

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

NO:

PLACEMENTS SERGAKIS INC.,
and COMPLEXE SKY,
entertainment complex, body politic
and corporate, having a place of
business at 1474 Ste-Catherine Street
East, in the City and District of
Montreal, Province of Quebec, H2L
2J1

PETER SERGAKIS, businessman,
having a place of business at 3800
Notre Dame Street West, in the City
and District of Montreal, Province of
Quebec, H4C 1P9

LES BILLARDS SKRATCH,
billiard club, body politic and
corporate, having a place of business
at 965 Cure-Labelle, in the City of
Laval, Province of Quebec H7V
2V7

VOULA DEMOPOULOS,
businesswoman, having a place of
business at 965 Cure-Labelle, in the
City of Laval, Province of Quebec
H7V 2V7

RAYMOND NAULT, Host,
domiciled and residing at 2375
Aumont Street, Apt. 106, in the City
of Brossard, Province of Quebec,
J4Z 3P3

GUY MILLETTE, Manager,
domiciled and residing at 1927
Alexandre-de-Sève Street, Apt. 119,
in the City and District of Montreal,
Province of Quebec, H2L 2W2

Plaintiffs

v.

ATTORNEY GENERAL OF
QUEBEC, having an office at 1
Notre Dame Street East, Suite 8.00,
in the City and District of Montreal,
Province of Quebec, H2Y 1B6

Defendant

INTRODUCTORY MOTION FOR DECLARATORY RELIEF

I. THE PARTIES

1. The parties are Placements Sergakis Inc., Complexe Sky, Peter Sergakis, Les Billards Skratch, Voula Demopoulos, Raymond Nault, and Guy Millette; the individuals are owners of bars, employees, and the corporation is a bar; Voula Demopoulos is also a smoker and does enjoy combining a drink with a cigarette in a bar;
2. The Defendant represents the Government of Quebec;

II. THE ISSUES

3. Since the discovery of America, the consumption of tobacco products has been part of western culture;
4. These products have included cigars, snuff and cigarettes;
5. In the 20th century, cigarettes in particular have been very widely used and have marked the art, cinema and literature of the epoch;
6. In the second half of the century, scientific studies have shown that smoking has a deleterious effect on the health and longevity of those who indulge in the habit and, to a lesser degree, and not conclusively on those exposed to second-hand smoke;

7. It is not the object of this action to dispute that there exists a rationale for regulating and restricting the use of tobacco products, but only to challenge the excesses;
8. It is clear that, despite the risks, cigarette smoking remains perfectly lawful in Canada and cigarettes continue to be widely available to adults in our society;
9. Moreover, those who smoke are often unable or unwilling to change and the adoption of excessive restrictions may make certain services offered by our society completely unavailable for them;
10. The Supreme Court set down certain limits on advertising restrictions in RJR MacDonald v. Canada and, recently, the Quebec Court of Appeal placed other limits in J.T.I. MacDonald Corp. v. P.G. Canada;
11. While these decisions have only limited bearing on the present case, they do demonstrate that the prevalent views about the need to drastically reduce the use of tobacco, the rule of law continues to operate in this domain and regulatory impulses must be balanced by considerations of individual freedom and common sense;

III. THE BARS

12. In particular, bars are places where adults often come for pleasure and entertainment and often associate drinking alcohol and smoking;
13. Some experience from other provinces indicate that the prohibition of smoking in bars has a drastic, negative effect on the frequentation of these establishments;
14. Yet bars are a perfectly lawful form of entertainment, important and pleasurable to many consumers;

IV. THE LEGISLATION

15. In 1998 the National Assembly adopted the Tobacco Act (1998 L.Q.C. 33);
16. In 2005 this law was amended under Bill 112 and was made far more restrictive than the 1998 Act;
17. The existence of provincial power to regulate this field of human endeavour is not challenged;
18. Nor do Plaintiffs contest the appropriateness of many regulations and restrictions;
19. Nevertheless, Plaintiff submits that the law as it stands is greatly excessive and that many of its measures are either ultra vires or inoperative;

V. THE DETAILED CLAIM

20. Art. 2.2 of the Tobacco Act as amended is a violation of liberty rights and therefore inoperative;
21. In Art. 2 of the law, paragraphs 6.1 and 6.2 are invalid and/or inoperative as violations of liberty rights and of freedom of association;
22. In Art. 2, par. 7(2) is invalid and/or inoperative as a violation of equality rights; it is also incompatible with Sec. 45 of the Quebec Charter of Rights and Freedoms which operates as an interpretative tool;
23. In Art. 2, paragraph 7(1) as amended violates liberty rights;
24. In Art. 2, paragraph 8 and 8.1 are inoperative and/or illegal as violations of liberty

- rights and freedom of association;
25. In Art. 2, the new paragraph 8.2 is invalid and/or inoperative as a violation of liberty rights;
 26. In Art. 2, paragraph 10 as amended, is inoperative as a violation of liberty rights;
 27. In Art. 2, paragraph 7(a) is so broad as to violate liberty rights;
 28. In Art. 2, paragraph 4 is a violation of liberty and security rights and is so broad as to amount to cruel and unusual treatment;
 29. In Art. 3, paragraph 12 is void for vagueness and violates freedom of association and liberty rights and it is therefore invalid and/or inoperative;
 30. The abrogation of the former Arts. 4 and 6 and their replacement by the new, prohibitive articles, violates liberty and equality rights; Art. 4 and 5 are therefore invalid and inoperative;
 31. Art. 11 of the Act is invalid as it violates the presumption of innocence and liberty rights;
 32. Art. 22 and 23 of the law are inoperative for the reasons given by the majority in the Court of Appeal in J.T.I. MacDonald Corporation v. P.G. Canada;
 33. The law insofar as it affects bars is tantamount to the destruction of a form of lawful business;
 34. The fact that the law does not permit smoking establishments and smoking rooms for clients (as opposed to employers) is a violation of liberty rights and of freedom of association;

35. Smoking constitutes lawful activity and the Tobacco Act has the effect of making it impossible for citizens to engage in it together, except in domiciles;
36. The paternalism and excessive reach of the law are not consistent with the letter of the law, as outlined above, and flagrantly violate the spirit of the law;

VI. THE DEFINITION

37. Liberty rights refers to Sec. 7 of the Canadian Charter of Rights and Freedoms and Sec. 1 of the Quebec Charter of Rights and Freedoms;
38. Equality rights refer to Sec. 15 of the Canadian Charter of Rights and Freedoms and Sec. 10 of the Quebec Charter of Rights and Freedoms;
39. Details of the proposed application of the two Charters will be provided in the notice under sec. 95 of the Quebec Code of Civil Procedure;

VII. THE CONSEQUENCES

40. The overreach and excess of the Tobacco Act are such that severance is impossible and would indeed be contrary to the intention of the legislator;
41. The entire law must therefore be set aside;
42. If the Court considered severance possible and practicable, all of the sections of the law considered above would have to be set aside as inoperative or illegal;
43. This must not prevent or preclude the adoption of more moderate laws to discourage consumption of tobacco, to promote information about it and to protect minors;

VIII. THE URGENCY

44. It is important that the issue of the validity of the Tobacco Act be decided before it takes full effect on May 31, 2006;
45. This is particularly crucial for bars in view of the disastrous effect on their business of similar legislation elsewhere;
46. If the law or part of it is set aside, the same considerations militate in favour of a judgment executory notwithstanding appeal;

IX. SEC. 1 OF THE CHARTER

47. Nothing in this motion prevents a fair and effective policy of tobacco control;
48. The excesses and paternalism of the law cannot be justified by any pressing need;
49. Further, it is not clear that there is any logical connection between the legitimate areas of tobacco regulation and the protection of minors on the one hand and the excesses and injustices of the Tobacco Act as it stands at present on the other;

CONCLUSION

WHEREFORE MAY IT PLEASE THIS HONOURABLE COURT TO:

ALLOW this action;

DECLARE invalid and/or inoperative the Tobacco Act as it stands, or, in the alternative, to declare invalid or inoperative sections Art. 2.2, 4, 6.1, 6.2 7(1), 7(2), 7(a), 8 and 8.1; Art. 3(12), Art. 4, Art. 5, Art. 11, Art. 22 and Art. 23;

The whole with costs and executory notwithstanding appeal;

MONTREAL, this 12th day of September 2005

GREY CASGRAIN
Attorneys for Plaintiffs

NOTICE OF PRESENTATION

TAKE NOTICE THAT the Petitioner has filed a Motion in the office of the Superior Court of the judicial district of Montreal.

To file an answer to the Introductory Motion for Declaratory Relief, personally or by advocate, at the Court House of Montreal, located at 1 Notre Dame Street East, within 10 days of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10-day period.

If you file an appearance, the application will be presented before the court on October 17, 2005 at the City of Montreal, in room 2.16 of the Court House. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case, unless you make a written agreement with the Petitioner or the Petitioner's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the Court.

In support of the motion to institute proceedings, the applicant discloses the following exhibits:

Plaintiffs do not file any exhibits at this time;

MONTREAL, September 12, 2005

GREY CASGRAIN
Attorneys for Plaintiffs