobacco companies with head offices in the following locations: Nova Scotia; Ontario; Montreal; Virginia USA; New York USA; North Carolina; London England; Switzerland.

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• A number of the tobacco companies have filed applications seeking dismissal of the action claiming that the Court has no jurisdiction over them. They deny having conducted any business in the Province or profiting from any alleged act of conspiracy or misrepresentation.

• In its response to the applications, the Province, through affidavit evidence, outlined the history of tobacco litigation in Canada highlighting the Applicants’ control, influence, coordination and/or management of the marketing activities of their Canadian operation.

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• On December 19th, 2013 Justice Orsborn released his decision on the preliminary jurisdictional questions.

• Justice Orsborn concluded that the court can assume jurisdiction over a foreign defendant if the defendant is present in the jurisdiction or there is a “real and substantial” connection between the jurisdiction and the defendant or as between the jurisdiction and the subject matter of the claim. Justice Orsborn found that affidavit evidence may be used by a defendant to rebut an assertion of a “real and substantial” connection by a plaintiff. If such evidence is submitted, the plaintiff may submit affidavit evidence in response (which is what has occurred in our case).

• Justice Orsborn goes on to conclude that a “properly pleaded” cause of action against a particular defendant is not necessary for the court to assume jurisdiction, nor must a plaintiff show a “good and arguable” case on the merits for the court to assume jurisdiction. Justice Orsborn summarizes his findings by stating that the court must satisfy itself that there is a
"reasonable basis upon which to assume jurisdiction", and that once this finding is made it is
final and binding on the parties, subject only to appeal.

Action Required:

- For information purposes

Prepared by: D. Rodgers
Date: 23 December 2013

Approved by:

Todd Stanley
Assistant Deputy Minister
Courts and Legal Services

Approved by:

Paul Noble
Deputy Minister and
Deputy Attorney General

Approved by:

The Honourable Thomas Marshall Q.C.
Attorney General

Month Day, Year
Jarvis, Carolyn B.

From: O'Neill, Lorna
Sent: Wednesday, January 15, 2014 3:57 PM
To: Noble, Paul
Cc: Jarvis, Carolyn B.
Subject: note

Sent on behalf of Minister Marshall to advise his approval of the following note

Title: Health Care Costs Recovery Act

Regards,
Lorna

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