

Court File No. CV-19-616779-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.**

**RESPONDING MOTION RECORD OF
ROTHMANS, BENSON & HEDGES INC.
(Sanction Hearing)
(Returnable January 29, 2025)**

January 20, 2025

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Tab 1

Court File No. CV-19-616779-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.**

Applicant

**AFFIDAVIT OF MILENA TRENTADUE
(Sworn January 20, 2025)**

I, Milena Trentadue, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the Managing Director of Rothmans, Benson & Hedges Inc. (“**RBH**” or the “**Applicant**”). I have served in this capacity since February 1, 2024. I have been employed with RBH, an affiliate of Philip Morris International Inc. (“**PMI**”), for over five years. Prior to my appointment as Managing Director of RBH, I served as a Director of Commercial Deployment for RBH from January 2019 to January 2024. Prior to joining RBH, I spent over 20 years in the consumer packaged goods industry.

2. I have personal knowledge of the matters to which I depose in this affidavit. Where I do not possess personal knowledge, I have stated the source of my information and believe it to be true.

RBH

3. RBH and its predecessor corporations have been engaged in the business of the production and sale of tobacco products in Canada for over 100 years. RBH is a Canadian company that provides employment or consultant work and other benefits to numerous Canadians, including suppliers of tobacco leaf used by RBH in its products. RBH sells its products through retailers and wholesale distributors and uses the services of third parties for logistics and other services, each of whom benefits from RBH's continuing operations either directly or indirectly.

4. Today, RBH is focused on bringing to market smoke-free alternatives to traditional cigarettes. While addictive and not risk-free, these alternatives, such as heated tobacco products and vaping products offer adult smokers potentially less harmful alternatives to continuing to smoke cigarettes.

RBH's CCAA Proceeding

5. RBH initiated this *Companies' Creditors Arrangement Act* ("CCAA") proceeding in March 2019 in order to explore a potential global resolution of all pending tobacco-related litigation against it in Canada.

6. The CCAA filing was made shortly after the Court of Appeal of Quebec issued its judgment on March 1, 2019 (the "**Quebec Appeal Judgment**") in respect of two class actions in Quebec.

7. The Quebec Appeal Judgment largely upheld the judgment of Justice Riordan in *Létourneau c. JTI-MacDonald Corp.*, 2015 QCCS 2382 (the "**Quebec Judgment**"), which

required RBH, Imperial Tobacco Canada Limited (“**Imperial**”), and JTI-Macdonald Corp. (“**JTIM**”) to pay billions of dollars in damages and allocated responsibility for payment among them. The Quebec Appeal Judgment is indexed as *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 358.

8. Imperial, RBH, and JTIM have also faced (and continue to face) various other tobacco-related claims. These include seven putative class actions in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia against each of Imperial, RBH, and JTIM, which I understand are at different stages of early development. They are vigorously contested by RBH.

9. The ongoing litigation also includes actions or claims asserted by all Canadian Provinces and Territories seeking to recover hundreds of billions of dollars of health care costs allegedly caused by Imperial’s, RBH’s, and JTIM’s conduct. These claims, which I understand are similarly in early stages of development, are also vigorously contested.

The Allocation Issue: Key Issue Throughout CCAA Proceedings

10. As part of this CCAA proceeding, RBH has sought to find a resolution to all of the litigation it faces, not just the Quebec Appeal Judgment.

11. Since the three tobacco companies are co-defendants in the vast majority of the litigation to be resolved, a key issue for RBH in these CCAA proceedings is how to allocate responsibility for any payments to be made to creditors and contingent claimants among the three tobacco companies in the context of a proposed aggregate settlement amount (the “**Allocation Issue**”).

12. RBH participated in a mediation process over the course of more than five years with the court-appointed mediator. That process led to the “**CCAA Plan**” proposed by the court-appointed mediator and the monitors. The mediation process is subject to the Court’s May 24, 2019 Court-Appointed Mediator Communication and Confidentiality Protocol.

13. Without disclosing the contents of the confidential mediation, I am advised by Peter Luongo (who was the Managing Director of RBH at the time of the initial CCAA filing) and Mindaugas Trumpaitis (who was the Managing Director of RBH after Mr. Luongo), that the Allocation Issue has been a significant issue for RBH throughout these CCAA proceedings.

14. RBH would also be content for this Court to consult the mediator about RBH’s position on allocation throughout the mediation process.

15. Outside the confidential mediation process, I am informed by Jamey Gage of McCarthy Tétrault LLP, counsel to RBH, that RBH’s counsel made representations to the Court that the Allocation Issue remained unresolved and should be settled or determined for the purposes of any CCAA plan and its implementation, including at the October 16, 2024, October 31, 2024 and December 23, 2024 court appearances.

16. While RBH has tried to resolve the Allocation Issue with Imperial and JTIM, there has been as of yet no resolution. The proposed CCAA Plan states in section 5.2 that allocation “remains unresolved.”

Significant Unfairness to RBH Without Allocation

17. Attached as **Exhibit “A”** are calculations of the portions that RBH would be required to contribute of the Upfront Contribution, aggregate Annual Contributions and Global Settlement Amount under the proposed CCAA Plan without an allocation. These calculations were prepared using (i) information and projections in the proposed CCAA Plan; (ii) information in reports filed by the Monitors; and (iii) financial projections prepared by RBH, which I understand were provided to Ernst & Young, Inc. in its capacity as Monitor of RBH, and used by the Monitor to calculate the projected aggregate Annual Contributions in the proposed CCAA Plan.

18. I am advised by Mr. Gage that the Monitor made adjustments to the financial projections of RBH and the other companies to estimate their net after-tax income (“**NATI**”). Those estimates were in turn used in the Monitor’s calculation of the estimated Annual Contributions set out in Section 16 of the proposed CCAA Plan. I understand that the adjustments consisted of deducting Alternative Product income and expenses, interest income and CCAA fees, and then accounting for tax. The RBH projections provided to the Monitor at the time (as adjusted) indicated a total projected NATI for RBH of \$1.955 billion between 2025 and 2028. There is an assumption reflected in the calculations in relation to RBH’s share of the aggregate Annual Contributions that there will be no material change in each tobacco company’s relative proportion of aggregate NATI over the entire Contribution Period compared to the Monitor’s estimates for the first few years after plan implementation. I believe that is a reasonable assumption since the tobacco companies are not allowed to engage in meaningful marketing of tobacco products.

19. The attached calculations in Exhibit “A” also set out:
- (a) the allocation of responsibility for the Upfront Contribution, aggregate Annual Contributions and Global Settlement Amount, based on the allocation of liability for compensatory damages among the tobacco companies that was determined by Justice Riordan in the Quebec Judgment: 67% to Imperial, 20% to RBH, and 13% to JTIM (the “**Court-Determined Allocation**”), and a comparison to the result if there is no allocation;
 - (b) the allocation of responsibility for contributions based on the average annual market share of the tobacco companies over the *Blais* class period (1950-1998) as found by Justice Riordan in the Quebec Judgment: 50.38% for Imperial, 30.03% for RBH, and 19.95% for JTIM (the “**Historic Market Share**”), and a comparison to the result if there is no allocation; and
 - (c) the allocation of responsibility for contributions based on the average market share during the CCAA proceedings from March 2019 to December 2024: 36.8% for RBH, 41.5% for Imperial and 21.7% for JTIM (“**Current Market Share**”), and a comparison to the result if there is no allocation. I understand that the Current Market Share percentages come from data that Imperial, RBH and JTIM provide to an independent third party identifying the volume of cigarettes shipped to Canadian intermediaries each month.
20. Based on the attached calculations, if the CCAA Plan were implemented without an allocation as between the Tobacco Companies, RBH would be required to contribute far more towards the Global Settlement Amount than would be required under any reasonable

allocation of responsibility. Such a CCAA Plan would effectively force RBH to subsidize Imperial, JTIM and their affiliates by a significant amount compared to what RBH would pay if responsibility were allocated in a reasonable way. For example, the calculations in Exhibit “A” reflect that RBH would contribute approximately \$6.923 billion more under the proposed CCAA Plan without an allocation than it would be responsible to pay if the Court-Determined Allocation were applied to the Global Settlement Amount.

21. In these circumstances, RBH is not presently in a position to consent to the proposed CCAA Plan and opposes the sanction of it in its current form.

SWORN BEFORE ME over videoconference this 20th day of January, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Toronto, in the Province of Ontario and the commissioner was located in the City of Toronto, in the Province of Ontario.

DocuSigned by:

Meena Alnajar

A Commissioner for taking Affidavits, etc.
Meena Alnajar | LSO #89626N

DocuSigned by:

Milena Trentadue

MILENA TRENTADUE

Tab A

This is **Exhibit "A"** referred to in the
Affidavit of **Milena Trentadue**
sworn before me January 20, 2025

DocuSigned by:

Meena Alnajar

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A Commissioner for taking Affidavits (or as may be)
Meena Alnajar LSO No: 89626N

Exhibit “A” Calculations Related to RBH Contributions and Allocation

Background to Calculations

The proposed CCAA Plan, if approved, would require Imperial, RBH, and JTIM to collectively pay \$32.5 billion (the “**Global Settlement Amount**”) to various claimants. This amount is divided between the following two principal forms of payment (leaving aside potential tax refund payments, the timing and amount of which are uncertain):

- (a) the “**Upfront Contribution**”, which is estimated by the Monitor as at December 31, 2024 to be \$12.456 billion (according to section 16.1 of the proposed CCAA Plan), comprised of the tobacco companies’ collective accumulated cash-on-hand less \$750 million of cash to be retained by the tobacco companies for working capital (the “**Retained Cash**”); and
- (b) annual payments equal to a specified percentage of the tobacco companies’ net after-tax income (“**NATI**”) until the Global Settlement Amount is paid in full (the “**Annual Contributions**”), estimated by the Monitor as at December 31, 2024 to total about \$20 billion (according to section 16.1 of the proposed CCAA Plan).

No Allocation

This section calculates the portion of the Global Settlement Amount that RBH would be required to contribute under the proposed CCAA Plan without an allocation.

Upfront Contribution: If no allocation is applied then, pursuant to the proposed CCAA Plan, RBH would contribute approximately 45.6% of the total Upfront Contribution, as calculated below:

Table 1	Projected Cash December 2024 (\$ Billion) ¹	Share (%)
RBH	\$6.018	45.6%
Imperial	\$5.607	42.5%
JTIM	\$1.581	12.0%
Total	\$13.206	100%

¹ Section 16.1 of the CCAA Plan, Note 2 and, with respect to the Cash Security Deposits posted by Imperial in the amount of \$758 million and by RBH in the amount of \$226 million, see Pre-Filing Report of FTI Consulting Canada Inc. as Proposed Monitor of Imperial dated March 12, 2019, at para. 49; Report of Ernst & Young Inc. as Proposed Monitor of RBH dated March 22, 2019, at Appendix A.

Section 16.1 of the proposed CCAA Plan allocates the Upfront Contribution principally among the Provinces and Territories, the Quebec Class Action Plaintiffs (“**QCAPs**”), and the Pan-Canadian Claimants (“**PCCs**”).²

The proposed CCAA Plan provides that the QCAPs are to receive \$3.869 billion of the Upfront Contribution. Without an allocation, RBH would contribute 45.6% of that amount which is approximately \$1.764 billion.

The proposed CCAA Plan also provides that the PCCs are to receive \$1.750 billion and the Provinces and Territories are to receive an estimated \$6.202 billion, for a total of \$7.952 billion. Without an allocation, RBH would contribute 45.6% of that amount which is approximately \$3.626 billion.

Annual Contributions: If no allocation is applied then pursuant to the proposed CCAA Plan, RBH would contribute approximately 38.7% of the Annual Contributions assuming no material change in relative NATI compared to the forecasts over the relevant payment period. That percentage is calculated as follows:

- (a) The proposed CCAA Plan in Section 16.1 sets out a chart showing the projected Annual Contributions in respect of years 2025-2029, which according to Note 3, represents 85% of the estimated NATI based on projections received from the three tobacco companies through to 2028 (and with 2029 being based on the Monitor’s assumption that the results after 2028 are replicated going forward). The chart shows the total amount to the end of 2028 is \$4.293 billion (\$1.111 + \$1.078 + \$1.067 + \$1.037), which is 85% of \$5.051 billion ($\$4.293/85 \times 100$). That means the total estimated NATI in the proposed CCAA Plan from 2025-2028, based on projections received from the tobacco companies, is **\$5.051 billion**;
- (b) The financial projections provided by RBH to the Monitor indicated a total projected NATI for RBH of \$1.955 billion between 2025 and 2028 (applying the same adjustments applied by the Monitor);
- (c) Therefore, RBH’s projected NATI from 2025-2028 is **38.7%** of total projected industry NATI for that period ($\$1.955/\$5.051 \times 100 = 38.7\%$).

Total Contributions: If no allocation is applied then, pursuant to the proposed CCAA Plan, RBH would contribute an estimated 41.3% to the overall Global Settlement Amount, calculated as follows:

- (a) **Upfront Contribution:** as provided above, RBH contributes approximately 45.6% of the total \$12.456 billion,³ which equals \$5.680 billion;

² Section 16.1 of the Proposed Plan provides that \$11.821 billion of the total \$12.456 billion Upfront Contribution will be allocated to the QCAPs, Provinces and Territories and PCCs.

³ This represents the projected cash on hand plus security deposits as of December 2024 as set out in section 16.1 of the Proposed Plan (\$13.206 billion) less the total amount to be retained by the tobacco companies (\$0.750 billion).

- (b) Annual Contributions: as provided above, RBH contributes approximately 38.7% of the remaining \$20.044 billion, which equals \$7.757 billion;
- (c) Total: Therefore, RBH's total contribution of approximately \$13.437 billion (the sum of the Upfront Contribution and Annual Contributions above) is approximately **41.3%** of the total settlement contribution of \$32.5 billion ($\$13.437/\32.5×100).

Comparison to Court-Determined Allocation in the Quebec Judgment⁴

The following charts show RBH's contribution requirements under the proposed CCAA Plan without an allocation, relative to RBH's share if the Court-Determined Allocation in the Quebec Judgment is applied:

Upfront Contribution to the QCAPs: \$3.869 billion

Table 2	Upfront Contribution, no allocation (%)	Upfront Contribution to QCAPs, no allocation (billions)	Upfront Contribution, Court-Determined Allocation (%)	Upfront Contribution to QCAPs, Court-Determined Allocation (billions)	Difference (billions)
RBH	45.6%	\$1.763	20%	\$0.774	\$0.989
Imperial	42.5%	\$1.643	67%	\$2.592	(\$0.949)
JTIM	12.0%	\$0.463	13%	\$0.503	(\$0.040)
Total	100%	\$3.869	100%	\$3.869	

Upfront Contribution to the PCCs and Provinces & Territories: \$7.952 billion

Table 3	Upfront Contribution, no allocation (%)	Upfront Contribution, no allocation (billions)	Upfront Contribution, Court-Determined Allocation (%)	Upfront Contribution, Court-Determined Allocation (billions)	Difference
RBH	45.6%	\$3.624	20%	\$1.590	\$2.033
Imperial	42.5%	\$3.376	67%	\$5.328	(\$1.951)
JTIM	12.0%	\$0.952	13%	\$1.034	(\$0.082)
Total	100%	\$7.952	100%	\$7.952	

⁴ For simplicity, the comparisons in this section do not include the portion of the Upfront Contribution and Annual Contributions that the proposed CCAA Plan indicates will be distributed to, or on account of, the Cy-Près Foundation, the Tobacco Producers, the *Knight* Class Action Plaintiffs, the Miscellaneous Claims Fund, the CCAA Plan Administration Reserve and PCC Compensation Plan Reserve which represent in aggregate \$1.135 billion of the \$32.5 billion Global Settlement Amount.

Total Upfront Contribution Overpayment by RBH relative to Court-Determined Allocation

Table 4	Overpayment by RBH to QCAP Upfront Contribution (billions) (Table 2)	Overpayment by RBH to PCC/Provinces/Territories Upfront Contribution (billions) (Table 3)	Total Overpayment by RBH re Upfront Contribution (billions)
RBH	\$0.989	\$2.033	\$3.022

Annual Contributions

Table 5	Annual Contributions, no allocation (%)	Annual Contributions, no allocation (billions)	Annual Contributions, Court-Determined Allocation (%)	Annual Contributions, Court-Determined Allocation (billions)	Difference
RBH	38.7%	\$7.757	20%	\$4.009	\$3.748
Imperial/JTIM	61.3%	\$12.287	80%	\$16.035	(\$3.748)
Total	100%	\$20.044	100%	\$20.044	

Total Overpayment by RBH relative to Court-Determined Allocation

Table 6	Overpayment by RBH to Upfront Payment (billions) (Table 4)	Overpayment by RBH to Annual Contributions (billions) (Table 5)	Total Overpayment by RBH (billions)
RBH	\$3.022	\$3.748	\$6.770

Comparison to Historic Market Share, Current Market Share and NATI Allocation⁵

The following chart shows RBH's contribution requirements under the proposed CCAA Plan without an allocation, relative to allocations based on the Court-Determined Allocation, Historic Market Share, Current Market Value and NATI:

Relative Allocation Calculations

Table 7		Court-Determined Allocation⁶	Historic Market Share⁷	Current Market Share⁸	NATI⁹	CCAA Plan No Allocation
Upfront Contribution (\$12.456)	RBH Share (%)	20.0%	30.0%	36.8%	38.7%	45.6%
	RBH Share (billion)	\$ 2.491	\$ 3.737	\$ 4.583	\$ 4.820	\$ 5.680
	RBH Overpayment Compared to Court-Determined Allocation (billion)	\$ -	\$ 1.246	\$ 2.092	\$ 2.329	\$ 3.189
Global Settlement Amount (\$32.5)	RBH Share (%)	20.0%	30.0%	36.8%	38.7%	41.3%
	RBH Share (billion)	\$ 6.500	\$ 9.750	\$11.960	\$12.578	\$ 13.423
	RBH Overpayment Compared to Court-Determined Allocation (billion)	\$ -	\$ 3.250	\$ 5.460	\$ 6.078	\$ 6.923

⁵ The comparisons in this section include the entire Upfront Contribution and Global Settlement Amount.

⁶ Affidavit, para. 19(a).

⁷ Affidavit, para. 19(b).

⁸ Affidavit, para. 19(c).

⁹ Affidavit, para. 18.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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OR ARRANGEMENT OF ROTHMANS, BENSON & HEDGES INC.

Court File No: CV-19-616779-00CL ¹⁹

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF MILENA TRENTADUE
(Sworn January 20, 2025)**

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Tab 2

Tab A



Amended pursuant to Supreme Court Rule 6-1(1)(b)(ii)^
Original filed on January 24, 2001

NO. S010421
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

PLAINTIFF

AND:

IMPERIAL TOBACCO CANADA LIMITED, ROTHMANS, BENSON & HEDGES INC., ROTHMANS INC., JTI-MACDONALD CORP., CANADIAN TOBACCO MANUFACTURERS' COUNCIL, B.A.T INDUSTRIES p.l.c., BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED, CARRERAS ROTHMANS LIMITED, PHILIP MORRIS USA INC. (formerly PHILIP MORRIS INCORPORATED), PHILIP MORRIS INTERNATIONAL INC., R. J. REYNOLDS TOBACCO COMPANY, R. J. REYNOLDS TOBACCO INTERNATIONAL, INC., ROTHMANS INTERNATIONAL RESEARCH DIVISION and RYESEKKS p.l.c.

DEFENDANTS

FURTHER AMENDED STATEMENT OF CLAIM

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I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

1. The Plaintiff Her Majesty the Queen in right of the Province of British Columbia (the “Government”) brings this action against the Defendants pursuant to the provisions of section 2 of the *Tobacco Damages and Health Care Costs Recovery Act*, S.B.C. 2000, c. 30 (the “*Act*”) to recover the cost of health care benefits, namely:

(a) the present value of the total expenditure by the government for health care benefits provided for insured persons resulting from tobacco related disease or the risk of tobacco related disease, and

(b) the present value of the estimated total expenditure by the government for health care benefits that could reasonably be expected will be provided for those insured persons resulting from tobacco related disease or the risk of tobacco related disease,

caused or contributed to by the tobacco related wrongs hereinafter described.

2. Pursuant to sections 2(1) and 2(4)(b) of the *Act*, the Government brings this action to recover the cost of health care benefits on an aggregate basis, provided for a population of insured persons as a result of smoking cigarettes.

3. In this Statement of Claim, words used that are defined in the *Act* have the meaning ascribed to them in the *Act*, except the word “cigarette”, which is defined in paragraph 4 herein.

4. In this Statement of Claim, words used have the following meaning ascribed to them, unless the context indicates otherwise:

- (a) “cigarette” includes loose tobacco intended for incorporation into a cigarette;
- (b) “consumer” means persons in British Columbia who are or have been smokers or might become smokers; and
- (c) “to smoke” or “smoking” means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette.

B. The Defendants

5. The Defendant British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited) is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England.

6. The Defendant B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and, before that, Tobacco Securities Trust Company Limited) is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England.

7. The Defendant Carreras Rothmans Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Oxford Road, Aylesbury, Bucks, England.

8. The Defendant Imperial Tobacco Canada Limited (created through the amalgamation of, *inter alia*, Imperial Tobacco Limited and Imasco Ltd.) is a company incorporated pursuant to the laws of Canada and has a registered office at 600 de Maisonneuve Boulevard West, 20th Floor, Montreal, Quebec.

9. The Defendant JTI-Macdonald Corp. (formerly RJR-Macdonald Corp. and, before that, RJR-Macdonald Inc.) is a company incorporated pursuant to the laws of Nova Scotia with a registered office at 5151 George Street, Suite 1600, Halifax, Nova Scotia and is registered as an extra-provincial company pursuant to the laws of British Columbia with an office at 1500-1055

West Georgia Street, Vancouver, British Columbia.

10. The Defendant Philip Morris USA Inc. (formerly Philip Morris Incorporated (name changed January 15, 2003, after this action was commenced) and formerly Philip Morris & Co., Ltd., Incorporated) is a company incorporated pursuant to the laws of Virginia, whose principal place of business is at 120 Park Avenue, New York, New York in the United States of America.

11. The Defendant Philip Morris International Inc. is a company incorporated pursuant to the laws of Delaware, and has a registered office at 800 Westchester Avenue, Rye Brook, New York, in the United States of America.

12. The Defendant Rothmans, Benson & Hedges Inc. (created through the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited) is a company incorporated pursuant to the laws of Canada with a registered office at 1500 Don Mills Road, North York, Ontario and is registered as an extra-provincial company pursuant to the laws of British Columbia with an office at 2100-1075 West Georgia Street, Vancouver, British Columbia.

13. The Defendant Rothmans Inc. (formerly Rothmans of Pall Mall Canada Limited) is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, Toronto, Ontario.

14. The Defendant Rothmans International Research Division is a company or a division of a company whose identity is not known to the Plaintiff, but is known to one or more of the Defendants Rothmans, Benson & Hedges Inc., Rothmans Inc., Carreras Rothmans Limited and Ryeseckks p.l.c. The Defendant Rothmans International Research Division issued announcements in Canada in 1958 concerning the link between smoking and disease, including an announcement published in the *Globe and Mail* newspaper on June 23, 1958 and another published in the *Toronto Daily Star* newspaper on August 13, 1958.

15. The Defendant Ryesecks p.l.c. (formerly Rothmans International p.l.c., before that, Rothmans International Limited, and before that Carreras Limited) is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Plumtree Court, London, England.

16. The Defendant R. J. Reynolds Tobacco Company is a company incorporated pursuant to the laws of New Jersey and has a registered office at 830 Bear Tavern Road, Trenton, New Jersey, in the United States of America.

17. The Defendant R. J. Reynolds Tobacco International, Inc. is a company incorporated pursuant to the laws of Delaware and has a registered office at 32 Loockerman Square, Suite L-100, Dover, Delaware, in the United States of America.

18. Each of the Defendants described above is a manufacturer pursuant to the *Act* by reason of one or more of the following:

- (a) it manufactures, or has manufactured, tobacco products, including cigarettes;
- (b) it causes, or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of tobacco products, including cigarettes;
- (c) it engages in, or has engaged in or causes or has caused, directly or indirectly, other persons to engage in, the promotion of tobacco products, including cigarettes; and
- (d) for one or more of the material fiscal years, it has derived at least 10% of its revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products, including cigarettes, by itself or by other persons.

19. The Defendant Canadian Tobacco Manufacturers' Council ("the Defendant CTMC") is a company incorporated pursuant to the laws of Canada with a registered office at 1808 Sherbrooke St. West, Montreal Quebec, and an office within British Columbia at 843 Yates

Street, Victoria, British Columbia.

20. The Defendant CTMC is the trade association of the Canadian tobacco industry. The current members include the Defendants Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., and JTI-Macdonald Corp.

21. The Defendant CTMC is a manufacturer pursuant to the *Act* in that it has been primarily engaged in one or more of the following activities:

- (a) the advancement of the interests of manufacturers,
- (b) the promotion of cigarettes, and
- (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes.

II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN BRITISH COLUMBIA

A. The Canadian Manufacturers

22. The Defendants Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc., and JTI-Macdonald Corp. are the principal manufacturers of cigarettes sold in Canada and in British Columbia.

1. The Defendant Imperial Tobacco Canada Limited

23. Imperial Tobacco Company of Canada Limited was incorporated in 1912. In or about September, 1970 the company changed its name to Imasco Limited.

24. In or about 1970, part of the tobacco related business of Imasco Limited was acquired by a wholly-owned subsidiary, Imperial Tobacco Limited.

25. In or about February, 2000, Imasco Limited amalgamated with its subsidiaries including

Imperial Tobacco Limited to form Imasco Limited. In a second amalgamation, also in or about February, 2000, Imasco Limited amalgamated with its parent company, British American Tobacco (Canada) Limited, to form the Defendant Imperial Tobacco Canada Limited.

26. At all material times, the Defendant Imperial Tobacco Canada Limited and its predecessor corporations have engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in British Columbia.

27. The Defendant Imperial Tobacco Canada Limited is Canada's largest manufacturer of cigarettes, with approximately 70% of the market. It manufactures and promotes cigarettes sold in British Columbia under several brand names, including *Player's* and *DuMaurier*.

2. The Defendant Rothmans Inc.

28. Rothmans of Pall Mall Canada Limited was incorporated in 1956 and in 1985 changed its name to Rothmans Inc. At times material to this action, the Defendant Rothmans Inc. has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in British Columbia.

3. The Defendant Rothmans, Benson & Hedges Inc.

29. Rothmans of Pall Mall Limited was incorporated in 1960. In 1985 Rothmans of Pall Mall Limited acquired part of the tobacco related business of the Defendant Rothmans Inc. and thereafter, until it amalgamated with Benson & Hedges (Canada) Inc. in 1986 to form the Defendant Rothmans, Benson & Hedges Inc., it engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in British Columbia.

30. Benson & Hedges (Canada) Inc. was incorporated in 1934. Until it amalgamated with Rothmans of Pall Limited in 1986, to form the Defendant Rothmans, Benson & Hedges Inc.,

Benson & Hedges (Canada) Inc. engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in British Columbia.

31. The Defendant Rothmans, Benson & Hedges Inc. was formed in 1986 by the amalgamation of Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc. Since that time, the Defendant Rothmans, Benson & Hedges Inc. has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in British Columbia.

32. The Defendant Rothmans, Benson & Hedges Inc. is currently Canada's second largest manufacturer of cigarettes. It manufactures and promotes cigarettes sold in British Columbia under several brand names, including *Benson & Hedges* and *Rothmans*.

4. The Defendant JTI-Macdonald Corp.

33. W.C. MacDonald Incorporated was incorporated pursuant to the laws of Quebec in 1930, having carried on business in Montreal since 1858 as an unincorporated entity. In 1957 it changed its name to Macdonald Tobacco Inc., and in 1973 it became a wholly-owned subsidiary of the Defendant R.J. Reynolds Tobacco Company.

34. In 1978 RJR-Macdonald Inc. was incorporated as a wholly-owned subsidiary of the Defendant R. J. Reynolds Tobacco Company. Also in 1978, Macdonald Tobacco Inc. was sold by the Defendant R.J. Reynolds Tobacco Company to RJR-Macdonald Inc. RJR-Macdonald Inc. became the successor of Macdonald Tobacco Inc. when it acquired all or substantially all of Macdonald Tobacco Inc.'s assets and continued the enterprise of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc. In 1999, as the result of a series of mergers, the name of RJR-Macdonald Inc. was changed to RJR-Macdonald Corp. and subsequently to JTI-Macdonald Corp.

35. At all material times JTI-Macdonald Corp. and its predecessor Macdonald Tobacco Inc. have engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in British Columbia.

36. The Defendant JTI-Macdonald Corp. is currently Canada's third largest manufacturer of cigarettes. It manufactures and promotes cigarettes sold in British Columbia under several brand names, including *Export "A"* and *Vantage*.

37. The manufacturers identified in paragraphs 23-36 are hereinafter referred to as the "Canadian Manufacturers".

B. The Foreign Manufacturers

38. At times material to this action the Defendants Philip Morris USA Inc., R.J. Reynolds Tobacco Company and Ryeseckks p.l.c. have engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in British Columbia.

III. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Properties Of Cigarettes

39. Cigarettes are made from tobacco, which contains nicotine. Cigarettes are devices for the delivery of nicotine to smokers.

40. Nicotine is a psychoactive drug that affects the brain and central nervous system, skeletal muscles, the cardiovascular system, endocrine functions, organs including the lungs, and other body systems.

41. Nicotine is an addictive substance which creates a dependency in users. Once addicted, smokers experience recurrent cravings for tobacco (or its pharmacologically active ingredient, nicotine). Attempted withdrawal from smoking causes irritability, difficulty in concentrating, anxiety, restlessness, increased hunger, depression and a pronounced craving for tobacco. These withdrawal symptoms are caused by a dependence on nicotine.

42. Smoking cigarettes exposes smokers to a number of substances which are known to be harmful, including, but not limited to:

- (a) tar;
- (b) nicotine;
- (c) ammonia;
- (d) hydrogen cyanide;
- (e) carbon monoxide;
- (f) polyaromatic hydrocarbons;
- (g) phenols;
- (h) catechol;
- (i) aldehydes;
- (j) nitrogen dioxide and nitrogen monoxide;
- (k) nitrosamines;
- (l) micotoxins and endotoxins; and
- (m) miscellaneous organics and metals.

43. Smoking cigarettes causes or contributes to disease, including, but not limited to:

- (a) chronic obstructive pulmonary disease and allied conditions, including:
 - (i) emphysema,
 - (ii) chronic bronchitis,
 - (iii) chronic airways obstruction, and
 - (iv) asthma,
- (b) cancer including:
 - (i) cancer of the lung,
 - (ii) cancer of the lip, oral cavity and pharynx,
 - (iii) cancer of the larynx,
 - (iv) cancer of the esophagus,
 - (v) cancer of the bladder,
 - (vi) cancer of the kidney,

- (vii) cancer of the pancreas, and
- (viii) cancer of the stomach;
- (c) circulatory system diseases including:
 - (i) coronary heart disease,
 - (ii) pulmonary circulatory disease,
 - (iii) cerebrovascular disease,
 - (iv) atherosclerosis, aortic and other aneurysms, and
 - (v) other peripheral vascular disease;
- (d) pneumonia and influenza;
- (e) peptic ulcers; and
- (f) increased morbidity and general deterioration of health.

B. Knowledge of the Defendants that Cigarettes Were Dangerous

44. Cigarettes were at all material times dangerous in that:
- (a) they contain substances which, when cigarettes are smoked as intended, can cause or contribute to disease;
 - (b) when smoked as intended, they produce by-products which can cause or contribute to disease; and
 - (c) when smoked as intended, they can cause or contribute to addiction.
45. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that smoking cigarettes could cause or contribute to disease in smokers.

46. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that nicotine is present in cigarettes and is addictive. In the alternative, at all material times, the Defendants knew or ought to have known that:

- (a) nicotine is present in cigarettes;
- (b) smokers crave nicotine; and
- (c) the physiological effect of nicotine on smokers is the main reason for continuing to smoke.

C. Breaches of Duty

47. The duties particularized in Section C herein were breached by the following Defendants:

- (a) Imperial Tobacco Canada Limited;
- (b) Rothmans, Benson & Hedges Inc.;
- (c) Rothmans Inc.;
- (d) JTI-Macdonald Corp.;
- (e) Philip Morris USA Inc.;
- (f) R.J. Reynolds Tobacco Company; and
- (g) Ryesekks p.l.c.

(hereinafter referred to as “these Defendants”).

48. At all material times cigarettes manufactured and promoted by these Defendants were intended to reach and did reach consumers without any change in their condition as manufactured, and were smoked in the manner intended.

1. Defective Product

49. At all material times these Defendants owed a duty of care to consumers to take all reasonable measures to eliminate or minimize the risks of smoking their cigarettes.

50. These Defendants breached their duty to consumers to design a reasonably safe product by failing to eliminate or reduce to a safe level, substances in cigarettes and by-products of combustion, including nicotine and tar, which are addictive and which can cause or contribute to disease.

51. These Defendants, in further breach of their duty, increased the risks of smoking by manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include the following:

- (a) these Defendants have sponsored or engaged in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine;
- (b) these Defendants have increased the level of nicotine by the methods used in blending the tobacco contained in their cigarettes;
- (c) these Defendants have increased the level of nicotine in their cigarettes by the addition of nicotine or substances containing nicotine; and
- (d) these Defendants have introduced substances, including ammonia, into their cigarettes to enhance the bio-availability of nicotine to smokers.

52. These Defendants, in further breach of their duty, increased the risks to consumers by incorporating into the design of their cigarettes ostensible safety features such as filters which they knew or ought to have known were ineffective, yet which, by their presence in cigarettes and by the manner in which they were promoted, led reasonable consumers to believe that the product was safer to use than it was in fact.

53. These Defendants, in further breach of their duty, increased the risks to consumers by designing and manufacturing “mild”, “low tar” and “light” cigarettes, which they promoted in a manner which led reasonable consumers to believe that the product was safer to use than it was in fact.

54. As a result of the aforementioned breaches of duty, persons in British Columbia started to smoke or continued to smoke cigarettes manufactured and promoted by these Defendants, which were unreasonably dangerous, and thereby suffered tobacco related disease and an increased risk of such disease. The Government has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased risk of such disease.

2. Failure to Warn

55. At all material times these Defendants owed a duty of care to consumers to provide a warning of the risks of smoking their cigarettes.

56. These Defendants breached their duty to warn, including, in particular, by failing to provide any warning prior to 1972, or any adequate warning thereafter:

- (a) of the risk of tobacco related disease; and
- (b) of the risk of addiction to the nicotine contained in their cigarettes.

57. To the extent that these Defendants have purported to provide warnings, these warnings:

- (a) were designed to be as innocuous and ineffective as possible;
- (b) were insufficient to give consumers an adequate indication of each of the specific risks of smoking their cigarettes;
- (c) were introduced only to forestall more effective government mandated warnings; and
- (d) failed to make clear, credible, complete and current disclosure to consumers of the risks inherent in the ordinary use of their cigarettes in such a way as to allow consumers to make free and informed decisions concerning smoking.

58. Without restricting the generality of the foregoing, although these Defendants knew or ought to have known that children and adolescents in British Columbia were smoking or might smoke their cigarettes, they failed to provide warnings sufficient to convey to such persons the risks of smoking.

59. These Defendants have engaged in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of the warnings provided to consumers by these Defendants and by governments and other agencies concerned with public health.

60. These Defendants have suppressed information regarding the risks of smoking.

61. These Defendants have misinformed and misled the public about the risks of smoking.

62. As a result of the aforementioned breaches of duty, persons in British Columbia started to smoke or continued to smoke cigarettes manufactured and promoted by these Defendants, and thereby suffered tobacco related disease and an increased risk of such disease. The Government has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased risk of such disease.

3. Sale of Cigarettes to Children and Adolescents ^

63. At all material times these Defendants owed a duty of care to children and adolescents in British Columbia to take all reasonable measures to prevent them from starting or continuing to smoke.

64. In British Columbia more than 80% of smokers start to smoke and become addicted before they are 19 years of age.

65. These Defendants knew or ought to have known that children and adolescents in British Columbia were smoking or might start to smoke their cigarettes and that it was contrary to law or public policy to sell cigarettes to children and adolescents in British Columbia and to promote

smoking by such persons.

66. These Defendants knew or ought to have known of the risk that children and adolescents in British Columbia who smoked their cigarettes would become addicted to cigarettes and would suffer tobacco related disease.

67. These Defendants, in breach of their duty to children and adolescents in British Columbia, failed to take any, or any reasonable, measures to prevent them from starting or continuing to smoke.

68. These Defendants, in further breach of their duty, targeted children and adolescents in their advertising, promotional and marketing activities with the object of inducing children and adolescents in British Columbia to start or continue to smoke.

69. These Defendants, in further breach of their duty, undermined government initiatives and legislation which were intended to prevent children and adolescents in British Columbia from starting or continuing to smoke.

70. As a result of the aforementioned breaches of duty, children and adolescents in British Columbia started to smoke or continued to smoke cigarettes manufactured and promoted by these Defendants, and thereby suffered tobacco related disease and an increased risk of such disease. The Government has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased risk of such disease.

A

[paragraph number 71 skipped in order to retain numbering consistent with original Statement of Claim]

4. Strict Liability

72. At all material times these Defendants knew or ought to have known that their cigarettes, when smoked as intended, were addictive and could cause or contribute to disease.

73. At all material times these Defendants have manufactured, marketed, distributed and sold cigarettes which are unjustifiably hazardous in that, when smoked as intended, they are addictive, inevitably cause or contribute to disease and death in large numbers of consumers, and which have no utility or benefit to consumers or, alternatively, have a utility or benefit which is vastly outweighed by the risks and costs associated with smoking.

74. These Defendants breached their duty by manufacturing, marketing, distributing and selling cigarettes which were unjustifiably hazardous or, alternatively, which they knew or ought to have known were unjustifiably hazardous.

75. As a result of the aforementioned breaches of duty, persons in British Columbia started to smoke or continued to smoke cigarettes, manufactured and promoted by these Defendants, which were unjustifiably hazardous, and thereby suffered tobacco related disease and an increased risk of such disease. The Government has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased risk of such disease.

5. Deceit and Misrepresentation

76. At all material times, these Defendants owed a duty not to misrepresent to consumers or deceive consumers with respect to the properties of cigarettes or the risks of smoking.

77. These Defendants, knowing of the risks of smoking, including addiction and disease, made representations to consumers with respect to smoking which they knew were false and deceitful, or which were made with wilful blindness or recklessness as to their truth or falsehood, particulars of which include the following:

- (a) representing that smoking has not been shown to cause any known diseases;
- (b) representing that they were aware of no research, or no credible research, establishing a link between smoking and disease;
- (c) representing that many diseases shown to have been related to tobacco were in fact related to other environmental or genetic factors;
- (d) representing that cigarettes were not addictive;
- (e) representing that smoking is merely a habit or custom as opposed to an addiction;
- (f) representing that they did not manipulate nicotine levels in their cigarettes;
- (g) representing that they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;
- (h) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes;
- (i) representing that certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes; and
- (j) representing that smoking is consistent with a healthy lifestyle.

78. At all material times these Defendants have been in possession of scientific and medical data establishing the risks of smoking, but they have suppressed such knowledge and have represented, directly and by omission, that the risks of smoking were less serious than they knew them to be.

79. These Defendants made statements regarding smoking and health which they knew to be incomplete and inaccurate and have also failed to correct statements made by others to consumers regarding the risks of smoking, which these Defendants knew were incomplete or inaccurate. The failure of these Defendants to correct this misinformation is a misrepresentation by omission or silence.

80. In the alternative, if these Defendants did not know that the representations referred to in the three preceding paragraphs were false, they ought to have known that they were false, and these Defendants were negligent in making the representations or allowing the representations to

be made.

81. These Defendants intended that the aforementioned representations would be relied upon by consumers as conveying truthful information regarding the risks of smoking and these Defendants knew that if the representations were relied upon persons in British Columbia would start to smoke or continue to smoke.

82. To this end, these Defendants participated in a campaign to make themselves appear more credible compared to health authorities and anti-smoking groups, and to reassure smokers that cigarettes were not as dangerous as some consumers suspected they were.

83. As a result of the aforementioned deceit or misrepresentation, persons in British Columbia started to smoke or continued to smoke cigarettes manufactured and promoted by these Defendants and thereby suffered tobacco related disease and an increased risk of such disease. The Government has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased risk of such disease.

6. *Trade Practice Act*

84. In paragraphs 85 and 86 herein, “consumer” means a consumer as defined in the *Trade Practices Act* S.B.C. 1974, c. 96.

85. These Defendants, being suppliers under the *Trade Practices Act* S.B.C. 1974, c. 96 and amendments thereto, in breach of their statutory duties or obligations to consumers, engaged in deceptive acts or practices in relation to consumer transactions by representations or other conduct which had the capability, tendency or effect of deceiving or misleading consumers. Particulars of such representations and other conduct include the following:

- (a) manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include the following:

- (i) sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine,
 - (ii) increasing the level of nicotine by the methods used in blending the tobacco contained in their cigarettes,
 - (iii) increasing the level of nicotine in their cigarettes by the addition of nicotine or substances containing nicotine,
 - (iv) introducing substances, including ammonia, into their cigarettes to enhance the bio-availability of nicotine to smokers, without advising consumers;
- (b) incorporating into the design of their cigarettes ostensible safety features such as filters which were ineffective, yet which would lead a reasonable consumer to believe that the product was safer to use than it was in fact;
 - (c) failing to disclose to consumers the risks inherent in the ordinary use of their cigarette products including the risks of disease and addiction;
 - (d) engaging in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings provided to consumers;
 - (e) suppressing or concealing scientific and medical information regarding the risks of smoking;
 - (f) engaging in marketing and promotion activities having the tendency to lead consumers to believe that cigarettes have performance characteristics, ingredients, uses and benefits and approval that they did not have;
 - (g) misinforming and misleading the public about the risks of smoking by using innuendo, exaggeration and ambiguity having the tendency to mislead consumers about the material facts regarding smoking and health;
 - (h) making the following representations to consumers:
 - (i) representing that smoking has not been shown to cause any known diseases,
 - (ii) representing that they were aware of no research, or no credible research, establishing a link between smoking and disease,
 - (iii) representing that cigarettes were not addictive,

- (iv) representing that smoking is merely a habit or custom as opposed to an addiction,
 - (v) representing that they did not manipulate nicotine levels in their cigarettes,
 - (vi) representing that they did not include substances in their cigarettes designed to increase the bio-availability of nicotine,
 - (vii) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes,
 - (viii) representing that certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes,
 - (ix) representing that smoking is consistent with a healthy lifestyle,
 - (x) representing that the risks of smoking were less serious than they knew them to be; and
- (i) failing to correct statements made by others to consumers regarding the risks of smoking, which they knew were incomplete or inaccurate, and thereby misrepresenting the risks of smoking by omission or silence.

86. These Defendants, being suppliers under the *Trade Practices Act*, in breach of their statutory duty or obligation to consumers, engaged in unconscionable acts or practices in relation to consumer transactions, before, during and after such transactions, by taking advantage of what these Defendants knew or ought to have known was the inability or incapacity of children and adolescents and persons addicted to nicotine to reasonably protect their own interests because of their physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character or nature of the purchase of cigarettes including the risks of smoking. Particulars of such unconscionable acts and practices include the following:

- (a) manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include the following:
 - (i) sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine,
 - (ii) increasing the level of nicotine by the methods used in blending the

- tobacco contained in their cigarettes,
- (iii) increasing the level of nicotine in their cigarettes by the addition of nicotine or substances containing nicotine,
 - (iv) introducing substances, including ammonia, into their cigarettes to enhance the bio-availability of nicotine to smokers;
- (b) incorporating into the design of their cigarettes ostensible safety features such as filters which they knew or ought to have known were ineffective, yet which would lead a reasonable consumer to believe that the product was safer to use than it was in fact;
 - (c) failing to disclose to such consumers the risks inherent in the ordinary use of their cigarette products including the risks of disease and addiction;
 - (d) engaging in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings provided to such consumers;
 - (e) suppressing or concealing from such consumers scientific and medical information regarding the risks of smoking;
 - (f) engaging in marketing and promotion activities having the tendency to lead such consumers to believe that cigarettes have performance characteristics, ingredients, uses and benefits and approval that they did not have;
 - (g) misinforming and misleading such consumers about the risks of smoking by using innuendo, exaggeration and ambiguity having the tendency to mislead them about the material facts regarding smoking and health;
 - (h) failing to take any, or any reasonable, measures to prevent children and adolescents from starting or continuing to smoke;
 - (i) targeting children and adolescents in their advertising, promotional and marketing activities with the object of inducing children and adolescents to start or continue to smoke;
 - (j) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that, when smoked as intended, they are addictive and inevitably cause or contribute to disease and death in large numbers of consumers;
 - (k) making the following representations to such consumers which they knew or

ought to have known were false or misleading:

- (i) representing that smoking has not been shown to cause any known diseases,
- (ii) representing that they were aware of no research, or no credible research, establishing a link between smoking and disease,
- (iii) representing that cigarettes were not addictive,
- (iv) representing that smoking is merely a habit or custom as opposed to an addiction,
- (v) representing that they did not manipulate nicotine levels in their cigarettes,
- (vi) representing that they did not include substances in their cigarettes designed to increase the bio-availability of nicotine,
- (vii) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes,
- (viii) representing that certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes,
- (ix) representing that smoking is consistent with a healthy lifestyle,
- (x) representing that the risks of smoking were less serious than they knew them to be; and
- (l) failing to correct statements made by others to such consumers regarding the risks of smoking, which they knew were incomplete or inaccurate, and thereby misrepresenting the risks of smoking by omission or silence.

87. As a result of the aforementioned breaches of statutory duties and obligations, persons in British Columbia started to smoke or continued to smoke cigarettes manufactured and promoted by these Defendants and thereby suffered tobacco related disease and an increased risk of such disease. The Government has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased risk of such disease.

7. Competition Act

88. These Defendants, for the purpose of promoting, directly or indirectly, the supply or use of cigarettes, in breach of their statutory duties or obligations to consumers under the *Combines Investigation Act* R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act* S.C. 1968-69, chapter 38 and amendments thereto and subsequently the *Competition Act* R.C.S. 1985, chapter C-34 and amendments thereto:

- (a) made representations to the public that were false or misleading in a material respect; and
- (b) made representations to the public in the form of statements regarding the performance and efficacy of cigarettes that were not based on adequate and proper testing.

89. Particulars of such representations include the following:

- (a) making representations about the characteristics of their cigarettes that were not based upon any or any adequate and proper testing of and investigation and research into:
 - (i) the risk of disease caused or contributed to by smoking their cigarettes,
 - (ii) the risk of addiction to nicotine contained in their cigarettes, and
 - (iii) the feasibility of eliminating or minimizing the risks referred to in subparagraphs (i) and (ii);
- (b) promoting as safer products, cigarettes with ostensible safety features such as filters, and "mild", "low tar" or "low nicotine" tobacco which adequate and proper testing would have revealed were ineffective to safeguard the health of consumers;
- (c) to the extent that these Defendants have purported to provide information about their cigarettes or warnings about the risks of smoking, they have failed to make clear, credible, complete and current disclosure of the risks inherent in the ordinary use of their cigarettes;
- (d) engaging in collateral marketing, promotional and public relations activities to

- neutralize or negate the effectiveness of warnings provided to consumers;
- (e) providing misleading information to the public about the risks of smoking based upon a failure to provide any or any adequate research or testing of their cigarettes;
 - (f) publicly discrediting the testing and research undertaken, and information provided by others, regarding the link between smoking and disease and smoking and addiction;
 - (g) representing that smoking has not been shown to cause any known diseases;
 - (h) representing that they were aware of no research, or no credible research, establishing a link between smoking and disease;
 - (i) representing that smoking has not been shown to cause addiction;
 - (j) representing that they were aware of no research, or no credible research, establishing a link between smoking and addiction;
 - (k) representing that smoking is merely a habit or custom as opposed to an addiction;
 - (l) representing that they did not manipulate nicotine levels in their cigarettes;
 - (m) representing that they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;
 - (n) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes;
 - (o) representing that certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes;
 - (p) representing that smoking is consistent with a healthy lifestyle; and
 - (q) failing to correct statements made by others to consumers regarding the risks of smoking, which they knew were incomplete or inaccurate, and thereby misrepresenting the risks of smoking by omission or silence.

90. As a result of the aforementioned breaches of statutory duties and obligations, persons in British Columbia started to smoke or continued to smoke cigarettes manufactured and promoted by these Defendants and thereby suffered tobacco related disease and increased risk of such disease. The Government has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased

risk of such disease.

IV. CONCERTED ACTION WITHIN CORPORATE GROUPS

A. Generally

91. Historically there have been four multinational tobacco enterprises (“Groups”) whose member companies engage directly or indirectly in the manufacture and promotion of cigarettes sold in British Columbia and throughout the world. The four Groups are:

- (a) the BAT Group;
- (b) the RJR Group;
- (c) the Philip Morris Group; and
- (d) the Rothmans Group.

92. At all times material to this action virtually all of the cigarettes sold in British Columbia have been manufactured and promoted by manufacturers who are or have been members of one of the four Groups.

93. At all times material to this action the manufacturers within each Group have had common policies relating to smoking and health. The common policies have been directed or co-ordinated by one or more of the Defendants within each group (the “Lead Companies”).

94. At material times, the Lead Companies of the four Groups were as follows:

Group	Lead Companies
BAT Group	<p>the Defendant British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited)</p> <p>the Defendant B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited, and before that Tobacco Securities Trust</p>

	Limited)
RJR Group	the Defendant R.J. Reynolds Tobacco Company the Defendant R.J. Reynolds Tobacco International, Inc.
Philip Morris Group	the Defendant Philip Morris Incorporated the Defendant Philip Morris International Inc.
Rothmans Group	The Defendant Carreras Rothmans Limited the Defendant Ryeseckks p.l.c. the Defendant Rothmans International Research Division

B. Joint Liability of the BAT Group Defendants

95. During all or part of the period in which the tobacco related wrongs described herein were committed, the members of the BAT Group have included the following companies (the “BAT Group Members”):

- (a) Imasco Limited and Imperial Tobacco Limited (now the Defendant Imperial Tobacco Canada Limited);
- (b) the Defendant B.A.T Industries p.l.c.; and
- (c) the Defendant British American Tobacco (Investments) Limited.

96. After about 1950, some or all of the BAT Group Members conspired, or had a common design, to prevent, by unlawful means, consumers in British Columbia and in other jurisdictions acquiring knowledge of the harmful nature and addictive properties of cigarettes, as described in paragraphs 39 - 43 herein, in circumstances where the BAT Group Members knew or ought to have known that injury to consumers would result from acts done in furtherance of the conspiracy or common design.

97. In furtherance of the aforementioned conspiracy or common design, Imperial Tobacco Limited and Imasco Limited, or either of them, breached their duties to consumers in the manner described in Part III herein.

98. The aforementioned conspiracy or common design was entered into or continued at or through committees, conferences and meetings established, organized and convened by the Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them, and attended by senior personnel of the BAT Group Members, including those of Imperial Tobacco Limited and Imasco Limited, or either of them, and through written and oral directives and communications amongst the BAT Group Members.

99. The committees utilized by the Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them, to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board, the Tobacco Executive Committee, and the Tobacco Strategy Review Team.

100. The conferences utilized by the Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them, to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Advisory Conferences, BAT Group Research Conferences, and BAT Group Marketing Conferences.

101. The Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them, further directed or co-ordinated the BAT Group's common policies on smoking and health by preparing and distributing to the members of the BAT Group, including Imperial Tobacco Limited and Imasco Limited, written directives and communications including "Smoking Issues: Claims and Responses", "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues", "Smoking and Health: The Unresolved Debate", "Smoking: The Scientific Controversy", "Smoking: Habit or Addiction?", and "Legal Considerations on Smoking and Health Policy". These directives and communications set out the BAT Group's position on smoking and health issues to ensure that the personnel of the BAT

Group companies, including the personnel of Imperial Tobacco Limited and Imasco Limited, understood and disseminated the BAT Group's position.

102. The Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them, further directed or co-ordinated the smoking and health policies of Imperial Tobacco Limited and Imasco Limited, or either of them, by directing or advising how they should vote in committees of the Canadian Manufacturers and at meetings of the Defendant CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian Manufacturers and by the Defendant CTMC.

103. Further particulars of the manner in which the conspiracy or common design was entered into or continued and of the breaches of duty committed by Imperial Tobacco Limited and Imasco Limited, or either of them, in furtherance of the conspiracy or common design, are peculiarly within the knowledge of the BAT Group Members.

104. By reason of the foregoing, the Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them, conspired with Imperial Tobacco Limited and Imasco Limited, or either of them, with respect to the breaches of duty committed by Imperial Tobacco Limited and Imasco Limited, referred to in Part III herein.

105. In the alternative, by reason of the foregoing, the Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them, acted in concert with Imperial Tobacco Limited and Imasco Limited, or either of them, with respect to the breaches of duty committed by Imperial Tobacco Limited and Imasco Limited, referred to in Part III herein.

106. In the further alternative, if the BAT Group Members did not agree or intend that unlawful means be used in pursuing the common design referred to in paragraph 96, they knew or ought to have known that one or more of the BAT Group Members might commit breaches of duty in furtherance of the common design. As a consequence, the Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them, acted in concert with Imperial Tobacco Limited and Imasco Limited, or either of them, with respect to the breaches of duty committed by Imperial Tobacco Limited and Imasco Limited, referred to Part III herein.

107. In the further alternative, in breaching the duties referred to in Part III herein, Imperial Tobacco Limited and Imasco Limited, or either of them, were acting as agents for the Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them.

108. In the further alternative, the Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them, directed the activities of Imperial Tobacco Limited and Imasco Limited, or either of them, to such an extent that the breaches of duty committed by Imperial Tobacco Limited and Imasco Limited, or either of them, were also breaches committed by the Defendants British American Tobacco (Investments) Limited and B.A.T Industries p.l.c., or either of them.

109. By reason of the allegations made in paragraphs 95 to 108 herein, the BAT Group Members have, under section 4 of the *Act*, jointly breached the duties particularized in Part III herein and the Defendants Imperial Tobacco Canada Limited, B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited are jointly and severally liable for the cost of health care benefits attributed to Imperial Tobacco Limited and Imasco Limited.

110. In any event, by reason of the allegations made in paragraphs 95 to 108 herein, the Defendants Imperial Tobacco Canada Limited, B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited are, at common law or in equity, jointly and severally liable for the cost of health care benefits attributed to Imperial Tobacco Limited and Imasco Limited.

C. Joint Liability of the RJR Group Defendants

111. During all or part of the period in which the tobacco related wrongs described herein were committed, the members of the RJR Group have included the following companies (the "RJR Group Members"):

- (a) the Defendant R.J. Reynolds Tobacco Company;
- (b) the Defendant R. J. Reynolds Tobacco International, Inc;
- (c) the Defendant JTI-Macdonald Corp.; and
- (d) Macdonald Tobacco Inc.

112. After about 1973, some or all of the RJR Group Members conspired or had a common design to prevent, by unlawful means, consumers in British Columbia and other jurisdictions acquiring knowledge of the harmful nature and addictive properties of cigarettes, as described in paragraphs 39 - 43 herein, in circumstances where the RJR Group Members knew or ought to have known that injury to consumers would result from acts done in furtherance of the conspiracy or common design.

113. In furtherance of the conspiracy or common design described above, the Defendant JTI-Macdonald Corp., its predecessor company Macdonald Tobacco Inc., and the Defendant R.J. Reynolds Tobacco Company, or any of them, breached their duties to consumers in the manner described in Part III herein.

114. The aforementioned conspiracy or common design was entered into or continued at or through committees, conferences and meetings established, organized and convened by the

Defendants R.J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc., or either of them, and attended by senior personnel of the RJR Group Members, including those of the Defendant JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., and through written and oral directives and communications amongst the RJR Group Members.

115. The meetings utilized by the Defendants R.J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc. or either of them, to direct or co-ordinate the RJR Group's common policies on smoking and health included the Winston-Salem Smoking Issues Coordinator Meetings.

116. The conferences utilized by the Defendants R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc., or either of them, to direct or co-ordinate the RJR Group's common policies on smoking and health include the "Hound Ears" and Sawgrass conferences.

117. The Defendants R.J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc., or either of them, further directed or co-ordinated the RJR Group's position on smoking and health by means of a system of reporting whereby each global "Area" had a "smoking issue designee" who was supervised by the Defendant R.J. Reynolds International Inc. and who reported to the Manager of Science Information in the R.J. Reynolds Tobacco Company. In the case of Area II (Canada), this "designee" was, from 1974, a senior executive of Macdonald Tobacco Inc., and later of the Defendant JTI-Macdonald Corp.

118. The Defendants R.J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc., or either of them, further directed or co-ordinated the RJR Group's common policies on smoking and health by preparing and distributing to the members of the RJR Group, including the Defendant JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., written directives and communications including an "Issues Guide". These directives and communications set out the RJR Group's position on smoking and health issues to ensure that the personnel of the RJR Group companies, including the Defendant JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc., understood and disseminated the RJR Group's position.

119. The Defendants R.J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc., or either of them, further directed or co-ordinated the smoking and health policies of the Defendant JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc. by directing or advising how they should vote in committees of the Canadian Manufacturers and at meetings of the Defendant CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian Manufacturers and by the Defendant CTMC.

120. Further particulars of the manner in which the conspiracy or common design was entered into or continued and of the breaches of duty committed by the Defendant JTI-Macdonald Corp., its predecessor company Macdonald Tobacco Inc., and the Defendant R.J. Reynolds Tobacco Company in furtherance of the conspiracy or common design are peculiarly within the knowledge of the RJR Group Members.

121. By reason of the foregoing, some or all of the RJR Group Members conspired with respect to the breaches of duty committed by the Defendant JTI-Macdonald Corp., its predecessor company Macdonald Tobacco Inc., and the Defendant R.J. Reynolds Tobacco Company, referred to in Part III herein.

122. In the alternative, by reason of the foregoing, some or all of the RJR Group Members acted in concert with respect to the breaches of duty committed by the Defendant JTI-Macdonald Corp., its predecessor company Macdonald Tobacco Inc., and the Defendant R.J. Reynolds Tobacco Company, referred to in Part III herein.

123. In the further alternative, if the RJR Group Members did not agree or intend that unlawful means be used in pursuing their common design, referred to in paragraph 112, they knew or ought to have known that one or more of them might commit breaches of duty in furtherance of their common design. As a consequence, the RJR Group Members acted in concert with respect to the breaches of duty committed by the Defendant JTI-Macdonald Corp., its predecessor company Macdonald Tobacco Inc., and the Defendant R.J. Reynolds Tobacco

Company, referred to in Part III herein.

124. In the further alternative, in breaching the duties referred to in Part III herein, the Defendant JTI-Macdonald Corp. and its predecessor company, Macdonald Tobacco Inc. were acting as agents for the Defendants R.J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc. or either of them.

125. In the further alternative, the Defendants R.J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc. directed the activities of the Defendant JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc. to such an extent that the breaches of duty by the Defendant JTI-Macdonald Corp. and its predecessor company Macdonald Tobacco Inc. were also breaches committed by the Defendants R.J. Reynolds Tobacco Company and R. J. Reynolds Tobacco International, Inc., or either of them.

126. By reason of the allegations made in paragraphs 111 to 125 herein, the RJR Group Members have, under section 4 of the *Act*, jointly breached the duties particularized in Part III herein and are jointly and severally liable for the cost of health care benefits attributed to each of them.

127. In any event, by reason of the allegations made in paragraphs 111 to 125 herein, the RJR Group Members are, at common law or in equity, jointly and severally liable for the cost of health care benefits attributed to each of them.

D. Joint Liability of the Philip Morris Group Defendants

128. During all or part of the period in which the tobacco related wrongs described herein were committed, the members of the Philip Morris Group have included the following companies (the "Philip Morris Group Members"):

- (a) the Defendant Philip Morris USA Inc.;
- (b) the Defendant Philip Morris International Inc.;

- (c) the Defendant Rothmans, Benson & Hedges Inc.; and
- (d) Benson & Hedges (Canada) Inc.

129. After about 1954, some or all of the Philip Morris Group Members conspired or had a common design to prevent, by unlawful means, consumers in British Columbia and other jurisdictions acquiring knowledge of the harmful nature and addictive properties of cigarettes, as described in paragraphs 39 - 43 herein, in circumstances where the Philip Morris Group Members knew or ought to have known that injury to consumers would result from acts done in furtherance of the conspiracy or common design.

130. In furtherance of the conspiracy or common design described above, the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Benson & Hedges (Canada) Ltd., and the Defendant Philip Morris USA Inc., or any of them, breached their duties to consumers in the manner described in Part III herein.

131. The aforementioned conspiracy or common design was entered into or continued at or through committees, conferences and meetings established, organized and convened by the Defendants Philip Morris USA Inc. and Philip Morris International Inc., or either of them, and attended by senior personnel of the Philip Morris Group companies, including those of the Defendant Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., and through written and oral directives and communications amongst the Philip Morris Group Members.

132. The committees utilized by the Defendants Philip Morris USA Inc., and Philip Morris International, Inc., or either of them, to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Committee on Smoking Issues and Management and the Corporate Products Committee.

133. The conferences utilized by the Defendants Philip Morris USA Inc. and Philip Morris International Inc., or either of them, to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Conference on Smoking and Health and the

Corporate Affairs World Conference.

134. The Defendants Philip Morris USA Inc. and Philip Morris International Inc., or either of them, further directed or co-ordinated the Philip Morris Group's common policies on smoking and health by means of their respective Corporate Affairs and Public Affairs Departments which directed or advised various departments of the other members of the Philip Morris Group, including the Defendant Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., concerning the Philip Morris Group position on smoking and health issues.

135. The Defendants Philip Morris USA Inc. and Philip Morris International Inc., or either of them, further directed or co-ordinated the common policies of the Philip Morris Group on smoking and health by preparing and distributing to the members of the Philip Morris Group, including the Defendant Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., written directives and communications including "Smoking and Health Quick Reference Guides" and "Issues Alert[s]". These directives and communications set out the Philip Morris Group's position on smoking and health issues to ensure that the personnel of the Philip Morris Group companies, including the Defendant Rothmans, Benson & Hedges Inc., and its amalgamating company Benson & Hedges (Canada) Ltd., understood and disseminated the Philip Morris Group's position.

136. The Defendants Philip Morris USA Inc. and Philip Morris International Inc., or either of them, further directed or co-ordinated the smoking and health policies of the Defendant Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., or either of them, by directing or advising how they should vote in committees of the Canadian Manufacturers and at meetings of the Defendant CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian Manufacturers and by the Defendant CTMC.

137. Further particulars of the manner in which the conspiracy or common design was entered into or continued and of the breaches of duty committed by the Defendant Rothmans, Benson &

Hedges Inc., its amalgamating company Benson & Hedges (Canada) Inc., and by the Defendant Philip Morris USA Inc. in furtherance of the conspiracy or common design are peculiarly within the knowledge of the Philip Morris Group Members.

138. By reason of the foregoing, some or all of the Philip Morris Group Members conspired with respect to the breaches of duty committed by the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Benson & Hedges (Canada) Inc., and by the Defendant Philip Morris USA Inc. referred to in Part III herein.

139. In the alternative, by reason of the foregoing, some or all of the Philip Morris Group Members acted in concert with respect to the breaches of duty committed by the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Benson & Hedges (Canada) Inc., and by the Defendant Philip Morris USA Inc., referred to in Part III herein.

140. In the further alternative, if the Philip Morris Group Members did not agree or intend that unlawful means be used in pursuing their common design, as referred to in paragraph 129, they knew or ought to have known that one or more of them might commit breaches of duty in furtherance of their common design. As a consequence, the Philip Morris Group Members acted in concert with respect to the breaches of duty committed by the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Benson & Hedges (Canada) Inc., and by the Defendant Philip Morris USA Inc., referred to in Part III herein.

141. In the further alternative, in breaching the duties referred to in Part III herein, the Defendant Rothmans, Benson & Hedges and its amalgamating company Benson & Hedges (Canada) Inc., or either of them, were acting as agents for the Defendants Philip Morris USA Inc. and Philip Morris International Inc., or either of them.

142. In the further alternative, the Defendants Philip Morris USA Inc. and Philip Morris International Inc., or either of them, directed the activities of the Defendant Rothmans, Benson & Hedges and its amalgamating company Benson & Hedges (Canada) Inc., or either of them, to such an extent that the breaches of duty committed by the Defendant Rothmans, Benson & Hedges and its amalgamating company Benson & Hedges (Canada) Inc., or either of them, were

also breaches committed by the Defendants Philip Morris USA Inc. and Philip Morris International Inc., or either of them.

143. By reason of the allegations made in paragraphs 128 to 142 herein, the Philip Morris Group Members have, under section 4 of the *Act*, jointly breached the duties particularized in Part III, and the Defendants Rothmans, Benson & Hedges, Inc., Philip Morris USA Inc. and Philip Morris International Inc. are jointly and severally liable for the cost of health care benefits attributed to the Philip Morris Group Members.

144. In any event, by reason of the allegations made in paragraphs 128 to 142 herein, the Defendants Rothmans, Benson & Hedges, Inc., Philip Morris USA Inc., and Philip Morris International Inc. are, at common law or in equity, jointly and severally liable for the cost of health care benefits attributed to Philip Morris Group Members.

E. Joint Liability of the Rothmans Group Defendants

145. During all or part of the period in which the tobacco related wrongs described herein were committed, the members of the Rothmans Group have included the following companies (the "Rothmans Group Members"):

- (a) the Defendant Rothmans, Benson & Hedges Inc.;
- (b) the Defendant Rothmans Inc.;
- (c) Rothmans of Pall Mall Limited;
- (d) the Defendant Carreras Rothmans Limited;
- (e) the Defendant Ryesekks p.l.c.;
- (f) the Defendant Rothmans International Research Division.

146. After about 1956, some or all of the Rothmans Group Members conspired or had a common design to prevent, by unlawful means, consumers in British Columbia and other jurisdictions acquiring knowledge of the harmful nature and addictive properties of cigarettes, as described in paragraphs 39 - 43 herein, in circumstances where the Rothmans Group Members

knew or ought to have known that injury to consumers would result from acts in furtherance of the conspiracy or common design.

147. In furtherance of the conspiracy or common design described above, the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, the Defendant Rothmans Inc. and the Defendant Ryesekks p.l.c., or any of them, breached their duties to consumers in the manner described in Part III herein.

148. The aforementioned conspiracy or common design was entered into or continued at or through committees, conferences and meetings established, organized and convened by the Defendants Ryesekks p.l.c., Carreras Rothmans Limited, and Rothmans International Research Division, or any of them, and attended by senior personnel of the Rothmans Group Members, including those of the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc., or any of them, and through written and oral directives and communications amongst the Rothmans Group Members.

149. The Defendants Ryesekks p.l.c., Carreras Rothmans Limited, and Rothmans International Research Division, or any of them, directed or co-ordinated the Rothmans Group's common policies on smoking and health by preparing and distributing statements which set out the Rothmans Group's position on smoking and health issues, including a series of announcements issued by the Rothmans International Research Division and published in Canada in or about 1958 which claimed, among other things, that smoking in moderation was safe, and that Canadian-made Rothmans cigarettes were safer than those of other brands because they contained less tar and had cooler smoke.

150. The Defendants Ryesekks p.l.c., Carreras Rothmans Limited, and Rothmans International Research Division, or any of them, further directed or co-ordinated the smoking and health policies of the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc., or any of them, by directing or advising how they should vote in committees of the Canadian Manufacturers and at meetings of the CTMC on issues relating to smoking and health, including the approval and funding of

research by the Canadian Manufacturers and by the Defendant CTMC.

151. Further particulars of the manner in which the conspiracy or common design was entered into or continued and of the breaches of duty committed by the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc. in furtherance of the conspiracy or common design are peculiarly within the knowledge of the Rothmans Group Members.

152. By reason of the foregoing, some or all of the Rothmans Group Members conspired with respect to the breaches of duty committed by the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc., referred to Part III herein.

153. In the alternative, by reason of the foregoing, some or all of the Rothmans Group Members acted in concert with respect to the breaches of duty committed by the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc., referred to Part III herein.

154. In the further alternative, if the Rothmans Group Members did not agree or intend that unlawful means be used in pursuing the common design referred to in paragraph 146, they knew or ought to have known that one or more of the Rothmans Group Members might commit breaches of duty in furtherance of the common design. As a consequence, the Rothmans Group Members acted in concert with respect to the breaches of duty committed by the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc., referred to Part III herein.

155. In the further alternative, in breaching the duties referred to in Part III herein, the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc., or any of them, were acting as agents for the Defendants Ryeseckks p.l.c., Carreras Rothmans Limited, and Rothmans International Research Division, or any of them.

156. In the further alternative, the Defendants Ryeseckks p.l.c., Carreras Rothmans Limited, and Rothmans International Research Division, or any of them, directed the activities of the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc., or any of them, to such an extent that the breaches of duty committed by the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc. were also breaches committed by the Defendants Ryeseckks p.l.c., Carreras Rothmans Limited, and Rothmans International Research Division, or any of them.

157. By reason of the allegations made in paragraphs 145 to 156 herein, the Rothmans Group Members have, under section 4 of the *Act*, jointly breached the duties particularized in Part III herein and are jointly and severally liable for the cost of health care benefits attributed to the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc.

158. In any event, by reason of the allegations made in paragraphs 145 to 156 herein, the Rothmans Group Members are, at common law or in equity, jointly and severally liable for the cost of health care benefits attributed to the Defendant Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and the Defendant Rothmans Inc.

V. CONCERTED ACTION OF THE TOBACCO INDUSTRY IN CANADA

159. At times material to this action, some or all of the Canadian Manufacturers conspired or had a common design, to prevent, by unlawful means, consumers in British Columbia and other jurisdictions acquiring knowledge of the harmful nature and addictive properties of cigarettes, as described in paragraphs 39 - 43 herein, in circumstances where they knew or ought to have known that injury to consumers would result from acts done in furtherance of the conspiracy or common design.

160. In furtherance of the conspiracy or common design described above, the Canadian Manufacturers, or one or more of them, breached their duties to consumers in the manner described in Part III herein.

161. The aforementioned conspiracy or common design was entered into or continued at or through committees, conferences and meetings established, organized and convened by some or all of the Canadian Manufacturers and attended by their senior personnel and through written and oral directives and communications amongst some or all of them.

162. The aforementioned conspiracy or common design was continued when:

- (a) in or about 1962, the Canadian Manufacturers each signed an agreement not to compete with each other by making health claims with respect to their cigarettes so as to avoid acknowledging the risks of smoking; and
- (b) in or about 1963, the Canadian Manufacturers formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, and incorporated as the Defendant CTMC in 1982) in order to maintain a united front on smoking and health issues (the Ad Hoc Committee on Smoking and Health, the pre-incorporation Canadian Tobacco Manufacturers' Council and the Defendant CTMC are hereinafter collectively referred to as "the CTMC").

163. Upon its formation and at all material times thereafter, the CTMC provided a forum for the continuance of the aforementioned conspiracy or common design. The Defendant CTMC, upon its incorporation, agreed to and adopted the aforementioned common design and thereafter directly participated in the aforementioned conspiracy.

164. Since about 1963, the CTMC has lobbied governments and regulatory agencies throughout Canada with respect to tobacco industry matters, as well as representing to the Canadian public the tobacco industry's position with respect to the health risks and concerns related to smoking.

165. The CTMC has also co-ordinated, with foreign manufacturers and international tobacco industry associations, the Canadian cigarette industry's positions on smoking and health issues with those of the multinational tobacco industry, including the Groups described in Part IV.

166. In furtherance of the conspiracy or common design described in paragraph 159, the Canadian Manufacturers not only breached their duties to consumers in the manner alleged in Part III herein but, in addition, breached the aforementioned duties by causing the CTMC to:

- (a) disseminate false and misleading information regarding the risks of smoking including making submissions to governments;
- (b) make no statement or admission that smoking caused disease;
- (c) suppress or conceal research regarding the risks of smoking;
- (d) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack based upon health risks; and
- (e) lobby governments in order to delay and minimize government initiatives with respect to smoking and health.

167. Further particulars of the manner in which the conspiracy or common design was entered into or continued and of the breaches of duty committed by the Canadian Manufacturers and

each of them, in furtherance of the conspiracy or common design are peculiarly within the knowledge of the Defendants.

168. By reason of the foregoing, at various times some or all of the Canadian Manufacturers and the Defendant CTMC conspired with respect to the breaches of duty referred to in paragraph 166 and Part III herein.

169. In the alternative, by reason of the foregoing, at various times, some or all of the Canadian Manufacturers and the Defendant CTMC acted in concert with respect to the breaches of duty referred to in paragraph 166 and Part III herein.

170. In the further alternative, if the Canadian Manufacturers and the Defendant CTMC did not agree or intend that unlawful means be used in pursuing the common design referred to in paragraph 159, they knew or ought to have known that one or more of them might commit breaches of duty in furtherance of the common design. As a consequence, the Canadian Manufacturers and the Defendant CTMC acted in concert with respect to the breaches of duty referred to in paragraph 166 and Part III herein.

171. At all times material to this action, the Defendant CTMC was acting as the agent of the Canadian Manufacturers.

172. In the alternative, the Canadian Manufacturers directed and co-ordinated the activities of the Defendant CTMC to such an extent that the breaches of duty referred to in paragraph 166 were breaches committed by the Canadian Manufacturers.

173. The acts of each Canadian Manufacturer described in this Part were acts done in furtherance of, and were means of advancing, the conspiracy or common design of the members of its respective Group as described in Part IV herein.

174. The acts of the Canadian Manufacturers and the Defendant CTMC described in this Part were also done in furtherance of, and were means of advancing, the conspiracy or common

design directed and co-ordinated by the Lead Companies, as described in Part VI herein.

175. By reason of the allegations made in this Part, the Canadian Manufacturers, the Defendant CTMC and the Lead Companies have, under section 4 of the *Act*, jointly breached the aforementioned duties and are jointly and severally liable for the cost of health care benefits of each of them.

176. In any event, by reason of the allegations made in this Part, the Canadian Manufacturers, the Defendant CTMC and the Lead Companies are, at common law or in equity, jointly and severally liable for the cost of health care benefits attributed to each of them.

VI. CONCERTED ACTION OF THE TOBACCO INDUSTRY INTERNATIONALLY

177. At various times after about 1953, in response to mounting publicity and public concern about the link between smoking and disease, some or all of the Lead Companies conspired, or had a common design, to prevent by unlawful means consumers in British Columbia and other jurisdictions acquiring knowledge of the harmful nature and addictive properties of cigarettes described in paragraphs 39 - 43 herein, in circumstances where they knew or ought to have known that injury to consumers would result from acts done in furtherance of the conspiracy or common design.

178. The aforementioned conspiracy or common design was entered into in 1953 and early 1954 through a series of meetings and communications among the Defendant Philip Morris Incorporated, the Defendant R. J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for the Defendant British American Tobacco (Investments) Limited) and American Tobacco Company. At these meetings and through these communications, these companies agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking;
- (b) make no statement or admission that smoking caused disease;

- (c) suppress or conceal research regarding the risks of smoking;
- (d) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring the public that smoking was not hazardous; and
- (e) ensure that the members of their respective Groups would implement the policies described in (a) through (d) above.

179. The aforementioned conspiracy or common design was continued at or through committees, conferences and meetings established, organized and convened by some or all of the Lead Companies and attended by senior personnel from some or all of the Defendants and through written and oral directives and communications amongst some or all of the Defendants, some particulars of which follow.

180. Between late 1953 and the early 1960s, the Lead Companies formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964 (the "CTR")); the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"); and the Tobacco Research Council ("TRC").

181. Some or all of the Lead Companies publicly represented that they, or members of their respective Groups, along with the TIRC, the CTR, CORESTA, the TRC and similar organizations, would perform objective research and gather data concerning the link between smoking and disease and would publicize the results of this research throughout the world.

182. In fact, the Lead Companies agreed that they, or members of their respective Groups, along with the TIRC, the CTR, CORESTA, the TRC, and similar organizations, would conduct research and publicize information to counter, undermine or obscure information that showed the link between smoking and disease, with a view to creating a public belief, in all markets including British Columbia, that there was a medical or scientific controversy as to whether smoking is harmful to human health and whether nicotine is addictive, when in fact no such controversy existed.

183. In 1963 and 1964 the Lead Companies of the BAT and Rothmans Groups, along with tobacco companies and state monopolies from Europe, including members of the RJR and Philip Morris Groups, agreed to co-ordinate their research into the link between smoking and disease with research conducted by the TIRC in the United States, particularly with a view to ensuring that no research be approved or conducted by the TIRC, the CTR, CORESTA and the TRC which might indicate that cigarettes were a flawed and dangerous product.

184. In April and September 1963, Lead Companies of the BAT and RJR Groups agreed with, *inter alia*, members of the 'Council of Action' in Hamburg, Germany and with Lead Companies of the Philip Morris Group in New York, to develop, at that time, a public relations campaign to counter the Royal College of Physicians report in England, the forthcoming Surgeon General's Report in the United States and a report of the Canadian Medical Association in Canada, and to reassure smokers that their health would not be endangered by smoking cigarettes.

185. In September 1963 in New York, the Lead Companies of the Philip Morris, RJR and BAT Groups, along with other US tobacco companies, agreed that they, and members of their respective Groups, would not issue warnings about the link between smoking and disease until and unless they were forced to do so by government action.

186. From either the outset of the conspiracy or common design described in this Part or, at the latest, from the time each Canadian Manufacturer became a member of one of the Lead Companies' Groups, each Canadian Manufacturer agreed to and adopted the common design and committed the wrongful acts described in Part III in furtherance of the aforementioned conspiracy or common design.

187. By the mid-1970s some or all of the Lead Companies decided that an increased international response was required to reassure smokers and potential smokers and to protect the interests of the tobacco industry around the world. They feared that admissions relating to the link between smoking and disease made by individual companies or national manufacturers' associations ("NMAs") could lead to a 'domino effect' to the detriment of the industry world-

wide.

188. As a result, in June, 1977 some or all of the Lead Companies, and other tobacco companies with international interests, met in England and continued the aforementioned conspiracy or common design by establishing the International Committee on Smoking Issues ("ICOSI").

189. Through ICOSI, the Lead Companies agreed to resist attempts by governments to provide adequate warnings with respect to the link between smoking and disease, and reiterated their position on smoking and health issues, continuing their agreement to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking;
- (b) make no statement or admission that smoking caused disease;
- (c) suppress or conceal research regarding the risks of smoking;
- (d) not compete with each other by making explicit health claims with respect to their cigarettes, and thereby avoid highlighting the risks of smoking; and
- (e) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring consumers in British Columbia and other jurisdictions that smoking was not hazardous.

190. In and after 1977, the members of ICOSI, including each of the Lead Companies, agreed orally and in writing, to ensure that:

- (a) the members of their respective Groups, including those in Canada, would act in accordance with the ICOSI position on smoking and health, including its position on warnings with respect to the link between smoking and disease;
- (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by NMAs, including, in Canada, the CTMC, to ensure compliance in the various tobacco markets world wide;

- (c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves; and
- (d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.

191. In 1980, ICOSI was renamed the International Tobacco Information Centre / Centre International d'Information du Tabac - INFOTAB ("INFOTAB"). In or before 1992 INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are hereinafter referred to collectively as "ICOSI").

192. At all times, the policies of ICOSI were mirrored in the policies of the NMAs including the CTMC, and were at all times presented as the policies and positions of the NMAs and their member companies so as to conceal from the public and from governments the existence of the aforementioned conspiracy or common design.

193. In the event that a manufacturer within one of the Groups took a position on smoking and health issues contrary to that of ICOSI, the Lead Companies took steps to ensure compliance with the position of ICOSI.

194. The wrongful acts committed by the members of each Group and the CTMC which are described in Part III and Part V herein were not only done in furtherance of the conspiracies or common designs described in Parts IV and Part V, but were also done in furtherance of the conspiracy or common design described in this Part.

195. Further particulars of the manner by which the conspiracy or common design was entered into or continued and of the breaches of duty committed in furtherance of the conspiracy or common design are peculiarly within the knowledge of the aforementioned Defendants.

196. By reason of the foregoing, at various times, some or all of the Defendants conspired

with respect to the breaches of duty referred to in Parts III and V herein.

197. In the alternative, by reason of the foregoing, at various times, some or all of the Defendants acted in concert with respect to the breaches of duty referred to in Parts III and V herein.

198. In the further alternative, if the Lead Companies did not agree or intend that unlawful means be used in pursuing the common design referred to in this Part, they knew or ought to have known that one or more of the Defendants might commit breaches of duty in furtherance of the common design.

199. By reason of the allegations made in this Part, the Defendants have, under section 4 of the *Act*, jointly breached the aforementioned duties and are jointly and severally liable for the cost of health care benefits of each of them.

200. In any event, by reason of the allegations made in this Part, the Defendants are, at common law or in equity, jointly and severally liable for the cost of health care benefits attributed to each of them.

VII. RELIEF

The Plaintiff claims against the Defendants, and each of them, as follows:

- (a) the present value of the total expenditure by the government for health care benefits provided for insured persons resulting from tobacco related disease or the risk of tobacco related disease;
- (b) the present value of the estimated total expenditure by the government for health care benefits that could reasonably be expected will be provided for those insured persons resulting from tobacco related disease or the risk of tobacco related disease;
- (c) Court Order Interest;
- (d) costs or, in the alternative, special or increased costs; and
- (e) such other relief as to this Honourable Court seems just.


Place of trial: Vancouver, British Columbia

Dated:

February 17/11

Bull, Housser & Tupper

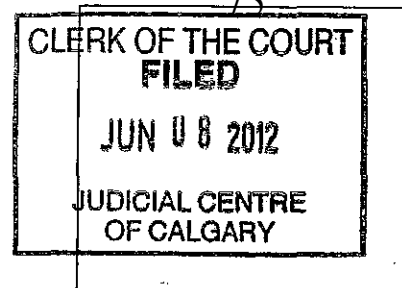
per:


Solicitors for the Plaintiff

This FURTHER AMENDED STATEMENT OF CLAIM is prepared and filed by Bull, Housser & Tupper, LLP Solicitors for the Plaintiff, whose office address and address for delivery is 3000 - 1055 West Georgia Street, Vancouver, British Columbia, V6E 3R3 Attention: Daniel A. Webster, Q.C. Telephone: (604) 641-4879 Facsimile: (604) 641-4949

Tab B

Clerk's stamp



FORM 10
[RULE 3.25]

COURT FILE NUMBER

1201- 07314

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE

CALGARY

PLAINTIFF(S)

HER MAJESTY IN RIGHT OF ALBERTA

DEFENDANT(S)

ALTRIA GROUP, INC.; B.A.T. INDUSTRIES P.L.C.;
BRITISH AMERICAN TOBACCO (INVESTMENTS)
LIMITED; BRITISH AMERICAN TOBACCO P.L.C.;
CANADIAN TOBACCO MANUFACTURERS COUNCIL;
CARRERAS ROTHMANS LIMITED; IMPERIAL
TOBACCO CANADA LIMITED; JTI-MACDONALD
CORP.; PHILIP MORRIS INTERNATIONAL, INC.;
PHILIP MORRIS USA, INC.; R.J. REYNOLDS
TOBACCO COMPANY; R.J. REYNOLDS TOBACCO
INTERNATIONAL, INC.; ROTHMANS BENSON &
HEDGES INC.; and ROTHMANS INC.

DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT

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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.
Go to the end of this document to see what you can
do and when you must do it.

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Statement of facts relied on:**INTRODUCTION AND SUMMARY OF CLAIM**

1. Her Majesty in right of Alberta (**Crown**) brings this claim to recover its cost of health services caused or contributed to by the Defendants' breaches of common law, equitable and statutory duties, and obligations owed to persons in Alberta who have been, or might become, exposed to tobacco products (**Breaches of Duty**). The claim is based on the statutory cause of action created in s. 42 of the *Crown's Right of Recovery Act (Act)*, it is not a subrogated claim. Furthermore, the Crown claims joint and several liability against the Defendants on the basis of s. 44 of the Act and the Defendants' conspiratorial conduct.
2. In this claim, *insured persons* as defined in the Act, are referred to as **Albertans**. The terms **Tobacco Products, Tobacco-Related Diseases, Health Services and Exposure** (and their derivatives) are used in this claim as defined in the Act.
3. While committing the Breaches of Duty, the Defendants, and their predecessors, parents, affiliates, and related companies, have, at various times, manufactured or promoted cigarettes, and loose tobacco intended for incorporation into cigarettes, and other Tobacco Products. During the same period, Tobacco Products were offered for sale in Alberta.
4. The Breaches of Duty include:
 - (a) deliberately designing Tobacco Products to be highly addictive,
 - (b) deceiving Albertans by making misrepresentations minimizing the addictiveness of Tobacco Products,
 - (c) failing and refusing to warn Albertans about the addictiveness of Tobacco Products,
 - (d) deceiving Albertans by making misrepresentations minimizing the harm associated with Exposure to Tobacco Products, including through second hand smoke,
 - (e) failing and refusing to research, reveal and remedy the hazards connected with Tobacco Products, and failing to warn Albertans about the harm associated with Exposure to them, including with respect to second hand smoke,
 - (f) deceiving Albertans by making misrepresentations that light, low tar, mild and filtered Tobacco Products are less harmful and pose less risk of Tobacco-Related Diseases and addiction caused or contributed to by Exposure to Tobacco Products, than Tobacco Products not described with those terms,

- (g) first falsely denying the health risks of Exposure to Tobacco Products, then concocting and perpetuating a fallacious controversy as to whether there was a real health risk, and ultimately, deceptively minimizing the negative health effects of Exposure to Tobacco Products, including through second hand smoke, and
 - (h) targeting youth and adolescents with these misrepresentations and deceptions knowing their particular vulnerabilities.
5. Many Albertans have been and will be exposed to Tobacco Products. Albertans exposed to Tobacco Products would not have been exposed to them were it not for these Breaches of Duty.
 6. Exposure to Tobacco Products causes and contributes to a number of Tobacco-Related Diseases and the risk of Tobacco-Related Diseases in human beings.
 7. The Crown has incurred billions of dollars of costs in providing Health Services to treat and care for Albertans who suffer Tobacco-Related Diseases and who are at risk for Tobacco-Related Diseases. The Crown will incur billions of dollars of costs in providing Health Services to treat and care for Albertans who will, in the future, suffer Tobacco-Related Diseases and who will be risk for Tobacco-Related Diseases.
 8. The Defendants have jointly committed the Breaches of Duty and are jointly and severally liable for the Crown's cost of Health Services as provided in the Act. In particular, the Defendants would, at common law, equity or by statute, be held to:
 - (a) have conspired or acted in concert with respect to the Breaches of Duty,
 - (b) be in relationships of principal and agent in respect of the Breaches of Duty, or
 - (c) be jointly or vicariously liable for the Breaches of Duty if damages would have been awarded to a person who suffered as a consequence of them.

THE DEFENDANTS

9. The Defendants are all **Manufacturers** within the meaning of the Act.
10. The Defendant, Altria Group, Inc., is a corporation registered in the state of Virginia in the United States of America, with a registered office at 6601 West Broad Street in Richmond, Virginia.
11. The Defendant, B.A.T. Industries p.l.c., is a company incorporated pursuant to the laws of the United Kingdom, with a registered office located at Globe House, 4 Temple Place in London, England.

12. The Defendant, British American Tobacco (Investments) Limited, is a company incorporated pursuant to the laws of the United Kingdom, with a registered office located at Globe House, 1 Water Street in London, England.
13. The Defendant, British American Tobacco p.l.c., is a company incorporated pursuant to the laws of the United Kingdom, with a registered office located at Globe House, 4 Temple Place in London, England.
14. The Defendant, Canadian Tobacco Manufacturers Council (CTMC), is a company incorporated pursuant to the laws of Canada, with an office at 1808 Sherbrooke St. West, in Montreal and 6 Rue D'Angers, in Gatineau, Quebec.
15. The Defendant, Carreras Rothmans Limited., is a company incorporated pursuant to the laws of the United Kingdom, with a registered office located at Globe House, 1 Water Street in London, England.
16. The Defendant, Imperial Tobacco Canada Limited, is a company federally incorporated pursuant to the laws of Canada. It has a head office located at 3711 Saint-Antoine Street West in Montreal, Quebec. Imperial Tobacco Canada Limited is extra-provincially registered in Alberta and carries on business in Alberta.
17. The Defendant, JTI-MacDonald Corp., is a company registered in Nova Scotia, with a head office located at 1 Robert Speck Parkway, Suite 1601, in Mississauga, Ontario. JTI-MacDonald Corp. is extra-provincially registered in Alberta and carries on business in Alberta.
18. The Defendant, Philip Morris International, Inc., is a company incorporated pursuant to the laws of Virginia, in the United States of America. It has a head office located at 120 Park Avenue in New York, New York.
19. The Defendant, Philip Morris USA, Inc., is a company incorporated pursuant to the laws of Virginia in the United States of America, with a registered office at 6601 West Broad Street in Richmond, Virginia.
20. The Defendant, R.J. Reynolds Tobacco Company, is a company incorporated pursuant to the laws of North Carolina in the United States of America, with a head office located at 401 North Main Street in Winston-Salem, North Carolina.
21. The Defendant, R.J. Reynolds Tobacco International, Inc., is a company incorporated pursuant to the laws of Delaware in the United States of America, with a registered office in Dover, Delaware. Its principle place of business is Winston-Salem, North Carolina.
22. The Defendant, Rothmans, Benson & Hedges Inc., is a federally incorporated company pursuant to the laws of Canada. It has a head office located at 1500 Don Mills Road in

Toronto, Ontario. Rothmans, Benson & Hedges Inc. is extra-provincially registered in Alberta and carries on business in Alberta.

23. The Defendant, Rothmans Inc., is a company incorporated pursuant to the laws of Canada, with a registered office located at 1500 Don Mills Road in North York, Ontario.
24. Where this claim is served on Defendants outside Alberta, it will be served on the basis that a real and substantial connection exists between Alberta and the facts on which it is based. That connection arises from the following:
 - (a) the claim is governed by the law of Alberta,
 - (b) the claim arises from breaches of duty owed to people in Alberta,
 - (c) some of the Defendants carry on business in Alberta,
 - (d) the *situs* of the cause of action is Alberta,
 - (e) the damages claimed occurred , and will occur, in Alberta, and
 - (f) the Defendants are all necessary or proper parties to the action.

25. The Defendant, Imperial Tobacco Canada Limited, is Canada's biggest tobacco company. It is a wholly owed subsidiary of the Defendant, British American Tobacco p.l.c.
26. Imperial Tobacco Company of Canada Limited (incorporated in 1912) changed its name to Imasco Limited in 1970. At about the same time a portion of its tobacco business was moved to its wholly owned subsidiary Imperial Tobacco Limited. In 2000 a majority of the shares of Imasco Limited were sold to British American Tobacco (Canada) Limited, which is wholly owned by British American Tobacco p.l.c., and which already held the remaining shares of Imasco Limited. Imasco Limited and British American Tobacco (Canada) Limited then amalgamated, along with Imperial Tobacco Limited, and the company was renamed Imperial Tobacco Canada Limited.
27. The Defendant, B.A.T. Industries p.l.c., was formerly known as B.A.T. Industries Limited and before that, Tobacco Securities Trust Limited.
28. The Defendant, British American Tobacco (Investments) Limited, was formerly known as British-American Tobacco Company Limited. It is also a wholly owned subsidiary of the Defendant, British American Tobacco p.l.c.
29. Brown & Williamson Holdings, Inc. (formerly Brown & Williamson Tobacco Corporation) is wholly owned by British American Tobacco p.l.c. In 2004, Brown & Williamson Tobacco Corporation's North American operations merged with Reynolds American, Inc.

30. The Defendant, Rothmans, Benson & Hedges Inc., is Canada's second largest tobacco company. It was created through the amalgamation, in 1986, of Benson & Hedges (Canada) Inc. (incorporated in 1934) and Rothmans of Pall Mall Limited (incorporated in 1960).
31. In 1985, Rothmans of Pall Mall Limited acquired a portion of the tobacco business of the Defendant, Rothmans Inc. Prior to that, Rothmans Inc. was known as Rothmans of Pall Mall Canada Limited (incorporated in 1956).
32. The Defendant, Rothmans, Benson & Hedges Inc., is owned directly or indirectly by the Defendant, Philip Morris International, Inc., which has a 40% stake, and by the Defendant, Rothmans Inc., which has a 60% stake.
33. The Defendant, Carreras Rothmans Limited., was a predecessor and amalgamating company to the Defendant, Rothmans, Benson & Hedges Inc.
34. The Defendant, R.J. Reynolds Tobacco Company, is a wholly owned subsidiary of publicly traded Reynolds American, Inc. 42% of Reynolds American, Inc. is owned by the Brown & Williamson Holdings, Inc., which is wholly owned by the Defendant, British American Tobacco p.l.c. Reynolds American, Inc. was also formerly known as R.J. Reynolds Tobacco Company.
35. The Defendant, R.J. Reynolds Tobacco International, Inc., is a wholly owned subsidiary of Reynolds American, Inc.
36. The Defendant, JTI-MacDonald Corp., is Canada's third largest tobacco company.
37. W.C. MacDonald Incorporated (incorporated in 1930) changed its name to MacDonald Tobacco Inc. in 1957. It then became a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1973. In 1978 it was sold to, and became part of, RJR-MacDonald Inc. which was a wholly owned subsidiary of RJR Nabisco Holdings Corp. When RJR-MacDonald Inc. was sold to Japan Tobacco Inc. in 1999, it was renamed JTI-MacDonald Corp.
38. The Defendant, Altria Group, Inc. was, until 2003, known as Philip Morris Companies, Inc., which was incorporated in 1985. The Defendant, Philip Morris USA, Inc. (formerly Philip Morris Incorporated), is a wholly owned subsidiary of the Defendant, Altria Group, Inc.
39. Until 2008, the Defendant, Philip Morris International, Inc., was wholly owned by the Defendant, Altria Group, Inc. It was spun off from the Defendant, Altria Group, in March 2008.
40. Most Tobacco Products currently sold, promoted and marketed in Alberta, are sold, promoted and marketed by, or on behalf of, the following Defendants:

- (a) Imperial Tobacco Canada Limited,
 - (b) Rothmans, Benson & Hedges Inc., and
 - (c) JTI-MacDonald Corp.
41. The Defendant, Imperial Tobacco Canada Limited, previously or currently manufactures and distributes the following brands of cigarettes in Alberta, among others: Cameo, du Maurier, Hudson, Matinee, Medallion, Pall Mall, Peter Jackson, Player's, Sweet Caporal and Vogue.
42. The Defendant, Rothmans, Benson & Hedges Inc., previously or currently manufactures and distributes the following brands of cigarettes in Alberta, among others: Accord, Belmont, Belvedere, Benson & Hedges, Craven "A", Dunhill, Mark Ten, Number 7, Rothmans, Silk Cut and Viscount.
43. The Defendant, JTI-MacDonald Corp., previously or currently manufactures and distributes the following brands of cigarettes in Alberta, among others: Export "A", MacDonald and Vantage.
44. All the Defendants, at various times, worked closely with affiliated and related companies in groups, although those relationships changed over time. Certain companies acted as lead companies for the various groups. The **Lead Companies** were organized as follows:

B.A.T. Companies	Group	Lead	British American Tobacco p.l.c. B.A.T. Industries p.l.c. (formerly B.A.T. Industries Limited and prior to that Tobacco Securities Trust Limited) British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited)
Rothmans Companies	Group	Lead	Carreras Rothmans Limited Rothmans Inc. Rothmans, Benson & Hedges Inc.
RJR Group Lead Companies			R.J. Reynolds Tobacco Company R.J. Reynolds Tobacco

	International, Inc.
Philip Morris Group Lead Companies	Altria Group (formerly Philip Morris Companies, Inc.) Philip Morris USA, Inc. (formerly Philip Morris Incorporated) Philip Morris International, Inc.

45. The companies in each **Group** have, at various times, included:

B.A.T. Group	British American Tobacco p.l.c. B.A.T. Industries p.l.c. (formerly B.A.T. Industries Limited and prior to that Tobacco Securities Trust Limited) British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited) Imperial Tobacco Limited and Imasco Limited (now Imperial Tobacco Canada Limited) Brown & Williamson Holdings, Inc. (formerly Brown & Williamson Tobacco corporation) American Tobacco Company
Rothmans Group	Carreras Rothmans Limited Rothmans Inc. Rothmans, Benson & Hedges Inc. Rothmans of Pall Mall Limited

RJR Group	R.J. Reynolds Tobacco Company R.J. Reynolds Tobacco International, Inc. JTI-MacDonald Corp. MacDonald Tobacco Inc.
Philip Morris Group	Altria Group (formerly Philip Morris Companies, Inc.) Philip Morris USA, Inc. (formerly Philip Morris Incorporated) Philip Morris International, Inc. Rothmans, Benson & Hedges Inc. Benson & Hedges (Canada) Inc.

46. Each Group member was an agent for the Lead Companies of that group, with respect to the Breaches of Duty and conspiracy described in this claim.
47. The Defendant, CTMC, was formed in 1969 out of a previously existing *ad hoc* committee and was later incorporated in 1970. The inaugural members of CTMC included Imperial Tobacco Canada Limited, MacDonald Tobacco Inc., Rothmans of Pall Mall Canada Limited, Benson & Hedges (Canada) Limited.
48. CTMC's current membership is made up of major Canadian cigarette manufacturers, including the Defendants, Imperial Tobacco Canada Limited, Rothmans, Benson & Hedges Inc. and JTI-MacDonald Corp.
49. CTMC is the lobbying and trade association of the Canadian tobacco industry and is engaged in:
 - (a) the advancement of the interests of tobacco manufacturers,
 - (b) the promotion of Tobacco Products, and
 - (c) activities causing, directly or indirectly, other people to engage in the promotion of Tobacco Products.
50. The Defendants, and their predecessors, parents, affiliates, and related companies, have in the past, or currently, including at the times of the Breaches of Duty:

- (a) caused, directly or indirectly, the production, assembly, or packaging of Tobacco Products, including through arrangements with contractors, subcontractors, licensees, franchisees or others,
- (b) derived at least 10% of their revenues from the manufacture or promotion of Tobacco Products by themselves, or by other persons,
- (c) engaged in, or cause directly or indirectly, other persons to engage in the promotion of Tobacco Products, or
- (d) sold, promoted or marketed, directly or indirectly, Tobacco Products in Alberta and are related to other Defendants who have done one of the things described above.

TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS

51. The Defendants', and their predecessors', parents', affiliates', and related companies', breaches of duty not to misrepresent or deceive, breaches of duty of care, breaches of duty to warn, and breaches of the *Competition* and *Fair Trading Acts*, all of which are described in the following paragraphs, constitute breaches of common law, and equitable, and statutory duties and obligations, owed to people in Alberta who have been Exposed, or might become Exposed, to Tobacco Products, and constitute **Tobacco-Related Wrongs** within the meaning of the Act.

Breaches of Duty not to Misrepresent or Deceive

52. The Defendants, and their predecessors, parents, affiliates, and related companies, owed a duty to Albertans, including those Exposed to Tobacco Products, not to make misrepresentations, or to deceive them. The Defendants, and their predecessors, parents, affiliates, and related companies, have made the following representations to the public, including Albertans Exposed to Tobacco Products in various ways including through second hand smoke:
- (a) Tobacco Products are not addictive,
 - (b) there is no, or limited, evidence that Tobacco Products are addictive,
 - (c) they did not design or formulate Tobacco Products to maximize their addictiveness,
 - (d) Exposure to Tobacco Products does not cause illness, disease or death,
 - (e) there is no, or limited, evidence that Exposure to Tobacco Products poses a risk of causing illness, disease or death,

- (f) Exposure to Tobacco Products poses only a minimal risk of causing illness, disease or death,
- (g) illness, disease and death commonly thought to be caused by Exposure to Tobacco Products are actually caused by environmental or genetic factors,
- (h) quitting smoking is easy and smoking Tobacco Products is only a matter of habit or custom,
- (i) light, low tar, mild and filtered Tobacco Products are less harmful and pose less risk of causing Tobacco-Related Diseases and addiction than Tobacco Products not described with those terms,
- (j) Exposure to Tobacco Products is consistent with good health, and
- (k) smoking cigarettes, and use of other Tobacco Products, is sophisticated, attractive, rebellious, and otherwise desirable,

knowing them to be false, with the intention that the public rely on them, and with the result that many Albertans were Exposed to Tobacco Products, and suffered Tobacco-Related Diseases as a consequence. The Defendants thereby breached their duty to Albertans.

53. Furthermore, the Defendants, and their predecessors, parents, affiliates, and related companies, hid facts inconsistent with the misrepresentations described above, suppressed research into these issues, and discouraged the expression of contrary views, in order to prevent the inaccuracy of their representations from becoming known by the public. The Defendants thereby further breached their duty to Albertans.

Breach of Duty of Care

54. Tobacco Products are dangerous because, even when used as intended, they:
- (a) are highly addictive,
 - (b) deliver harmful and addictive substances, like nicotine and other toxic chemicals found in tobacco, commonly referred to as *tar*, to the organs and tissues of those Exposed to them,
 - (c) cause Tobacco-Related Diseases,
 - (d) significantly increase the risk of Tobacco-Related Diseases,
 - (e) exacerbate other illnesses and diseases, and
 - (f) are deleterious to human health.

55. The Defendants, and their predecessors, parents, affiliates, and related companies, owed, and continue to owe, a duty of care to Albertans, including those Exposed to Tobacco Products in various ways, including through second hand smoke, and have breached that duty. Particulars of their breaches of duty of care include:
- (a) adding substances, and designing their products, to ease, intensify, and amplify the absorption of the nicotine in Tobacco Products by the organs and tissues of those who are Exposed to them,
 - (b) designing, manufacturing and promoting Tobacco Products with filters and with descriptions such as light, low tar, mild and filtered, all of which give the appearance of being less harmful and addictive than Tobacco Products not described with those terms, when such Tobacco Products are not safer than other Tobacco Products,
 - (c) designing, formulating, and manufacturing Tobacco Products to maximize their addictiveness,
 - (d) designing, formulating, and manufacturing Tobacco Products to maximize their inhalability, which increases and reinforces their addictiveness and makes them more dangerous,
 - (e) targeting youth and adolescents with the misrepresentations described in paragraph 52 knowing that:
 - (i) they are more susceptible to such misrepresentations than adults;
 - (ii) most youth and adolescents who smoke cigarettes and use other Tobacco Products become addicted to nicotine,
 - (iii) the onset of addiction in youth and adolescence leads to stronger and longer lasting addiction, which in turn leads to greater Tobacco-Related Disease and associated harm, and
 - (iv) people who do not begin smoking cigarettes in their teenage years tend never to take up smoking,
 - (v) cigarette and other Tobacco-Product advertising increases smoking and other Tobacco Product use among youth and adolescents to a greater extent than with adults.
 - (f) failing to research the health effects of their Tobacco Products until the publicity generated by public health researchers prompted such product research and ostensibly health-oriented product innovations,

- (g) combating and interfering with public health authorities' efforts and messages in order to limit the reduction in sales of Tobacco Products that might result from them,
 - (h) designing and carrying out public relations and advertising campaigns tailored to falsely minimize the health risk associated with Exposure to Tobacco Products, particularly with respect to those who are addicted, knowing such people are more susceptible to such a message because of their addiction,
 - (i) failing to fully and promptly share information they obtained regarding the addictiveness of Tobacco Products and the health effects associated with Exposure to them,
 - (j) failing to design and manufacture Tobacco Products in a way that would minimize their addictiveness and the other dangers associated with them, and
 - (k) generally failing to take all reasonable steps to reduce the risk of Tobacco-Related Diseases associated with Exposure to their Tobacco Products and to reduce the addictiveness of them.
56. Alternatively, the Defendants, and their predecessors, parents, affiliates, and related companies, were reckless and wilfully blind to the truth with respect to the misrepresentations described in paragraph 52 and took no, or only token, steps to verify the truth of the representations they were making. The Defendants thereby further breached their duty of care to Albertans.

Breach Of Duty To Warn

57. The Defendants, and their predecessors, parents, affiliates and related companies, know and have known (or should have known) since at least the early 1950s, that:
- (a) Tobacco Products are highly addictive,
 - (b) there is extensive, credible evidence that Tobacco Products are addictive,
 - (c) Exposure to Tobacco Products, including through second hand smoke, causes illness, disease or death,
 - (d) there is extensive, credible evidence that Exposure to Tobacco Products, including through second hand smoke, poses a risk of causing illness, disease or death,
 - (e) Exposure to Tobacco Products, including through second hand smoke, significantly increases the risk of illness, disease and death,

- (f) illness, disease and death commonly thought to be caused by Exposure to Tobacco Products is actually caused by Exposure to Tobacco Products, not by environmental or genetic factors,
 - (g) quitting smoking cigarettes is very difficult, and even more so for those who started smoking before adulthood,
 - (h) light, low tar, mild and filtered Tobacco Products are no less harmful and pose as much risk of Tobacco-Related Diseases and addiction as Tobacco Products not described with those terms, and
 - (i) Exposure to Tobacco Products is deleterious to health.
58. As purveyors of dangerous products, the Defendants, and their predecessors, parents, affiliates, and related companies, had a duty to warn the public, including Albertans Exposed to Tobacco Products, of these facts and failed to do so in any way prior to 1972, and in an inadequate and ineffective way since then.
59. Even to the extent the Defendants, and their predecessors, parents, affiliates, and related companies, incorporated package warnings after 1972, they undermined those warnings by continuing to make the misrepresentations described in this claim, designing the warnings to blend into the surrounding packaging and otherwise be less effective, and purporting to warn against doing the very things which those products were designed for, like inhaling. They thereby further breached their duty to warn.

Deceptive Marketing Practices - *Competition Act* (Canada)

60. The Defendants, and their predecessors, parents, affiliates, and related companies, have, for the purpose of promoting, directly or indirectly, the supply or use of their Tobacco Products, made representations and warranties to the public, including Albertans, that are false and misleading in a material respect, as described in paragraph 52, and have concealed knowledge such as that described in paragraph 57.
61. In doing so, the Defendants, and their predecessors, parents, affiliates and related companies, have made representations to the public with respect to the performance, efficacy, safety, and suitability for their intended purpose, of Tobacco Products as described in paragraph 52, that are not based on adequate and proper tests, and in some cases were based on deliberately flawed tests.
62. The Defendants, and their predecessors, parents, affiliates, and related companies, have, for the purpose of promoting, directly or indirectly, the supply or use of their Tobacco Products, made representations to the public that tests have been made as to the performance or efficacy of their Tobacco Products, without being able to establish that:

- (a) such representations were previously made or published by the person by whom the test was made, and
- (b) the representations accorded with the representation previously made, published or approved.

63. The Defendants, and their predecessors, parents, affiliates, and related companies, have breached their statutory duties, as imposed by the *Competition Act* as well as its predecessor, the *Combines Investigation Act*, by doing the things described here.

Unfair Trading Practices - *Fair Trading Act* (Alberta)

64. The Defendants', and their predecessors', parents', affiliates' and related companies', misrepresentations and failure to warn of the dangers of Tobacco Products described in this claim were calculated to, and did, exert undue pressure and influence on Albertans, particularly children and adolescents, to use Tobacco Products.

65. The Defendants, and their predecessors, parents, affiliates, and related companies, used language in the promotion of Tobacco Products that was calculated to obfuscate the dangers and addictiveness of Tobacco Products. As a result, some Albertans were unable to understand the character and nature of the risks and addictiveness associated with Tobacco Products and the harmful effects associated with Exposure to them.

66. The Defendants, and their predecessors, parents, affiliates, and related companies, exaggerated the uncertainty with respect to the dangers of Tobacco Products, implied they were not dangerous or addictive, and sowed doubt and ambiguity with respect to the nature and extent of the risks associated with Tobacco Products and their addictiveness, while concealing knowledge such as that described in paragraph 57.

67. The Defendants, and their predecessors, parents, affiliates, and related companies, engaged in a campaign calculated to interfere with and undermine the public health community's research into, and public pronouncements on, the addictiveness and health effects associated with Exposure to Tobacco Products.

68. The Defendants, and their predecessors, parents, affiliates, and related companies, promoted and supplied Tobacco Products that were used by Albertans knowing that the consumers of those products would be unable to receive any reasonable benefit from them.

69. The Defendants', and their predecessors', parents', affiliates', and related companies', misrepresentations, described in paragraph 52, did, or alternatively, might reasonably be expected to, deceive and mislead consumers of Tobacco Products.

70. Consumers of Tobacco Products did, or in the alternative, were likely to, rely on the misrepresentations and opinions described in paragraph 52, to the consumer's disadvantage, as described in this claim.

71. The Defendants', and their predecessors', parents', affiliates', and related companies', misrepresentations described in paragraph 52, attribute certain characteristics and benefits to Tobacco Products which they do not have.
72. The Defendants', and their predecessors', parents', affiliates', and related companies', misrepresentations described in paragraph 52, constitute representations that their Tobacco Products are of a particular standard and quality, which they are not.
73. The Defendants', and their predecessors', parents', affiliates', and related companies', misrepresentations described in paragraph 52, about the performance, and capability of their Tobacco Products:
 - (a) were not based on adequate and proper independent testing done before the representation was made,
 - (b) were not based on testing that substantiates the claims, and
 - (c) did not accurately and fairly reflect the results of any testing that was done.
74. The Defendants', and their predecessors', parents', affiliates', and related companies', misrepresentations described in paragraph 52, were made directly and also appeared in objective formats, including editorials, documentaries and scientific reports (without any statement to the effect that they were advertisements or promotions) when the misrepresentations were primarily made to sell Tobacco Products.
75. The Defendants, and their predecessors, parents, affiliates, and related companies, are suppliers within the meaning of the *Fair Trading Act*. They have breached their statutory duties, as imposed by the *Fair Trading Act* and its predecessor the *Unfair Trade Practices Act*, by doing the things described here.

Conspiracy - Generally

76. The Defendants, and their predecessors, parents, affiliates, and related companies, conspired among themselves (the **Conspiracy**) by agreeing to and, in concert with a common design, jointly breaching the duties described in this claim as constituting Tobacco-Related Wrongs. In particular, they did the following unlawful things:
 - (a) prevented the public from learning that:
 - (i) Tobacco Products are highly, and deliberately, addictive,
 - (ii) youth and adolescents are particularly susceptible to addiction to Tobacco Products,
 - (iii) Exposure to Tobacco Products, directly and in the form of second hand smoke, causes illness, disease and death, and

- (iv) addiction to Tobacco Products is a substantial contributing factor in causing Tobacco-Related Diseases,
- (b) created and perpetuate the myths that:
 - (i) Tobacco Products are not addictive,
 - (ii) there is no, or limited, evidence that Tobacco Products are addictive,
 - (iii) Exposure to Tobacco Products, directly and in the form of second hand smoke, poses only a minimal risk of causing illness, disease or death,
 - (iv) there is no, or limited, evidence that Exposure to Tobacco Products, directly and in the form of second hand smoke, poses a risk of causing illness, disease or death,
 - (v) illness, disease and death commonly thought to be caused by Exposure to Tobacco Products are actually caused by environmental or genetic factors,
 - (vi) quitting smoking cigarettes is easy and smoking is only a matter of habit or custom,
 - (vii) light, low tar, mild and filtered Tobacco Products are less harmful and pose less risk of causing Tobacco-Related Diseases and addiction than Tobacco Product not described with those terms, and
 - (viii) Exposure to Tobacco Products is consistent with good health,
- (c) designed or formulated Tobacco Products to maximize their addictiveness,
- (d) created a false belief among the public that the tobacco industry was absolutely committed to good health in order to allay the public's concerns about smoking and health, reassure cigarette smokers, and provide them with an effective rationale for continuing to smoke,
- (e) destroyed documents that implicate them in wrongdoing, including the Tobacco-Related Wrongs described in this claim, for the purpose of hiding those wrongs and reducing the likelihood of successful litigation against them,

knowing and intending the result of the Conspiracy would be that many Albertans were Exposed to Tobacco Products, and suffered Tobacco-Related Diseases. They conspired also knowing that, as a result, the Crown would incur costs in treating and caring for those Albertans, all of which occurred.

77. The Defendants, and their predecessors, parents, affiliates, and related companies, through committees, meetings and various communications, all involving senior employees, officers and directors, coordinated policies and systems to achieve the objectives described in paragraph 76. Some of them also determined and directed the position others would, and did, advance on their own and within the CTMC and Tobacco Institute, Inc. (TI), in order to achieve their common purpose and design.
78. TI was incorporated in New York in 1958 as a Domestic Not-for-Profit Corporation, and was dissolved in 2000. TI, was a manufacturers' association comprised of tobacco industry companies, including the Defendants, and their predecessors, parents, affiliates, and related companies. TI was actively involved in disseminating misinformation on behalf of the tobacco industry, including the Defendants, and their predecessors, parents, affiliates, and related companies. Its principal place of business was Washington DC, USA, but its public relations and advertising material was received by the public throughout North America in the form of television, newspaper, magazine and other advertising. TI spent hundreds of millions of dollars over its 42 years of operation, most of which came in the form of contributions from the tobacco industry, including the Defendants, and their predecessors, parents, affiliates, and related companies, particularly, Philip Morris USA, Inc. and R.J. Reynolds Tobacco Company.
79. The meetings, communications and other acts in furtherance of the Conspiracy occurred in Canada and other places around the world.
80. Some particulars of the manner in which the Conspiracy was entered into or continued, and of the breaches of duty committed in furtherance of the Conspiracy, are described below. Further details are unknown to the Crown, but within the knowledge of the Defendants.

Particulars of Conspiracy - Internationally

81. The Conspiracy began secretly in 1953 and early 1954 in a series of meetings and communications among the following, and others: Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British-American Tobacco Company Limited), American Tobacco Company and the industry created and jointly funded Tobacco Industry Research Committee (TIRC), which was renamed the Council for Tobacco Research (CTR) in 1964. The TIRC and CTR were comprised of representatives from the agents, parents, predecessors and affiliates of the Defendants, among others. Through the course of these meetings and communications, the participants agreed they and their principals, parents, affiliates, related companies and successors would:
 - (a) refrain from seeking a competitive advantage over each other by inferring their cigarettes were less risky than others,

- (b) jointly disseminate false and misleading information in the United States, Canada and elsewhere regarding the risks of smoking cigarettes, including publication of their:
 - (i) *Frank Statement to Cigarette Smokers* published in 448 newspapers throughout the United States on 4 January 1954, with 205 000 copies sent to about 176 800 doctors around the United States, and another 1 400 to various radio stations,
 - (ii) Pamphlet *Smoke Without Fear* published in 1954,
 - (iii) *White Paper* entitled *A Scientific Perspective on the Cigarette Controversy* published in April 1954, and
 - (iv) *Tobacco and Health Newsletter* first published by TIRC in October 1957, reaching a circulation of 520 000 by 1962,

all of which asserted cigarette smoking was not a proven cause of lung cancer,
- (c) make no statement or admission that smoking cigarettes caused disease,
- (d) suppress or conceal research regarding the risks of smoking cigarettes, and
- (e) orchestrate a public relations campaign on smoking and health issues with the object of:
 - (i) promoting cigarettes,
 - (ii) protecting cigarettes from governmental restrictions and attack based on health risks,
 - (iii) reassuring the public that smoking cigarettes was not hazardous, and
 - (iv) fomenting false doubt and controversy around the medical science concerning cigarettes and the health effects of smoking.

- 82. The first of the meetings referenced in paragraph 81 occurred on 14 December 1953 at the Plaza Hotel in New York, NY, USA. The TIRC was formally created at a continuation of that meeting on 18 December 1953.
- 83. The Conspiracy was continued through secret committees, conferences and meetings involving senior personnel and through written and oral directives.
- 84. A structure emerged whereby the following companies took the lead in the Conspiracy on behalf of all of the major tobacco manufacturers in North America, as well as many in

Europe, including some or all of the Defendants, and their predecessors, parents, affiliates, and related companies:

- (a) British American Tobacco p.l.c.,
- (b) B.A.T. Industries Limited (now B.A.T. Industries p.l.c.),
- (c) British-American Tobacco Company Limited (now British American Tobacco (Investments) Limited),
- (d) Carreras Rothmans Limited (now Rothmans, Benson & Hedges Inc.),
- (e) Rothmans Inc.,
- (f) Rothmans, Benson & Hedges Inc.,
- (g) R.J. Reynolds Tobacco Company,
- (h) R.J. Reynolds Tobacco International, Inc.,
- (i) Philip Morris Companies Inc. (now Altria Group, Inc.),
- (j) Philip Morris Incorporated (now Philip Morris USA, Inc.), and
- (k) Philip Morris International, Inc.

These are the Lead Companies described in paragraph 44.

- 85. Between late 1953 and the early 1960s, the Lead Companies formed or joined several research organizations including the TIRC and the CTR, the Centre for Cooperation in Scientific Research Relative to Tobacco (**CORESTA**), TI, the Tobacco Industry Research Commission, which subsequently became the Tobacco Research Council (**TRC**) and in the United Kingdom, the Tobacco Manufacturers' Standing Committee (**TMSC**).
- 86. The Lead Companies publicly misrepresented that they, or their affiliated and related companies, along with TIRC, CTR, CORESTA, TI, TRC, TMSC and similar organizations, would objectively conduct research and gather data concerning the link between smoking cigarettes and disease, and would publicize the results of this research throughout the world, even though they had no intention of doing so.
- 87. In reality, the Lead Companies used TIRC, CTR, CORESTA, TI, TRC, TMSC and similar organizations, as fora and contrivances to conspire and to further the Conspiracy, to suppress, conceal, and distort the research and to publicize misleading information to undermine awareness of the truth about the link between smoking cigarettes and disease. The Defendants, and their predecessors, parents, affiliates, and related

companies, intended to mislead the public into believing that there was a real medical or scientific controversy about whether smoking caused addiction and disease.

88. Tobacco industry documents refer to this campaign of misinformation as a *holding strategy*. It was intended to capitalize on smokers' addiction by creating a psychological crutch and self-rationale to continue smoking cigarettes.
89. In 1963 and 1964, the Lead Companies agreed to coordinate their research with research conducted by TIRC in North America, for the purpose of suppressing any findings that might indicate cigarettes were a harmful and dangerous product.
90. In April and September 1963, the Lead Companies agreed to develop a public relations campaign to counter a Royal College of Physicians Report in England, a then forthcoming Surgeon General's Report in the United States and a report of the Canadian Medical Association, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes and to otherwise advance their conspiratorial aims.
91. In September 1963 in New York, the Lead Companies agreed they would not issue warnings about the link between smoking cigarettes and disease unless and until they were forced to do so by government action, and even then would do so only to the extent absolutely required. As a result, over time, the Defendants, and their predecessors, parents, affiliates, and related companies, lobbied against clear and emphatic warnings, and designed their products and marketing to avoid or minimize the impact of smoking and advertising restrictions.
92. The Lead Companies further agreed they would continue to suppress and conceal information concerning the harmful effects of cigarettes.
93. In the early 1970s, the Lead Companies and some or all of the Defendants, and their predecessors, parents, affiliates, and related companies, and others, began to combine their resources and coordinate their activities, specifically with respect to second hand smoke. In 1975, they formed the first of several committees to specifically address second hand smoke. Although they claimed the committees were formed to conduct sound science regarding the emerging issue of second hand smoke, their actual purpose was to fund projects that would counter the public's growing concern regarding the harmful effects of second hand smoke, despite their knowledge of these harmful effects. The committees formed in 1975 and their various successors, including the Committee for Indoor Air Research founded in 1987, carried out their mandate of challenging the growing scientific consensus regarding second hand smoke by:
 - (a) coordinating and funding efforts to generate dubious evidence to support the false notion that there remained an open controversy as to the health implications of second hand smoke,

- (b) leading the attack on government and public health community efforts to make known the evidence linking second hand smoke to disease and to generally reduce the number of anti-smoking advertisements, and
 - (c) acting as a front organization for directing tobacco industry funds to research projects so that the various committees appeared to be independent organizations and the role of the tobacco industry was hidden.
94. By the mid-1970s, the Lead Companies, and some or all of the Defendants, and their predecessors, parents, affiliates, and related companies, decided that an increased international misinformation campaign was required to mislead smokers and potential smokers in order to protect the interests of the tobacco industry, because of fear that any admissions to the link between smoking cigarettes (and second hand smoke) and disease could lead to a domino effect to the detriment of the industry around the world.
95. As a result, on 2 and 3 June 1977, the Lead Companies, and some or all of the Defendants, and their predecessors, parents, affiliates, and related companies, met at Shockerwick House near Bath, England to establish Operation Berkshire and the International Committee on Smoking Issues (ICOSI) which was to serve as the forum and agent for its planning and implementation. Operation Berkshire was aimed at Canada and other major markets, to further advance their campaign of misinformation and to promote cigarette smoking. Operation Berkshire was lead by the Philip Morris Lead Companies, Rothmans Lead Companies and B.A.T. Lead Companies, along with some or all of the other Defendants, and their predecessors, parents, affiliates, and related companies.
96. Various meetings among some or all of the Lead Companies, the Defendants, their predecessors, parents, affiliates, and related companies, and ICOSI, or subsets thereof, took place, including: 21 and 22 July 1977, 11 and 12 November 1977 at Brillancourt, Lausanne, Switzerland; and 2 and 3 May 1979 at Zurich, Switzerland.
97. Through ICOSI, the Defendants, and their predecessors, parents, affiliates and related companies, resisted attempts by governments to require adequate warnings about smoking cigarettes (and second hand smoke) and disease, and agreed to and did:
- (a) jointly disseminate false and misleading information regarding the risks of smoking and second hand smoke,
 - (b) make no statement or admission that smoking and second hand smoke cause disease,
 - (c) suppress research regarding the risks of smoking and second hand smoke,

- (d) not compete with each other by making health claims with respect to their cigarettes, and thereby avoided direct or indirect admissions about the risks of smoking and second hand smoke, and
 - (e) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring smokers, the public and governments, that smoking was not hazardous.
98. In and after 1977, the members of ICOSI, including each of the Lead Companies, as well as the Defendants, and their predecessors, parents, affiliates and related companies, agreed orally and in writing to, and did, ensure that:
- (a) they would act in accordance with the ICOSI position on cigarette smoking (and second hand smoke) and health, including the decision to mislead the public about the link between smoking and disease,
 - (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national associations of cigarette manufacturers (**NMAs**) including TI and, in Canada, CTMC, to ensure compliance in the various tobacco markets world wide,
 - (c) when it was not possible for NMAs to carry out ICOSI's initiatives, they would be carried out by themselves, and
 - (d) they would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.
99. In 1981, ICOSI was renamed the International Tobacco Information Centre/Centre International d'Information du Tabac - **INFOTAB (INFOTAB)**. In or before 1992, INFOTAB changed its name to the Tobacco Documentation Centre (**TDC**) (ICOSI, INFOTAB and TDC are referred to collectively as **ICOSI Organization**).
100. At all times, the policies of ICOSI Organization were identical to the policies of the NMAs, including TI and CTMC, and were presented as the policies and positions of the NMAs and their member companies so as to conceal from the public and from governments, the existence of the Conspiracy.
101. The Lead Companies and the Defendants, and their predecessors, parents, affiliates and related companies, at all times acted to ensure that those associated with ICOSI Organization complied with, and did not deviate from, the official ICOSI Organization position on the adverse health effects of smoking cigarettes.
102. In addition to the foregoing, the Defendants, and their predecessors, parents, affiliates, and related companies, denied that second hand smoke caused or contributed to

Tobacco-Related Disease, even though they knew that not to be the case since at least as early as 1970. They thereby furthered the Conspiracy.

103. Since at least as early as the early 1950s, the Defendants, and their predecessors, parents, affiliates, and related companies, systematically culled their documents, particularly those relating to research and development, in order to eliminate or hide evidence that they knew Tobacco Products caused Tobacco-Related Diseases and that they were conspiring as described in this claim. These efforts were the result of anticipated litigation against them. In Canada, various meetings and communications address these issues. For example, at a meeting of some of the Defendants, and their predecessors, parents, affiliates, and related companies on 21 and 22 June 1990, hosted by Imperial Tobacco Canada, it was agreed that a *document retention policy* would be adopted that would require the destruction of research and development documentation generated by, or in the possession of, some of the Defendants, and their predecessors, parents, affiliates, and related companies, particularly those affiliated with, or related to, the B.A.T. Lead Companies and RJR Lead Companies, after they had been retained for 5 years. It was also agreed the destruction of documents which had already been retained for more than 5 years would take place in September 1990. As a result of those agreements, many documents relating to research and development were destroyed, including those relating to:

- (a) mouse skin painting experiments inquiring into the carcinogenic properties of nicotine,
- (b) smoke inhalability,
- (c) mutagenic activity of cigarette tobacco,
- (d) retention of smoke components in the human respiratory system,
- (e) properties of nicotine, and
- (f) toxicity of various cigarette additives.

Particulars Of Conspiracy - Inter-provincially throughout Canada

104. The Conspiracy described above was continued in Canada when:

- (a) the language and message of the *Frank Statement to Cigarette Smokers*, referenced in paragraph 81(b)(i), was disseminated in Canada, by some or all of the Defendants, particularly Imperial Tobacco Canada Limited, and their predecessors, parents, affiliates, and related companies, including to the Deputy Minister of Health for Canada in January 1954,
- (b) in or about 1962, some or all of the Defendants, and their predecessors, parents, affiliates, and related companies, agreed not to compete with each other in

Canada by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of smoking cigarettes,

- (c) in or about 1962, some or all of the Defendants, particularly Imperial Tobacco Canada Limited, and their predecessors, parents, affiliates, and related companies, agreed not to make reference to tar, nicotine or other smoke constituents with similar connotations, in advertising, packaging and other documentation and communication designed for public use, in order to obfuscate the health risks associated with cigarettes,
 - (d) in 1963, some or all of the Defendants, and their predecessors, parents, affiliates, and related companies, misrepresented to the Canadian Medical Association that there was no causal connection between smoking cigarettes and disease,
 - (e) in or about 1963, some or all of the Defendants, and their predecessors, parents, affiliates, and related companies, formed the Ad Hoc Committee on Smoking and Health (renamed the CTMC in 1969, and then incorporated in 1970) in order to maintain a united front on cigarette smoking and health issues, and
 - (f) in or about 1969, some or all of the Defendants, and their predecessors, parents, affiliates, and related companies, misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking cigarettes and disease.
105. TI and CTMC provided a means and method to continue and advance the Conspiracy, and participated in the Conspiracy.
106. CTMC has sought to advance the interest of Manufacturers, and promoted Tobacco Products throughout Canada since about 1963 by a variety of means, including misrepresenting the risks of cigarette smoking to the public, in accordance with the tobacco industry's position, as described in this claim.
107. CTMC has co-ordinated, with some or all of the Defendants, and their predecessors, parents, affiliates, and related companies, and international tobacco industry associations, the Canadian cigarette industry's positions on cigarette smoking and health issues and the associated misrepresentations.
108. In furtherance of the Conspiracy, TI and CTMC (and the Defendants, and their predecessors, parents, affiliates, and related companies through those organizations):
- (a) disseminated false and misleading information regarding the risks of smoking cigarettes and second hand smoke, including making false and misleading submissions to governments,

- (b) refused to admit that smoking cigarettes and second hand smoke caused disease when they knew it did,
 - (c) suppressed research regarding the risks of smoking cigarettes and second hand smoke,
 - (d) participated in a public relations program on cigarette smoking and health issues with the object of promoting cigarettes, protecting cigarette sales, and protecting cigarettes and smoking from attack by misrepresenting the link between smoking and disease, and
 - (e) lobbied the federal and various provincial governments in order to delay and minimize government initiatives with respect to cigarette smoking and health.
109. In the 1960s and 1970s, the Defendants, and their predecessors, parents, affiliates, and related companies, particularly those related to, or affiliated with, the B.A.T. Lead Companies, destroyed documents detailing research which showed cigarettes marketed and described as low tar were no less harmful than others, in part because smokers compensated by smoking those cigarettes more intensely. As a result of destroying and denying the existence of the associated research, information about the harm connected with low tar cigarettes was kept from the public and the health community for several decades. The destruction of those documents was pursuant to the Conspiracy among the Defendants, and their predecessors, parents, affiliates, and related companies, to destroy documents that contradicted their misrepresentations.
110. Between 1978 and 1987, Imperial Tobacco Canada Limited destroyed at least 60 documents reporting research it had undertaken which showed cigarette smoking and second hand smoke causes lung cancer and other diseases, pursuant to the Conspiracy. Imperial Tobacco Canada Limited then publicly denied the existence of internal research showing smoking and second hand smoke causes lung cancer and other diseases.
111. In 1990, the president of the CTMC made a written submission to the Government of Canada objecting to proposed health warnings regarding the risks of second hand smoke and denying the existence of credible or reliable evidence that second hand smoke is a health hazard. However, the CTMC and its members had previously destroyed documents which constituted exactly that evidence pursuant to their conspiratorial agreement to destroy documents that contradicted their misrepresentations.
112. At all material times, TI and CTMC acted, with express or implied authority, as the agent for some or all of the Defendants, and their predecessors, parents, affiliates, and related companies.

Particulars Of Conspiracy Among Affiliated Corporations

B.A.T. Group

113. The B.A.T. Group Companies participated in the Conspiracy, and continued the Conspiracy at or through committees, conferences and meetings established, organized and convened by the B.A.T. Lead Companies and attended by senior personnel of all of the Groups' Companies and through written and oral directives and communications amongst them.
114. The committees used by the B.A.T. Lead Companies to direct or coordinate common policies on cigarette smoking and health, include the *Chairman's Policy Committee*, the *Research Policy Group*, the *Scientific Research Group*, the *Tobacco Division Board*, the *Tobacco Executive Committee*, and the *Tobacco Strategy Review Team* (which later became known as the *Tobacco Strategy Group*).
115. The conferences used by the B.A.T. Lead Companies to direct or coordinate common policies on cigarette smoking and health, include the *Chairman's Advisory Conferences*, *BAT Research Conferences*, and *BAT Marketing Conferences*. Some of these conferences took place in Canada.
116. At certain times, the B.A.T. Lead Companies further directed or co-ordinated common policies on cigarette smoking and health, by preparing and distributing written directives and communications including *Smoking Issues: Claims and Responses*, *Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues*, *Smoking and Health: The Unresolved Debate*, *Smoking: The Scientific Controversy*, *Smoking: Habit or Addiction?*, and *Legal Considerations on Smoking and Health Policy*. These directives and communications set out a common position on smoking and health issues to ensure all of these companies understood, disseminated, and followed the common position, which they did.
117. The B.A.T. Lead Companies further directed or coordinated the cigarette smoking and health policies of Imperial Tobacco Limited and Imasco Limited, by directing or advising how they should vote in committees of Canadian cigarette manufacturers and at meetings of TI and CTMC on issues relating to smoking and health, including the approval and funding of research by Canadian cigarette manufacturers and by TI and CTMC.

Rothmans Group

118. The Rothmans Group Companies participated in the Conspiracy, and continued the Conspiracy at or through committees, conferences and meetings established, organized, convened by the Rothmans Lead Companies and attended by senior personnel of all of the Groups' companies, and through written and oral directives and communications amongst them.

119. At certain times, the Rothman's Lead Companies were involved in directing or coordinating the common policies of these companies on cigarette smoking and health, by preparing and distributing statements that set out their position on smoking and health issues, which were adopted by these companies.
120. At certain times, the Rothman's Lead Companies were also involved in directing or coordinating the cigarette smoking and health policies of these companies, by influencing or advising how they should vote in committees of Canadian cigarette manufacturers and at meetings of TI and CTMC on issues relating to smoking and health, including the approval and funding of research by Canadian cigarette manufacturers and by TI and CTMC.

RJR Group

121. The RJR Group Companies participated in the Conspiracy, and continued the Conspiracy at or through committees, conferences and meetings established, organized and convened by the RJR Lead Companies and attended by senior personnel of all of the Groups' Companies and through written and oral directives and communications amongst them.
122. The meetings used by the RJR Lead Companies to direct or co-ordinate the common policies on cigarette smoking and health included the *Winston-Salem Smoking Issues Coordinator Meetings* and the *Hound Ears* and *Sawgrass conferences*.
123. At certain times, the RJR Lead Companies further directed or co-ordinated a position on cigarette smoking and health by means of a system of reporting whereby each global area had a *smoking issue designee* who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to the *Manager of Science Information* in the R.J. Reynolds Tobacco Company. In the case of *Area II (Canada)*, this designee was, from 1974, a senior executive of MacDonald Tobacco Inc., and later of JTI-MacDonald Corp.
124. At certain times, the RJR Lead Companies further directed or co-ordinated the policies on cigarette smoking and health by preparing and distributing written directives and communications including an *Issues Guide*. These directives and communications set out the position on smoking and health issues to ensure that they were understood, disseminated and followed, which they were.
125. The RJR Lead Companies further directed or co-ordinated the cigarette smoking and health policies of JTI-MacDonald Corp. and its predecessors by directing or advising how they should vote in committees of Canadian cigarette manufacturers and at meetings of TI and CTMC on issues relating to smoking and health, including the approval and funding of research by Canadian cigarette manufacturers and by TI and CTMC. JTI-MacDonald Corp. and its predecessors complied with these directives.

Philip Morris Group

126. The Philip Morris Group Companies participated in the Conspiracy, and continued the Conspiracy at or through committees, conferences and meetings established, organized and convened by the Philip Morris Lead Companies and attended by senior personnel of all of the Groups' Companies and through written and oral directives and communications amongst them.
127. The committees used by the Philip Morris Lead Companies to direct or co-ordinate common policies on cigarette smoking and health, include the *Committee on Smoking Issues and Management*, the *Corporate Products Committee*, the *Conference on Smoking and Health*, and the *Corporate Affairs World Conference*.
128. At various times, the Philip Morris Lead Companies further directed or co-ordinated common policies on cigarette smoking and health by means of their respective Corporate Affairs and Public Affairs Departments, which directed or advised various departments of the other companies concerning a coordinated position on smoking and health issues.
129. At various times, the Philip Morris Lead Companies further directed or co-ordinated the common policies on cigarette smoking and health by preparing and distributing written directives and communications including *Smoking and Health Quick Reference Guides* and *Issues Alerts*. These directives and communications set out the coordinated position on smoking and health issues to ensure that they understood, disseminated and followed the same position, which they did.
130. At various times, the Philip Morris Lead Companies further directed or co-ordinated the cigarette smoking and health policies of Rothmans, Benson & Hedges Inc. and its predecessors by directing or advising how they should vote in committees of Canadian cigarette manufacturers and at meetings of TI and CTMC on issues relating to smoking and health, including the approval and funding of research by Canadian cigarette manufacturers and by TI and CTMC. Rothmans, Benson & Hedges Inc. and its predecessors complied with these directives.

Joint and several liability

131. In participating in the Conspiracy, the Defendants and their predecessors, parents, affiliates, and related companies, have conspired, acted in concert and jointly committed the Breaches of Duty and are jointly and severally liable to the Crown for the cost of healthcare services caused by those breaches.
132. Some of the Defendants were acting in a principal and agent relationship with each other in participating in the Conspiracy and committing the Breaches of Duty, and are jointly and severally liable to the Crown to the extent of those relationships.

133. The Defendant, R.J. Reynolds Tobacco Company, was the alter ego and guiding mind directing JTI MacDonald Corp. (then MacDonald Tobacco Inc.) in its activity relating to the Conspiracy for at least a portion of the time when it occurred. R.J. Reynolds Tobacco Company is liable for the breaches of duty of JTI-MacDonald Corp. which occurred during that period.
134. The Defendants, British American Tobacco (Investments) Limited and B.A.T. Industries p.l.c., were the alter egos and guiding minds directing Imperial Tobacco Canada Limited (then Imperial Tobacco Limited and Imasco Limited) and Brown & Williamson Holdings, Inc. (then Brown & Williamson Tobacco Corporation) in their activities relating to the Conspiracy for at least a portion of the time when it occurred. They are liable for the breaches of duty of Imperial Tobacco Canada Limited and Brown & Williamson Holdings, Inc. which occurred during that period.
135. The Defendants, Philip Morris USA, Inc. and Philip Morris International, Inc. were the alter egos and guiding minds directing Rothmans, Benson & Hedges Inc. (and its predecessors Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited) in their activities relating to the Conspiracy for at least a portion of the time when it occurred. They are liable for the breaches of duty of Rothmans, Benson & Hedges Inc. which occurred during that period.
136. The Defendant, Carreras Rothmans Limited, was the alter ego and guiding mind directing Rothmans, Benson & Hedges Inc. (and its predecessors Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited) and of Rothmans Inc. in their activity relating to the Conspiracy for at least a portion of the time when it occurred. Carreras Rothmans Limited is liable for the breaches of duty of Rothmans, Benson & Hedges Inc. and Rothmans Inc. which occurred during that period.

THE CROWN'S COST OF HEALTH SERVICES

137. Smoke from Tobacco Products contains carbon monoxide, nitrogen oxides, cyanide, benzopyrenes, radioactive polonium, arsenic, aldehydes, nitrosamines, numerous toxins, and other human carcinogens. These carcinogens and toxins are absorbed by the lungs and into the bloodstream during Exposure to Tobacco Products, including through inhalation of smoke.
138. Exposure to Tobacco Products in various ways, including through second hand smoke, causes, and contributes to, Tobacco-Related Diseases.
139. The following, among others, are Tobacco-Related Diseases:
 - (a) lung cancer,
 - (b) cardiovascular disease, including myocardial infarction, coronary heart disease, and atherosclerosis,

- (c) chronic obstructive pulmonary disease and related respiratory diseases like chronic bronchitis and emphysema,
 - (d) bladder cancer,
 - (e) cerebrovascular disease,
 - (f) esophageal cancer,
 - (g) kidney cancer,
 - (h) laryngeal cancer,
 - (i) oral cancer,
 - (j) pancreatic cancer,
 - (k) peptic ulcer disease,
 - (l) aortic aneurysm,
 - (m) cataracts,
 - (n) low bone density in post-menopausal women,
 - (o) reduced fertility,
 - (p) adverse reproductive outcomes including pre-mature rupture of the membranes, placenta previa, placental abruption, pre-term delivery and shortened gestation, foetal growth restriction, low birth weight, and sudden infant death syndrome,
 - (q) acute myeloid leukemia,
 - (r) stomach cancer,
 - (s) uterine and cervical cancer,
 - (t) liver cancer,
 - (u) Buerger's disease, and
 - (v) overall diminished health and increased risk of morbidity and mortality.
140. For at least a portion of the time since they first committed a Tobacco-Related Wrong, Tobacco Products manufactured or promoted by the Defendants, and their predecessors, parents, affiliates, and related companies, have been sold in Alberta.

141. Albertans Exposed to Tobacco Products would not have been Exposed to Tobacco Products, or at least not to the same extent, but for the Tobacco-Related Wrongs.
142. Exposure to Tobacco Products caused or contributed to Tobacco-Related Diseases or the risk of Tobacco-Related Diseases among many of those Albertans Exposed to Tobacco Products. Many Albertans have been and will be exposed to Tobacco Products.
143. The Crown has provided, and will provide, Health Services in treating and caring for those with Tobacco-Related Diseases caused or contributed to by Tobacco-Related Wrongs, including:
 - (a) inpatient and outpatient services provided in a hospital or other facilities, and
 - (b) Health Services as defined in the Act and in the *Alberta Health Care Insurance Act*.

Remedy Sought:

144. The Crown seeks judgment against the Defendants, jointly and severally, to recover its cost of Health Services caused or contributed to by Tobacco-Related Wrongs, as well as the present value of its anticipated costs of Health Services caused or contributed to by Tobacco-Related Wrongs, in the amount of at least \$10 billion, as well as:
 - (a) an order prohibiting the Defendants from continuing their misrepresentations, deceptive marketing practices and unfair trading practices, as described in this claim,
 - (b) interest under the *Judgment Interest Act*,
 - (c) costs, and
 - (d) such further and other relief the Court may deem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the

clerk of the Court of Queen's Bench at CALGARY, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

Tab C

AMENDED STATEMENT OF CLAIM

(Amended October 5, 2012)

CANADA

PROVINCE OF SASKATCHEWAN

**IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON**

BETWEEN:

THE GOVERNMENT OF SASKATCHEWAN

PLAINTIFF

- and -

ROTHMANS, BENSON & HEDGES INC., ROTHMANS INC., ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC., PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP., R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH AMERICAN TOBACCO P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED, CARRERAS ROTHMANS LIMITED, and CANADIAN TOBACCO MANUFACTURERS' COUNCIL

DEFENDANTS

NOTICE TO DEFENDANTS

1 The plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as may be granted pursuant to the Rules of Court

within 20 days if you were served in Saskatchewan;

within 30 days if you were served elsewhere in Canada or in the United States of America;

within 40 days if you were served outside Canada and the United States of America.

(excluding the day of service) you serve a Statement of Defence on the plaintiff and file a copy thereof in the office of the local registrar of the Court for the judicial centre above-named.

2 In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult his lawyer as to his rights.

3 This Statement of Claim is to be served within six months from the date on which it is issued.

4 This Statement of Claim is issued at the above-named judicial centre the 8th day of June, 2012.

R. Robertson, Deputy Local Registrar
Local Registrar

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I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

1. The Plaintiff, the Government of Saskatchewan, provides health care benefits for insured persons. Pursuant to the provisions of *The Tobacco Damages and Health Care Costs Recovery Act*, S.S. 2007, c.T-14.2 (the "Act"), the Government of Saskatchewan brings this action against the Defendants to recover the cost of health care benefits, on an aggregate basis, for a population of insured persons as a result of exposure to cigarettes.

In particular, the Government of Saskatchewan seeks to recover:

- (a) the present value of the total expenditure by the Government of Saskatchewan since 1953 for health care benefits provided for insured persons resulting from tobacco-related disease or the risk of tobacco-related disease, and
- (b) the present value of the estimated total expenditure by the Government of Saskatchewan for health care benefits that could reasonably be expected will be provided for those insured persons resulting from tobacco-related disease or the risk of tobacco-related disease,

caused or contributed to by the tobacco-related wrongs of the Defendants as described below. The Government of Saskatchewan pleads and relies on sections 3 and 4 of the Act.

2. The Government of Saskatchewan brings this action as a direct and distinct action for the recovery of health care benefits caused or contributed to by a tobacco-related wrong as defined in the Act, and the Government of Saskatchewan does so in its own right and not

on the basis of a subrogated claim. The Government of Saskatchewan pleads and relies on subsections 3(1) and 3(2) of the Act.

3. The Government of Saskatchewan also pleads and relies on the presumptions and population-based evidence provisions under the Act, including subsections 3(5), 4(2) and 4(3) and section 6.
4. The words and terms used in this Statement of Claim including, "cost of health care benefits," "disease," "exposure," "health care benefits," "insured person," "manufacture," "manufacturer," "market share," "promote," "promotion," "tobacco product," "tobacco-related disease" and "tobacco-related wrong," have the meanings ascribed to them in the Act. The Government of Saskatchewan pleads and relies on the provisions of section 2 of the Act.
5. Also in this Statement of Claim:
 - (a) "cigarette" includes loose tobacco intended for incorporation into a cigarette, and
 - (b) "to smoke" or "smoking" means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette and includes exposure to cigarette smoke.
6. Throughout the Statement of Claim, reference to a defendant includes both its predecessors in interest and its predecessors in name as identified in Part C. Reference to the Defendants means all of the Defendants unless otherwise stated.
7. The Defendants' tobacco-related wrongs began in 1950 and continue to the present, unless otherwise stated.

B. Overview of the Government of Saskatchewan's Claim

8. Each of the Defendants is a Manufacturer of tobacco products (referred to herein as cigarettes), as defined in the Act. At all times material to this action, cigarettes manufactured and promoted by the Defendants were offered for sale in Saskatchewan. The Defendants owed a duty to persons in Saskatchewan who have been exposed or might become exposed to cigarettes.
9. By 1950, the Defendants knew or ought to have known that nicotine is addictive and that smoking cigarettes could cause or contribute to disease. By 1960, the Defendants also knew or ought to have known that exposure to cigarette smoke could cause or contribute to disease.
10. From 1950, all of the Defendants have committed tobacco-related wrongs by breaching duties and obligations to persons in Saskatchewan, particularly their duties and obligations not to misrepresent the risks of smoking, to warn of the risks of smoking, not to promote cigarettes to children and adolescents, to design and manufacture a reasonably safe product, and other common law, equitable and statutory duties and obligations, as pleaded.
11. The Defendants have breached these duties and obligations by misrepresenting the risks of smoking and exposure to smoke, failing to warn the public that cigarettes are addictive and cause disease, engaging in promotional activities to neutralize the effectiveness of the warnings on cigarette packaging, targeting children and adolescents in promotional and marketing activities, suppressing information and scientific and medical data about the risks of smoking and exposure to smoke, manipulating the level and bio-availability of

nicotine in their cigarettes and misrepresenting that filters reduce the risks of smoking and that filtered, "mild," "low tar" and "light" cigarettes are healthier and safer than other cigarettes.

12. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and have suffered, or will suffer, tobacco-related disease or an increased risk of tobacco-related disease.
13. In committing these tobacco-related wrongs, the Defendants have conspired or acted in concert. From the 1950s, the Defendants have been members of multinational tobacco enterprises or "Groups" whose companies engaged in the manufacture and promotion of cigarettes in Saskatchewan and throughout the world. The four Groups were:
 - (a) the Philip Morris Group
 - (b) the R.J. Reynolds or RJR Group
 - (c) the British American Tobacco or BAT Group
 - (d) the Rothmans Group.
14. Beginning in 1953, these Groups agreed to disseminate false and misleading information, to suppress research and information on the risks of smoking and to orchestrate a false and misleading public relations program on smoking and health issues.
15. From 1953, the Defendants, both within each Group and with each other, have continued to conspire or to act in concert to distort research and to publicize misleading information about smoking and disease. They collectively agreed not to make any statement or

admission that smoking caused disease and not to issue cigarette warnings unless they were forced to do so by government action. Since 1960, the Defendants have conspired or acted in concert to misrepresent the risk of exposure to smoke.

16. Beginning in 1953, this conspiracy was implemented in Saskatchewan and throughout Canada through the defendants Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited, Rothmans Inc., and the Canadian Tobacco Manufacturers' Council.
17. The Defendants have conspired or acted in concert to prevent the Government of Saskatchewan and persons in Saskatchewan from acquiring knowledge of the harmful and addictive properties of cigarettes and in committing tobacco-related wrongs.
18. Particulars of the Government of Saskatchewan's claim are provided below.

C. The Defendants

19. In 1950 and for several decades thereafter, the four tobacco Groups were the Philip Morris Group, the RJR Group, the BAT Group and the Rothmans Group. Within each Group, certain companies (referred to herein as the Lead Companies) were responsible for the direction, control, coordination and implementation of the common policies on smoking and health described below.

(i) The Philip Morris Group

1. Altria Group, Inc.

20. The defendant Altria Group, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in

the United States of America. Altria Group, Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Companies Inc. Altria Group, Inc. is a Lead Company of the Philip Morris Group.

2. Philip Morris U.S.A. Inc.

21. The defendant Philip Morris U.S.A. Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in the United States of America. Philip Morris U.S.A. Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Incorporated. Philip Morris U.S.A. Inc. is a Lead Company of the Philip Morris Group.

3. Philip Morris International, Inc.

22. The defendant Philip Morris International, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 120 Park Avenue, New York, New York, in the United States of America. Philip Morris International, Inc. is responsible in law for the actions and conduct of its predecessor in interest, Philip Morris Overseas, a division of Philip Morris Incorporated. In 1987, Philip Morris International, Inc. was incorporated as a subsidiary of Altria Group, Inc. Philip Morris International, Inc. remained a subsidiary of Altria Group, Inc. until 2008. Philip Morris International, Inc. is a Lead Company of the Philip Morris Group.

4. Rothmans, Benson & Hedges Inc.

23. The defendant Rothmans, Benson & Hedges Inc. is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans, Benson & Hedges Inc. is responsible in law for the actions and

conduct of its predecessors in interest, Benson & Hedges (Canada) Limited, Benson & Hedges (Canada) Inc., and Rothmans of Pall Mall Limited.

24. Benson & Hedges (Canada) Limited was incorporated in 1934. In 1958, Benson & Hedges (Canada) Limited became a subsidiary of Philip Morris International, Inc. and an integral part of the Philip Morris Group. In 1979, Benson & Hedges (Canada) Limited changed its name to Benson & Hedges (Canada) Inc.
25. Rothmans, Benson & Hedges Inc. was formed in 1986 by the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited. In 2009, Rothmans, Benson & Hedges Inc. and the defendant Rothmans Inc. amalgamated and continued to operate as Rothmans, Benson & Hedges Inc. Rothmans, Benson & Hedges Inc. is a wholly owned subsidiary of Philip Morris International, Inc.

5. The Philip Morris Group Lead Companies Control and Direct Rothmans, Benson & Hedges Inc.

26. At all times material to this action, the Canadian company, Rothmans, Benson & Hedges Inc., has been controlled and directed by the Lead Companies of the Philip Morris Group. The control and direction by Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. has extended to the manufacture and promotion of their cigarettes.
27. The means by which the Philip Morris Group Lead Companies have exercised control and direction include:
 - i. Overseeing board meetings of Rothmans, Benson & Hedges Inc.

- ii. Placing board members of the Lead Companies on the board of directors of Rothmans, Benson & Hedges Inc.
- iii. Placing senior executives of the Lead Companies as senior executives of Rothmans, Benson & Hedges Inc.
- iv. Providing technical expertise, smoking and health materials, financial support and direction to Rothmans, Benson & Hedges Inc., including information on the relationship between smoking and health and technical knowledge for the manufacture of cigarettes, the levels of tar and nicotine and the type of tobacco to be used
- v. Organizing Philip Morris Group smoking and health conferences to set common policies for key tobacco companies in the Philip Morris Group, including Rothmans, Benson & Hedges Inc.
- vi. Developing and implementing Philip Morris Group positions and policies through committees, including the Corporate Issues Management Committee, the Corporate Products Committee and the Committee on Smoking Issues and Management
- vii. Creating a Public Affairs branch designed to manage smoking and health issues and government relations
- viii. Orchestrating marketing and promotional campaigns

- ix. Approving the deployment of funds for subsidiary operations, research into smoking and health, the promotion of cigarettes and smoker reassurance campaigns.
28. The control and direction by the Lead Companies of the Philip Morris Group have involved the implementation of the Philip Morris Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Philip Morris Group has maintained a policy that members of the Philip Morris Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the Philip Morris Group was to create doubt and controversy regarding the adverse health consequences of smoking and to defeat or delay anti-smoking legislation that would impose restrictions on the formulation, marketing, sale or use of cigarettes.
 29. From 1960, it has been the Philip Morris Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
 30. The Lead Companies of the Philip Morris Group have communicated and directed these policies for Rothmans, Benson & Hedges Inc. by a variety of means, including:
 - i. Establishing directives and communications such as "Smoking and Health Quick Reference Guides" and "Issues Alerts" to the Regions, including Canada
 - ii. Providing training, technical expertise and support
 - iii. Convening conferences, including the Conference on Smoking and Health and the Corporate Affairs World Conference

- iv. Forming committees, such as the Committee on Smoking Issues Policy and Management and the Scientific Research and Review Committee for Worldwide Tobacco
 - v. Establishing Corporate Affairs and Public Affairs departments of the Lead Companies
 - vi. Conspiring or acting in concert as particularized in Part IV below.
31. These common policies of the Philip Morris Group have continued notwithstanding changes in the corporate structure of the Philip Morris Group. These common policies on smoking and health in the Philip Morris Group have been maintained in Canada under the control and direction of Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. from 1950 to the present, such that these defendants are responsible in law for the Philip Morris Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
32. In particular, the Government of Saskatchewan states that:
- i. By reason of the facts pleaded, Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
 - ii. Rothmans, Benson & Hedges Inc. has acted as agent for Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada

- iii. As described in Part IV, Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

6. The Philip Morris Group Defendants are Manufacturers under the Act

33. Each of Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. (collectively, "the Philip Morris Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the Philip Morris Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the Philip Morris Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the Philip Morris Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
- iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the Philip Morris Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants,

associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

34. From 1950 and continuing to the present, cigarettes manufactured or promoted by the Philip Morris Defendants have been offered for sale in Saskatchewan. The brand names of the cigarettes of the Philip Morris Defendants offered for sale in Saskatchewan and the rest of Canada include *Benson & Hedges*, *Belvedere*, *Marlboro*, *Marlboro Lights*, *Rothmans*, *Alpine* and *Parliament*.

(ii) **The RJR Group**

1. R.J. Reynolds Tobacco Company

35. The defendant R.J. Reynolds Tobacco Company is a company currently incorporated pursuant to the laws of ~~New Jersey~~ North Carolina and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco Company is a Lead Company of the RJR Group.
36. R.J. Reynolds Tobacco Company was incorporated in 1922. In 2004~~3~~, the U.S. assets, liabilities and operations of R.J. Reynolds Tobacco Company (at the time, incorporated pursuant to the laws of New Jersey) were combined entered into a business combination with those of Brown & Williamson Tobacco Corporation, owned by the defendant, British American Tobacco p.l.c. Concurrent with the completion of the business combination, R.J. Reynolds Tobacco Company became a North Carolina corporation. Its principal place of business continued to be North Carolina. For greater certainty, the Province pleads that R.J. Reynolds Tobacco Company (incorporated in North Carolina) is

responsible in law for the actions and conduct of its predecessor in interest and name, R.J. Reynolds Tobacco Company (incorporated in New Jersey).

2. R.J. Reynolds Tobacco International, Inc.

37. The defendant R.J. Reynolds Tobacco International, Inc. is a company incorporated pursuant to the laws of Delaware and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco International, Inc. is a Lead Company of the RJR Group.

3. JTI-Macdonald Corp.

38. The defendant JTI-Macdonald Corp. is a company formed by continuance pursuant to the laws of Canada and has a registered office at 1 Robert Speck Parkway, Mississauga, Ontario. JTI-Macdonald Corp. is responsible in law for the actions and conduct of its predecessors in interest, RJR-Macdonald Corp., RJR-Macdonald Inc. and Macdonald Tobacco Inc.
39. W.C. Macdonald Incorporated was incorporated in 1930 and changed its name to Macdonald Tobacco Inc. in 1957. In 1970, Macdonald Tobacco Inc. became the exclusive Canadian distributor of the cigarette brands of R.J. Reynolds Tobacco Company referred to in paragraph 50. Macdonald Tobacco Inc. became a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1974.
40. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. In 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald Tobacco Inc. and acquired all or substantially all of Macdonald Tobacco Inc.'s assets and

continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc.

41. In 1999, RJR-Macdonald Inc. amalgamated with 3027221 Nova Scotia Company and continued as RJR-Macdonald Corp. JTI-Macdonald Corp. was created in 1999 as a result of an amalgamation between RJR-Macdonald Corp. and JT-Nova Scotia Corporation.

4. The RJR Group Lead Companies Control and Direct JTI-Macdonald Corp.

42. At all times material to this action, the Canadian company, JTI-Macdonald Corp., has been controlled and directed by the Lead Companies of the RJR Group. The control and direction by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. has extended to the manufacture and promotion of their cigarettes.

43. The means by which the RJR Lead Companies have exercised control and direction include:

- i. Developing a reporting system whereby each global "Area," including Canada as Area II, had a smoking issue designee who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to R.J. Reynolds Tobacco Company's Manager of Science Information
- ii. Convening meetings such as the Winston-Salem Smoking Issues Coordinator Meetings
- iii. Developing and implementing positions and policies such as the "Issues Guide" to direct and control the activities of the RJR Group's subsidiaries, including JTI-Macdonald Corp.

- iv. Placing senior executives of the Lead Companies as senior executives of JTI-Macdonald Corp.
 - v. Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department
 - vi. Providing technical expertise, including information and knowledge on the manufacture of cigarettes, the use of substitutes and additives, the use of pH controls, the appropriate levels of tar and nicotine and the type and mixture of tobacco used in the manufacture of cigarettes
 - vii. Providing cigarettes and cigarette samples made by the Lead Companies to JTI-Macdonald Corp. for sale in Canada, including Saskatchewan
 - viii. Maintaining a veto over research funding by the Canadian Tobacco Manufacturers' Council.
44. The control and direction by the Lead Companies of the RJR Group have involved the implementation of the RJR Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the RJR Group has maintained a policy that members of the RJR Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. This policy included the creation of an action plan to respond to health and smoking issues by distributing information creating a scientific controversy surrounding smoking-related disease and by countering anti-smoking groups and legislation.
45. From 1960, it has been the RJR Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.

46. The Lead Companies of the RJR Group have communicated and directed these policies for JTI-Macdonald Corp. by a variety of means, including:
- i. Establishing directives and communications such as the "Issues Guide"
 - ii. Developing an action plan which set out the RJR Group's position on smoking and health issues to ensure that the personnel in the RJR Group companies, including JTI-Macdonald Corp., understood and disseminated the RJR Group's position
 - iii. Convening meetings including the Winston-Salem Smoking Issues Coordinator Meetings
 - iv. Convening conferences including the "Hounds Ears" and Sawgrass conferences
 - v. Taking a leadership role in the International Committee on Smoking Issues ("ICOSI"), particularly in relation to Canada
 - vi. Conspiring or acting in concert as particularized in Part IV below.
47. These common policies of the RJR Group have continued notwithstanding changes in the corporate structure of the RJR Group. These common policies on smoking and health in the RJR Group have been maintained in Canada under the control and direction of R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. from 1950 to the present, such that these defendants are responsible in law for the RJR Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of JTI-Macdonald Corp.

48. In particular, the Government of Saskatchewan states that:
- i. By reason of the facts pleaded, R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of JTI-Macdonald Corp.
 - ii. JTI-Macdonald Corp. has acted as agent for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. in committing tobacco-related wrongs in Canada
 - iii. As described in Part IV, R.J. Reynolds Tobacco Company, R.J. Reynolds International, Inc. and JTI-Macdonald Corp. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

5. The RJR Group Defendants are Manufacturers under the Act

49. Each of R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc. and JTI-Macdonald Corp. (collectively, "the RJR Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:
- i. Each of the RJR Defendants manufactures or has manufactured cigarettes.
 - ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the RJR Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
 - iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the RJR Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.

iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the RJR Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

50. From 1950 and continuing to the present, cigarettes manufactured or promoted by the RJR Defendants have been offered for sale in Saskatchewan. The brand names of the cigarettes of the RJR Defendants offered for sale in Saskatchewan and the rest of Canada include *Export*, *Export "A"*, *Vantage*, *Camel*, *Salem*, *Smooth*, *Contessa*, *Contessa Slims*, *More*, *Macdonald* and *Winston*.

(iii) The BAT Group

1. British American Tobacco p.l.c.

51. The defendant British American Tobacco p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England. British American Tobacco p.l.c. is responsible in law for the actions and conduct of its predecessors in interest, British-American Tobacco Company Limited (now known as British American Tobacco (Investments) Limited) and B.A.T Industries p.l.c. British American Tobacco p.l.c. is a Lead Company of the BAT Group.

52. British American Tobacco p.l.c. has been the parent company of the BAT Group since 1998. British American Tobacco p.l.c. purports to have been in the tobacco business in the Americas for more than 100 years and to be solely focused on tobacco.

2. British American Tobacco (Investments) Limited

53. The defendant British American Tobacco (Investments) Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England. British American Tobacco (Investments) Limited is responsible in law for the actions and conduct of its predecessor in name, British-American Tobacco Company Limited. British American Tobacco (Investments) Limited is a Lead Company of the BAT Group.
54. British American Tobacco (Investments) Limited was the parent company of the BAT Group from 1902 to 1976. British American Tobacco (Investments) Limited was known as British-American Tobacco Company Limited until 1998.

3. B.A.T Industries p.l.c.

55. The defendant B.A.T Industries p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England. B.A.T Industries p.l.c. is responsible in law for the actions and conduct of its predecessors in interest, B.A.T Industries Limited and Tobacco Securities Trust Limited. B.A.T Industries p.l.c. is a Lead Company of the BAT Group.
56. B.A.T Industries p.l.c. was the parent company of the BAT Group from 1976 to 1998.

4. Imperial Tobacco Canada Limited

57. The defendant Imperial Tobacco Canada Limited is a company incorporated pursuant to the laws of Canada and has a registered office at 3711 St. Antoine Street West, Montreal, Quebec. Imperial Tobacco Canada Limited is responsible in law for the actions and

conduct of its predecessors in interest, Imperial Tobacco Company of Canada Limited, Imperial Tobacco Limited and Imasco Ltd.

58. For 100 years, Imperial Tobacco Canada Limited and its predecessors have been an integral part of the BAT Group and a subsidiary of the parent company of the BAT Group.
59. Imperial Tobacco Company of Canada Limited was incorporated in 1912. In 1970, Imperial Tobacco Company of Canada Limited changed its name to Imasco Limited, and formed a wholly owned subsidiary, Imperial Tobacco Limited. In 2000, Imasco Limited and Imperial Tobacco Limited were amalgamated under the name Imperial Tobacco Canada Limited.
60. In 2000, Imperial Tobacco Canada Limited became a wholly owned subsidiary of British American Tobacco p.l.c., the current parent of the BAT Group.

5. The BAT Group Lead Companies Control and Direct Imperial Tobacco Canada Limited

61. At all times material to this action, the Canadian company, Imperial Tobacco Canada Limited has been controlled and directed by the Lead Companies of the BAT Group. The control and direction by British American Tobacco p.l.c., British American Tobacco (Investments) Limited, and B.A.T Industries p.l.c. has extended to the manufacture and promotion of their cigarettes.
62. The means by which the BAT Group Lead Companies have exercised control and direction include:

- i. Establishing Smoking and Health Policies to be followed by the members of the BAT Group
 - ii. Convening Tobacco Strategy Review Team Policy meetings
 - iii. Convening Smoking and Health, Marketing and Research conferences for major international markets, including Canada
 - iv. Forming committees including the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board and the Tobacco Executive Committee
 - v. Overseeing tobacco-related activities in Canada by the Chairman of the BAT Group Tobacco Division Board
 - vi. Making final decisions on which Canadian Tobacco Manufacturers' Council research should be funded by Imperial Tobacco Canada Limited.
63. The control and direction by the Lead Companies of the BAT Group have involved the implementation of the BAT Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the BAT Group has maintained a policy that members of the BAT Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the BAT Group was to maintain that causation had not been scientifically proven and remained controversial and to resist warnings as long as possible.

64. From 1960, it has been the BAT Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
65. The Lead Companies of the BAT Group have communicated and directed these policies for Imperial Tobacco Canada Limited by a variety of means, including:
 - i. Establishing the Smoking and Health Policies which ensured that all BAT Group companies gave uniform answers to similar questions on smoking and health issues, including B.A.T Industries p.l.c.'s Statement of Business Conduct
 - ii. Convening the Chairman's Advisory Conferences, BAT Group Research Conferences and BAT Group Marketing Conferences, all of which included Imperial Tobacco Canada Limited
 - iii. Preparing and distributing to BAT Group members, including Imperial Tobacco Canada Limited, written directives and communications, including "Smoking Issues: Claims and Responses," "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues," "Smoking and Health: The Unresolved Debate," "Smoking: The Scientific Controversy," "Smoking: Habit or Addiction?" and "Legal Considerations on Smoking and Health Policy"
 - iv. Ensuring through all of these means that the personnel of the BAT Group companies, including Imperial Tobacco Canada Limited, understood and disseminated the BAT Group's position on smoking and health
 - v. Conspiring or acting in concert as particularized in Part IV below.

66. These common policies of the BAT Group have continued notwithstanding changes in the corporate structure of the BAT Group. There continues to be central coordination of the BAT Group's international strategy, of which Canada is an integral part, and central control and management of the BAT Group policies on smoking and health issues. These common policies on smoking and health in the BAT Group have been maintained in Canada under the control and direction of British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited from 1950 to the present, such that these defendants are responsible in law for the BAT Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited.
67. In particular, the Government of Saskatchewan states that:
- i. By reason of the facts pleaded, British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited are jointly liable with and are vicariously liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited
 - ii. Imperial Tobacco Canada Limited has acted as agent for British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited in committing tobacco-related wrongs in Canada
 - iii. As described in Part IV, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Imperial Tobacco Canada Limited have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

6. The BAT Group Defendants are Manufacturers under the Act

68. Each of British American Tobacco p.l.c., British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Imperial Tobacco Canada Limited (collectively, "the BAT Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:
- i. Each of the BAT Defendants manufactures or has manufactured cigarettes.
 - ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the BAT Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
 - iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the BAT Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
 - iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the BAT Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.
69. From 1950 and continuing to the present, cigarettes manufactured or promoted by the BAT Defendants have been offered for sale in Saskatchewan. The brand names of the cigarettes of the BAT Defendants offered for sale in Saskatchewan and the rest of Canada include *du Maurier*, *Peter Jackson*, *Player's Matinee*, *Goldcrest*, *John Player*, *Avanti*,

Cameo, Kool, Marlboro, Sweet Caporal, Pall Mall, Medallion, Matinee Slims, Matinee Special Mild, Matinee Extra Mild and Vogue.

(iv) The Rothmans Group

1. Carreras Rothmans Limited

70. The defendant Carreras Rothmans Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England. Carreras Rothmans Limited is responsible in law for the actions and conduct of its predecessors in interest Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada and Carreras Limited. Carreras Rothmans Limited was a Lead Company of the Rothmans Group. Since 1999, Carreras Rothmans Limited has been part of the BAT Group.

71. Carreras Rothmans Limited was formed in 1958 when Rothmans of Pall Mall Limited acquired a controlling interest in Carreras Limited. At that time, Rothmans of Pall Mall Limited controlled Rothmans of Pall Mall Canada Limited and Carreras Limited controlled Rock City Tobacco Company of Quebec. By 1963, Rothmans of Pall Mall Canada had assumed all outstanding shares of Rock City Tobacco Company of Quebec.

2. Rothmans Inc.

72. The defendant Rothmans Inc. is a company incorporated pursuant to the laws of Ontario and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans Inc. has represented itself to have been a part of the Canadian tobacco industry for the past 100 years. Rothmans Inc. is responsible for the actions and conduct of its predecessor in name Rothmans of Pall Mall Canada Limited.

73. Rothmans of Pall Mall Canada Limited was incorporated in 1956. In 1985, Rothmans of Pall Mall Canada Limited changed its name to Rothmans Inc. Between 1986 and 2008, Rothmans Inc. was a co-owner with Altria Group, Inc. of Rothmans, Benson & Hedges Inc. In 2009, Rothmans Inc. amalgamated with and continued as Rothmans, Benson & Hedges Inc. as a wholly owned subsidiary of Philip Morris International, Inc.

3. The Rothmans Group Lead Companies Controlled and Directed Rothmans Inc.

74. Prior to 1986, the Canadian company, Rothmans Inc., was controlled and directed by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group. The control and direction by the Rothmans Group Lead Companies extended to the manufacture and promotion of their cigarettes.

75. Since 1980, the Philip Morris Group exercised substantial influence over Rothmans International through the creation of a partnership with the Rothmans Group and the placement of board members of the Philip Morris Group Lead Companies on the board of Rothmans International.

76. The means by which Carreras Rothmans Limited and Rothmans International exercised control and direction included:

- i. Coordinating the research strategy of all of the Rothmans Group companies worldwide, including Canada
- ii. Facilitating a constant exchange of information, knowledge and ideas of all of the Rothmans Group companies worldwide, including Canada

- iii. Directing its subsidiaries and affiliates, including Rothmans Inc., to conform their policies to those of the broader tobacco industry
 - iv. Creating the International Advisory Board for the development of common policies and strategies for the benefit of the Rothmans Group
 - v. Providing technical expertise and other support to members of the Rothmans Group
 - vi. Placing board members of the Lead Companies on the board of directors of Rothmans Inc.
77. The control and direction by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group involved the implementation of the Rothmans Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Rothmans Group maintained a policy that members of the Rothmans Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed.
78. From 1960, it was the Rothmans Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
79. The Lead Companies of the Rothmans Group, including Carreras Rothmans Limited and Rothmans International, communicated and directed these policies for Rothmans Inc. by a variety of means, including:
- i. Directing Rothmans Inc. to maintain the Rothmans Group's position that more research was needed in order to determine whether cigarettes cause disease

- ii. Instructing Rothmans Inc. not to agree voluntarily to cautionary warnings in advertising
 - iii. Creating the International Advisory Board
 - iv. Conspiring or acting in concert as particularized in Part IV below.
80. These common policies on smoking and health in the Rothmans Group were maintained in Canada under the control and direction of Carreras Rothmans Limited and Rothmans International from 1950 to 1986 such that Carreras Rothmans Limited is responsible in law for its own tobacco-related wrongs and is jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
81. Altria Group, Inc. and Philip Morris International, Inc. controlled and directed the Rothmans Group such that from 1980 to the present, Altria Group, Inc. and Philip Morris International, Inc. are responsible in law for their own tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
82. In particular, the Government of Saskatchewan states that:
 - i. By reason of the facts pleaded, Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans Inc.
 - ii. Rothmans Inc. has acted as agent for Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada

- iii. As described in Part IV, Carreras Rothmans Limited, Altria Group, Inc., Philip Morris International, Inc. and Rothmans Inc. have, together and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

4. The Rothmans Group Defendants are Manufacturers under the Act

83. Each of Carreras Rothmans Limited and Rothmans Inc. (together, the "Rothmans Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the Rothmans Defendants has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the Rothmans Defendants has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the Rothmans Defendants derived at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
- iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the Rothmans Defendants engaged in, or caused, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of tobacco cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

84. From 1950 until 2008, cigarettes manufactured or promoted by the Rothmans Group were offered for sale in Saskatchewan. The brand names of the cigarettes of the

Rothmans Group offered for sale in Saskatchewan and the rest of Canada are now offered for sale through the defendant, Rothmans, Benson & Hedges Inc. and include *Rothmans*, *Dunhill*, *Craven "A"*, *Craven "A" Super Slims*, *Sportsman* and *Black Cat*.

(v) The Canadian Tobacco Manufacturers' Council

85. The defendant Canadian Tobacco Manufacturers' Council is a company incorporated pursuant to the laws of Canada and has a registered office at 6 Rue D'Angers, Gatineau, Quebec. The Canadian Tobacco Manufacturers' Council is the trade association of the Canadian tobacco industry and was originally formed as an ad hoc committee of members of the Canadian tobacco industry in 1963 to influence government authorities on the question of smoking and health.
86. The founding members of the Canadian Tobacco Manufacturers' Council were Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans Inc.
87. As described in paragraphs 167 - 184, the Canadian Tobacco Manufacturers' Council provided a means by which the Defendants' Conspiracy (defined in Part IV) was implemented and continues to be implemented in Canada. In addition, the Canadian Tobacco Manufacturers' Council itself was and remains a participant in the Conspiracy.
88. The Canadian Tobacco Manufacturers' Council is a Manufacturer pursuant to subparagraph 2(1)(h)(iv) of the Act because it has been and is engaged in all of the following activities:
- (a) the advancement of the interests of Manufacturers

- (b) the promotion of cigarettes
- (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes.

II. THE DEFENDANTS' KNOWLEDGE OF THE RISKS OF SMOKING AND EXPOSURE TO SMOKE

89. The Defendants designed and manufactured cigarettes to deliver nicotine to smokers.
90. Nicotine is an addictive drug that affects the brain and central nervous system, the cardiovascular system, the lungs, other organs and body systems and endocrine function. Addicted smokers physically and psychologically crave nicotine.
91. Smoking causes or contributes to disease, including, but not limited to:
- (a) chronic obstructive pulmonary disease and related conditions, including:
 - i. emphysema
 - ii. chronic bronchitis
 - iii. chronic airways obstruction
 - iv. asthma
 - (b) cancer, including:
 - i. cancer of the lung
 - ii. cancer of the lip, oral cavity and pharynx

- iii. cancer of the larynx
 - iv. cancer of the esophagus
 - v. cancer of the bladder
 - vi. cancer of the kidney
 - vii. cancer of the pancreas
 - viii. cancer of the stomach
- (c) circulatory system diseases, including:
- i. coronary heart disease
 - ii. pulmonary circulatory disease
 - iii. cerebrovascular disease
 - iv. atherosclerosis, aortic and other aneurysms
 - v. peripheral vascular disease
- (d) pneumonia and influenza
- (e) peptic ulcers
- (f) increased morbidity and general deterioration of health
- (g) fetal harm.

92. Since 1950, the Defendants have been aware that cigarettes:
- (a) contain substances and produce by-products which can cause or contribute to disease including, nitrosamines, carbon monoxide, benzene, benzo[a]pyrene, dibenz[a,h]anthracene, benzo[e]pyrene, chrysene, dibenzo[a,i]pyrene, n'nitrosonornicotine, acrolein, hydrogen cyanide, isoprene, chromium, chloracetophenone and arsenic
 - (b) cause or contribute to addiction.
93. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that smoking cigarettes could cause or contribute to disease.
94. By 1950, the Defendants knew or ought to have known that:
- (a) nicotine is an addictive and active ingredient in cigarettes
 - (b) smokers crave nicotine
 - (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.

III. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Deceit and Misrepresentation

95. At all material times, the Defendants have owed a duty to persons in Saskatchewan not to misrepresent the risks of smoking, those risks being the risks of addiction and disease.

96. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

(i) The Misrepresentations

97. From 1950, the Defendants have misrepresented the risks of addiction and disease and in particular, without limiting the generality of the foregoing, have misrepresented in Saskatchewan and throughout Canada that:

- (a) smoking has not been shown to cause any known diseases
- (b) there is no medical or scientific link between smoking and disease
- (c) they were not aware of any research, or any credible research, establishing a link between smoking and disease
- (d) environmental and genetic factors are to blame for many diseases rather than smoking
- (e) cigarettes are not addictive
- (f) smoking is merely a habit or custom, not an addiction
- (g) they have not manipulated nicotine levels
- (h) they have not included substances in their cigarettes designed to increase the bio-availability of nicotine

- (i) certain of their cigarettes, such as "filter," "mild," "low tar" and "light" brands, are safer than other cigarettes
 - (j) machine measurements of tar and nicotine are representative of actual intake
 - (k) smoking is consistent with a healthy lifestyle
 - (l) smoking is not harmful to health
 - (m) exposure to cigarette smoke is not harmful to health
 - (n) smoking and exposure to cigarette smoke are not a serious health risk
 - (o) they are interested in the health and well-being of smokers.
98. The misrepresentations by the Philip Morris Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)
 - ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of

Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)

- iii. Public and media statements to Canadian newspapers and on North American television (including a statement in the Toronto Daily Star (September 1967) and a speech in Halifax (June 1978))
 - iv. Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.)
 - v. Publications (including in the 1978 Booklet "The Facts" published by Benson & Hedges (Canada) Inc.)
 - vi. Advertising, marketing and promotional campaigns
 - vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.
99. The misrepresentations by the RJR Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)

- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
 - iii. Publications (including "R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina" in *The Tobacco Industry in Transition*)
 - iv. Speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts)
 - v. Public statements (including the 1983 Revised Mission Statement on Smoking and Health)
 - vi. Advertising, marketing and promotional campaigns
 - vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.
100. The misrepresentations by the BAT Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on

- Health, Welfare and Social Affairs (May 1969), the National Association of Tobacco and Confectionery Distributors Convention (October 1969), federal Legislative Committees (including in November 1987 and January 1988) and the House of Commons Standing Committee on Health (December 1996)
- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
 - iii. Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited)
 - iv. Public and media statements to Canadian newspapers and on national television (including CBC television (December 1969) and in the Toronto Daily Star (June 1971))
 - v. Publications (including on the topics of smoking and health, "habit or addiction" and environmental tobacco smoke)
 - vi. British American Tobacco p.l.c.'s website relating to environmental tobacco smoke
 - vii. Advertising, marketing and promotional campaigns

- viii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.
101. The misrepresentations by the Rothmans Group in Canada were continuous and were made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and the National Association of Tobacco and Confectionery Distributors Convention (October 1969)
 - ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979) and with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981)
 - iii. Full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart "vital information" as soon as available
 - iv. Public and media statements to Canadian newspapers and on national television, (including in the Toronto Daily Star (September 1962, June 1969) and in the Globe and Mail (June 1967))
 - v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

102. Since 1963, the Canadian Tobacco Manufacturers' Council's misrepresentations have been continuous and have been made through a variety of means including:

- i. Presentations, including the 1963 presentation to the Canadian Medical Association, the 1963 presentation to the federal Department of National Health and Welfare, the 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs, the 1969 presentation to the National Association of Tobacco and Confectionery Distributors Convention and the 1987 and 1988 presentations to federal Legislative Committees
- ii. Meetings with the federal Department of National Health and Welfare, the purpose of which was to oppose and delay regulatory measures
- iii. Position papers
- iv. Public statements characterizing warnings as misstatements and exaggerations of the scientific evidence, and representing environmental tobacco smoke as a symptom of inadequate ventilation in buildings
- v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

(ii) Suppression and Concealment of Scientific and Medical Data

103. From 1950, the Defendants have suppressed and concealed scientific and medical data which revealed the serious health risks of smoking and exposure to cigarette smoke. Each Group had policies in accordance with which the Defendants have withheld, altered and destroyed research on addiction and disease causation.

104. Particulars of this suppression of scientific and medical data and research by the Philip Morris Group include:

- i. Agreeing with British American Tobacco (Investments) Limited and the RJR Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
- ii. Destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group
- iii. Closing of research laboratories and destroying related scientific information
- iv. Withdrawing internal research relating to nicotine from peer review
- v. Destroying internal research relating to nicotine
- vi. Prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the additive effect of smoking
- vii. Establishing INBIFO, a facility in Europe where unfavourable research was destroyed
- viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

105. Particulars of this suppression of scientific and medical data by the RJR Group include:

- i. Agreeing with British American Tobacco (Investments) Limited and the Philip Morris Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)

- ii. Ceasing research on the effects of smoke because of its potential bearing on product liability
 - iii. Removing 150 boxes of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina
 - iv. Imposing restrictions on the use of terms, including "drug," "marketing" and "dependency," in scientific studies
 - v. Destroying research relating to the biological activity of Camel cigarettes
 - vi. Invalidating and destroying research reports
 - vii. Terminating and destroying research associated with R.J. Reynolds Tobacco Company's "The Mouse House" experiments
 - viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
106. Particulars of this suppression of scientific and medical data by the BAT Group include:
- i. Agreeing with the Philip Morris and RJR Groups to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
 - ii. Agreeing with the Rothmans Group to suppress research relating to carbon monoxide and smoke intake
 - iii. Implementing a policy with Imperial Tobacco Canada Limited to avoid written documentation on issues relating to smoking and health

- iv. Agreeing within the BAT Group not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the BAT Group
 - v. Directing that certain research reports in Canada be destroyed (1992)
 - vi. Suppressing information and developments relating to potentially safer products
 - vii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
107. Particulars of this suppression of scientific and medical data by the Rothmans Group include:
- i. Agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake
 - ii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
108. Particulars of the Canadian Tobacco Manufacturers' Council's suppression of scientific and medical data include:
- i. Refusing to approve and fund research where there was a concern that the results could be adverse to the tobacco industry
 - ii. Sponsoring studies only where there was no likelihood that the results could be harmful to the tobacco industry.

(iii) Misleading Campaigns to Enhance Their Own Credibility

109. From 1950, the Defendants have participated in misleading campaigns to enhance their own credibility and to diminish the credibility of health authorities and anti-smoking groups for the purposes of reassuring smokers that cigarettes were not as dangerous as authorities were saying and of maintaining the social acceptability of smoking.

110. The misleading campaigns were at least two-pronged: (a) public denials as to the harmful effects of smoking and the calls for more research (while concealing research findings and suppressing further research); and (b) implementing misleading campaigns designed to reassure smokers which (as described in paragraphs 98 to 102) included advertising campaigns and numerous public statements relating both to cigarette smoking and exposure to cigarette smoke.

(iv) Misrepresentations Relating to Filtered, "Mild," "Low Tar" and "Light" Cigarettes

111. Beginning in the 1960s, the Defendants have wrongfully promoted filtered, "mild," "low tar" and "light" cigarettes to the public and government agencies, including the federal government and the federal Department of Health and Welfare, with the purpose of deceiving the public and these agencies into believing that these cigarettes were healthier and safer.

112. From the 1960s, the Defendants have known that filtered, "mild," "low tar" and "light" cigarettes were not healthier or safer because smokers would compensate by increasing their inhalation of smoke to obtain as much or more nicotine.

113. The Defendants have also misled the public by linking a healthy image and lifestyle to filtered, “mild,” “low tar” and “light” cigarettes. In this way, the Defendants have reassured the public and furthered their campaign of misrepresentation. The tobacco industry's research confirmed that smokers and the public mistakenly believed that filtered, “mild,” “low tar” and “light” cigarettes meant healthier or safer cigarettes.
114. Particulars of the Defendants' research are as follows:
- i. The Philip Morris Group's research confirmed that smokers develop a daily nicotine intake quota and that when smoking a cigarette lower in nicotine delivery than their regular cigarettes, smokers will adjust their smoking patterns to obtain their normal nicotine intake.
 - ii. The RJR Group's research confirmed that smokers will subconsciously adjust their intake volume and frequency, and smoking frequency, to obtain and maintain their hourly and daily requirements of nicotine. The RJR Group also knew that "low tar, low nicotine" cigarettes did not offer a health advantage compared to regular filter cigarettes.
 - iii. The BAT Group's research confirmed that smokers must maintain a threshold amount of nicotine. BAT Group scientists found that when nicotine content was reduced, smokers would adjust their smoking patterns to obtain their threshold nicotine intake. These scientists also found that smokers would obtain a tar yield proportionately higher than that which the cigarette was designed to produce and could more than double the amount of nicotine intake reported in league tables.

- iv. The Rothmans Group possessed research which confirmed that when a smoker changes to a brand of cigarette with purportedly lower delivery of nicotine the smoker will compensate by increasing inhalation of tar and carbon monoxide.

(v) Campaigns to Increase Smoking Rates Among Women

115. From 1950, the Defendants have engaged in deceitful advertising, marketing and promotional campaigns to increase smoking rates among women.
116. The Defendants have advertised, marketed and promoted their cigarettes to women as being reasonably healthy and safe, both expressly, through public statements including denials that cigarettes are harmful, and impliedly, through campaigns which equate smoking cigarettes with physical activities and a healthy lifestyle.
117. Each of the four Groups has targeted women as smokers and as potential smokers through advertising and branding campaigns. In Saskatchewan, and throughout Canada, brands targeted at women include the Philip Morris Group's *Marlboro Lights* and *Virginia Slims*, the RJR Group's *Contessa* and *Contessa Slims*, the BAT Group's *Matinee*, *Matinee Slims*, *Matinee Special Mild* and *Matinee Extra Mild*, and the Rothmans Group's *Craven "A" Superslims*.

B. Failure to Warn

118. At all material times, the Defendants knew or ought to have known that their cigarettes were addictive and could cause or contribute to disease. At all material times, the Defendants owed a duty to persons in Saskatchewan to warn of the risks of smoking, being addiction and disease. As Manufacturers, the Defendants have owed a duty to

persons in Saskatchewan as consumers of cigarettes and as persons who would be exposed to cigarette and tobacco smoke.

119. As described below, from 1950, the Defendants have breached this duty, thereby committing tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.
120. Beginning in 1950, the Defendants breached their duty by failing to provide any warning, or any adequate warning after 1972, of:
 - (a) the risk of tobacco-related disease or
 - (b) the risk of addiction to the nicotine contained in their cigarettes.
121. Any warnings that were provided were inadequate and ineffective in that they:
 - (a) failed to warn of the actual and known risks
 - (b) failed to give smokers, prospective smokers, and the public a true indication of the risks
 - (c) were introduced for the purpose of delaying more accurate government mandated warnings
 - (d) were combined with marketing plans and campaigns designed to reassure smokers
 - (e) failed to make clear, credible, complete and current disclosure of the harmful substances in their cigarettes.

122. From 1950, the Defendants have breached their duty to warn by wrongfully engaging in advertising, marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings on cigarette packaging and of warnings and advertising by governments and other agencies concerned with public health. These activities include the campaigns to reassure the public and governments, all as previously described.
123. From 1950, the Defendants have breached their duty to warn by misinforming and misleading the public about the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 95-102.
124. From 1950, the Defendants have breached their duty to warn by selectively promoting and publicising misleading research to create doubt and controversy regarding the risks of smoking and of exposure to cigarette smoke. This selective promotion and publication of misleading research was facilitated, in part, by the Defendants' creation of tobacco organizations, as particularized in paragraphs 151-157, and the Canadian tobacco Manufacturers' Council, and by presentations made by the Lead Companies to the public.
125. From 1950, the Defendants have breached their duty to warn by suppressing and concealing information regarding the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 103 to 108.
126. From 1950, the Defendants have breached their duty to warn children and adolescents. The Defendants knew or ought to have known that children (under the age of 13) and adolescents (between the ages of 13 and 18) in Saskatchewan either were smoking or might start smoking. Despite their knowledge, the Defendants failed to provide warnings sufficient to inform children and adolescents of the risks. The Defendants wrongfully

directed advertising, marketing and promotional material to children and adolescents who were unable to make informed decisions about smoking.

C. Promotion of Cigarettes to Children and Adolescents

127. At all material times, the Defendants have owed a duty to children and adolescents in Saskatchewan to take all reasonable measures to prevent them from starting or continuing to smoke.
128. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, children and adolescents in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.
129. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age. The Defendants were also aware that children and adolescents are unable to make informed decisions about smoking.
130. From 1950, the Defendants knew or ought to have known that children and adolescents in Saskatchewan were smoking or might start to smoke and that it was contrary to law, including the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and public policy, to sell cigarettes to children and adolescents or to promote smoking by such persons.

131. From 1950, the Defendants knew or ought to have known that children and adolescents in Saskatchewan who smoked cigarettes would become addicted and would suffer tobacco-related disease.
132. From 1950, the Defendants have failed to take any reasonable and effective measures to prevent children and adolescents from starting or continuing to smoke. Instead, the Defendants have effectively done the opposite: they have targeted children and adolescents in their advertising, promotional and marketing activities; they have advertised in publications accessed by children and adolescents; they have marketed cigarettes for sale in places frequented by children and adolescents; and they have engaged in marketing campaigns directed at children and adolescents.
133. These activities were undertaken to induce children and adolescents in Saskatchewan to start or continue to smoke and to undermine government initiatives and legislation (including that set out in paragraph 130) aimed at preventing children and adolescents in Saskatchewan from starting or continuing to smoke.
134. In particular:
 - (a) The Philip Morris Group targeted youth as a means to both attract new smokers and develop those smokers into a "young adult franchise" and through Rothmans, Benson & Hedges Inc., undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands.
 - (b) The RJR Group recognized the importance of imagery for the youth market and developed marketing criteria (including the use of cartoons and celebrities) and

specific brands it believed would assist in obtaining and maintaining the youth marketing position.

- (c) The BAT Group targeted what it described as "starters", that is, children and adolescents, by studying their smoking habits and adopting advertising strategies which focused on youth-oriented and youth-appealing activities.
- (d) The Rothmans Group targeted youth and undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands in Canada.

D. Negligent Design and Manufacture

- 135. At all material times, the Defendants have owed a duty to design and manufacture a reasonably safe product and a duty to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking the cigarettes they manufactured and promoted.
- 136. As described below, since 1950, the Defendants have breached these duties by failing to design a reasonably safe product – a product that is not addictive and does not cause disease – and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking. In breaching these duties, the Defendants have committed tobacco-related wrongs.
- 137. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

138. From the 1960s, the Defendants have halted research and development of alternative products because of concerns that such products would imply that cigarettes were unsafe. As described in paragraph 105, the RJR Group stopped work on the alleged positive effects of smoke due to concerns about product liability. As described in paragraph 106, through its control of Imperial Tobacco Canada Limited, B.A.T Industries p.l.c. suppressed information relating to potentially safer products because of the negative implications for cigarettes.
139. From the 1960s, the Defendants have increased the risks of smoking by manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
- (a) blending of tobacco
 - (b) adding nicotine or substances containing nicotine
 - (c) increasing the pH level to increase the rate of nicotine intake into the body
 - (d) introducing substances, such as ammonia and menthol, to enhance the bio-availability of nicotine to smokers or to compensate for the variability in the nicotine content
 - (e) such further and other activities known to the Defendants.
140. From the 1960s, the Defendants have increased the risks of smoking by adding to their cigarettes ineffective filters and by misleading the public and government agencies, including the federal government and the federal Department of Health and Welfare, that these filters made smoking safer. At all material times, the Defendants have known that smokers compensated for the filters by increasing their inhalation and by adopting other

means to increase the assimilation of smoke into their lungs. The Defendants have known that the design of these filters resulted in a larger dose of nicotine to be inhaled by the smoker.

141. From the 1960s, the Defendants have designed and manufactured filtered, “mild,” “low tar” and “light” cigarettes which they promoted as healthier than regular cigarettes, with knowledge that this was not the case. The Defendants have misled the public by linking a healthy image to a low tar – low nicotine cigarette through the use of descriptors and the portrayal of filtered, "mild," "low tar" and "light" cigarettes in the context of a lifestyle or activities that misrepresented smoking and health.
142. These filtered, "mild," "low tar" and "light" cigarettes were designed and manufactured notwithstanding the Defendants' own research and knowledge. In particular, the BAT Group's research confirmed that smokers and the public mistakenly believed that "light" or "low tar" meant a healthier cigarette and Imperial Tobacco Canada Limited marketed its brands, including *Medallion*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The Philip Morris Group's research confirmed that smokers mistakenly believed that low delivery was healthy and that the public's positive perception of filtration was more important than the filtration's actual effectiveness. Rothmans, Benson & Hedges Inc. marketed its brands, including *Benson & Hedges Lights*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The RJR Group's research confirmed that younger people believed "mild," "low tar" and "light" cigarettes to be more healthy and JTI-Macdonald Corp. marketed its brands, including *Vantage*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette.

E. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations

143. The Defendants, in their role as Manufacturers of cigarettes for human use and consumption, were under legal, equitable and statutory duties and obligations to ensure that their cigarettes were reasonably safe, and they expressly or impliedly warranted that their cigarettes were reasonably safe. In particular, from 1950, the Defendants advertised and promoted their cigarettes as being reasonably safe, both expressly, through public statements including denials that they are harmful, and impliedly, through campaigns which related cigarettes to a healthy lifestyle and physical activities. The Defendants also have repeatedly proclaimed to be interested in the health and well-being of smokers.
144. Knowing that cigarettes are addictive and cause and contribute to disease, from 1950, the Defendants inflicted harm on persons in Saskatchewan by manufacturing, promoting and selling cigarettes for profit and in disregard of public health.
145. From 1950, the Defendants engaged in unconscionable acts or practices and exploited the vulnerabilities of children and adolescents, and persons addicted to nicotine, particulars of which include:
- (a) manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
 - i. sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine
 - ii. deliberately increasing the level of nicotine through blending of tobaccos

- iii. deliberately increasing the level of nicotine by adding nicotine or other substances containing nicotine
 - iv. adding ammonia and menthol
- (b) adding ineffective filters to cigarettes and misleading the public into believing these filters made smoking safer
 - (c) failing to disclose to consumers the risks inherent in smoking, those being the risks of disease and addiction
 - (d) engaging in marketing, promotional and public relations activities to neutralize or negate the effectiveness of safety warnings provided to the public
 - (e) suppressing or concealing scientific and medical information regarding the risks of smoking and of exposure to cigarette smoke
 - (f) marketing and promoting smoking in a manner designed to mislead the public into believing that cigarettes have performance characteristics, ingredients, uses, benefits and approval that they did not have
 - (g) using innuendo, exaggeration and ambiguity to misinform and mislead the public about the risks of smoking and of exposure to cigarette smoke by mischaracterizing any health concerns relating to smoking and exposure to smoke or attempts at regulation as unproven, controversial, extremist and an infringement of liberty or authoritarian
 - (h) failing to take any reasonable measures to prevent children and adolescents from starting or continuing to smoke

- (i) targeting children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents to start smoking or to continue to smoke
- (j) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that they are addictive and cause or contribute to disease and death
- (k) misrepresenting that:
 - i. smoking has not been shown to cause any known diseases
 - ii. there is no medical or scientific link between smoking and disease
 - iii. they were not aware of any research, or any credible research, establishing a link between smoking and disease
 - iv. environmental and genetic factors are to blame for many diseases rather than smoking
 - v. cigarettes are not addictive
 - vi. smoking is merely a habit or custom, not an addiction
 - vii. they have not manipulated nicotine levels
 - viii. they have not included substances in their cigarettes designed to increase the bio-availability of nicotine

- ix. certain of their cigarettes, such as filtered, "mild," "low tar" and "light" brands, are safer than other cigarettes
 - x. machine measurements of tar and nicotine are representative of actual intake
 - xi. smoking is consistent with a healthy lifestyle
 - xii. smoking is not harmful to health
 - xiii. exposure to cigarette smoke is not harmful to health
 - xiv. smoking and exposure to cigarette smoke are not a serious health risk
 - xv. they are interested in health and well-being of smokers.
- (l) failing to correct statements regarding the risks of smoking which they knew were incomplete or inaccurate, thereby misrepresenting the risks of smoking by omission or silence
- (m) misrepresenting the characteristics of their cigarettes without proper testing, investigation or research concerning:
- i. the risk of disease
 - ii. the risk of addiction to nicotine
 - iii. the feasibility of eliminating or minimizing these risks

- (n) misrepresenting as safer products, cigarettes with filters, and "mild," "low tar" or "low nicotine" tobacco, which adequate and proper testing would have revealed were ineffective to safeguard the health of smokers
 - (o) failing to make clear, credible, complete and current disclosure of the risks inherent in smoking their cigarettes
 - (p) misleading the public about the risks of smoking and of exposure to cigarette smoke
 - (q) deliberately and unconscionably discrediting various testing and research which showed a link between smoking and disease and addiction
 - (r) such further and other activities known to the Defendants.
146. The Defendants breached their legal, equitable and statutory duties and obligations, provincially and federally, including the provisions of *Combines Investigation Act*, R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act*, S.C. 1968-69, chapter 38 and amendments thereto (and in particular, section 33D) and subsequently the *Competition Act*, R.S.C. 1985, chapter C-34 and amendments thereto (and in particular, section 74.01), the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and statutory and regulatory obligations in the province of Saskatchewan.
147. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and increased risk of such disease.

IV. CONSPIRACY AND CONCERT OF ACTION IN COMMITTING TOBACCO-RELATED WRONGS

A. Role of the Lead Companies

148. At various times beginning in 1953 and continuing to the present, in response to reports in medical and other publications linking smoking and disease, the Defendants conspired or acted in concert to prevent the Government of Saskatchewan and persons in Saskatchewan and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their actions would cause increased health care costs (the "Conspiracy").

149. The Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups were acting throughout on their own behalf and on behalf of their respective Groups. As particularized below, the Conspiracy was renewed at numerous meetings and through various campaigns and policies, all of which are known to the Defendants.

(vi) The Industry Conspiracy is Hatched

150. The Conspiracy or concert of action secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco (Investments) Limited), American Tobacco Company, Lorillard Tobacco Company and the public relations firm, Hill & Knowlton. At least two of these meetings were held at the Plaza Hotel in New York on December 15 and 28, 1953. These companies agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking
- (b) make no statement or admission that smoking caused disease
- (c) orchestrate a public relations program on smoking and health issues with the object of:
 - i. promoting cigarettes
 - ii. protecting cigarettes from attack based upon health risks
 - iii. reassuring the public that smoking was not hazardous (sometimes referred to as the campaign of reassurance).

(vii) Use of Research Organizations in Furtherance of the Conspiracy

151. Between late 1953 and the early 1960s, the Lead Companies of each of the Groups formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964, both referred to herein as TIRC), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Manufacturers' Standing Committee (the "TMSC", renamed the Tobacco Research Council in 1963 and renamed the Tobacco Advisory Council in 1978, collectively referred to herein as TMSC) and Verband der Cigarettenindustrie ("Verband").
152. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, CORESTA, TMSC and Verband, would objectively conduct research and gather data concerning the link between smoking and disease and

would publicize the results of this research throughout the world. Particulars of these misrepresentations are within the knowledge of the Defendants but include:

- i. The issuance of the TIRC's 1954 "Frank Statement to Cigarette Smokers" which received coverage in the Canadian press
 - ii. Statements made to the Canadian Medical Association in May 1963
 - iii. November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare
 - iv. May 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs
 - v. Statements to the national press and news organizations in Canada
 - vi. Communications through the Canadian Tobacco Manufacturers' Council in Canada, including to the federal Department of Health and Welfare
 - vii. As to British American Tobacco p.l.c. and the Philip Morris Group in particular, misleading statements on environmental tobacco smoke.
153. From 1953, the Lead Companies conspired with the TIRC, CORESTA, TMSC and Verband to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Defendants misled the public and the Government of Saskatchewan, into believing that there was a medical or scientific controversy about whether smoking is addictive and causes disease. The Defendants' position and policy has been that causation remains an "open question." As described

below, this policy was enforced through ICOSI and the Canadian Tobacco Manufacturers' Council.

154. In 1963 and 1964 the Lead Companies and the Defendants agreed to co-ordinate their research with research conducted by the TIRC in the United States, for the purpose of suppressing any findings which might indicate that cigarettes are harmful and dangerous. In particular, the Lead Companies contributed to research and vetted and selected the persons who were to conduct such research.
155. In April and September 1963, the Lead Companies, and in particular, British American Tobacco (Investments) Limited, through its agent Brown & Williamson Tobacco Corporation, and Imperial Tobacco Canada Limited, Philip Morris U.S.A. Inc. and R.J. Reynolds Tobacco Company, together with TIRC and Hill & Knowlton, agreed to develop a public relations campaign to counter the Royal College of Physicians Report in England, the forthcoming Surgeon General's Report in the United States and a Report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes. This public relations campaign was part of the broader ongoing public relations campaign which continues to the present to reassure the public and to suppress information.
156. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease unless and until they were forced to do so by government action.
157. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes and risks of smoking, including research

funded by British American Tobacco (Investments) Limited at Harrogate Labs in England. In particular, the Lead Companies agreed to suppress and conceal all information which confirmed scientific work on the carcinogenicity of tobacco smoke condensate, and to avoid reference to nicotine, nicotine dependence and nicotine pharmacology in the development of research proposals.

(viii) Operation Berkshire and the Establishment of ICOSI

158. By the mid-1970s, the Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups decided that an increased international misinformation campaign ("Operation Berkshire") was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease could lead to a "domino effect" to the detriment of the industry world-wide.
159. Through Operation Berkshire, the Defendants further advanced their campaign of misinformation. Operation Berkshire was aimed at Canada and other major markets and led by both the Philip Morris Group in concert with the Rothmans Group and the BAT Group.
160. Operation Berkshire was implemented as a scheme among the Defendants. This scheme involved an agreement among the Defendants not to make concessions voluntarily and to oppose, through legal or other means, the imposition of anti-smoking legislation. The Defendants also agreed not to concede that adverse health effects had been linked to smoking and, instead, agreed to create "controversy" concerning any research or studies suggesting otherwise.

161. In June, 1977, Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Rothmans International, as Lead Companies of each of the four Groups and acting on behalf of the members of those Groups, met in England to establish ICOSI.
162. The primary objective of ICOSI was to implement the Conspiracy. The smoking and health scheme denying the relationship between smoking and disease was directed at major international markets, including Canada. This scheme included an agreement by all members that the issue of causation remains controversial and unresolved and that warning notices would be strenuously resisted with all means at their disposal.
163. On June 2 and 3, 1977 and November 11 and 12, 1977, the founding members of ICOSI, including Philip Morris U.S.A. Inc., the R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Rothmans International, adopted a position paper and then a revised version thereof, developed jointly by the BAT and Philip Morris Groups. The position paper and the revised version required that the tobacco industry as a whole take the position that there was "medical controversy" regarding the relationship between smoking and disease.
164. Through ICOSI, the Defendants resisted attempts by governments to provide warnings about smoking and disease and sought to attribute warnings to governments. In furtherance of the Conspiracy, all of the Defendants pledged to:
 - (a) jointly disseminate false and misleading information regarding the risks of smoking
 - (b) make no statement or admission that smoking caused disease

- (c) suppress research regarding the risks of smoking
 - (d) resist government attempts to restrict advertising, sponsorship and smoking in public places
 - (e) not compete with each other by making health claims with respect to their cigarettes – in other words, not advertise "safer" cigarettes - and thereby avoid direct or indirect admissions about the risks of smoking
 - (f) attribute quotes on smoking and health to "appropriate non-ICOSI sources"
 - (g) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring smokers, the public and authorities in Saskatchewan and other jurisdictions that smoking was not hazardous.
165. In and after 1977 the members of ICOSI, including the Lead Companies of each of the Groups, in furtherance of the Conspiracy, agreed orally and in writing, to ensure that:
- (a) the members of their respective Groups, including those in Canada, would act in accordance with the ICOSI position on smoking and health (as described in paragraph 164), including the decision to mislead the public about the link between smoking and disease
 - (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, the Canadian Tobacco Manufacturers' Council, to ensure compliance in the various tobacco markets worldwide

- (c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves
 - (d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.
166. In 1980, ICOSI was renamed the International Tobacco Information Centre/Centre International d'Information du Tabac – INFOTAB. In 1992, INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are referred to collectively as ICOSI). The objectives of ICOSI have remained the same notwithstanding these name changes and the Defendants maintained and have continued their Conspiracy to commit tobacco-related wrongs.
- (ix) ICOSI and the Canadian Tobacco Manufacturers' Council**
167. At all times from 1977 onward, the policies of ICOSI were identical to the policies of the NMAs, including the Canadian Tobacco Manufacturers' Council, and were presented as the policies and positions of the NMAs, including the Canadian Tobacco Manufacturers' Council and its member companies, so as to conceal from the public and from governments the existence of the Conspiracy or concert of action. ICOSI organized conferences of the NMAs, including the Canadian Tobacco Manufacturers' Council, to ensure compliance with ICOSI initiatives.
168. The Lead Companies were members of the Canadian Tobacco Manufacturers' Council through their respective operating companies in Canada, the predecessors of the

defendants Imperial Tobacco Canada Limited, JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Rothmans Inc. The Canadian Tobacco Manufacturers' Council was an allied member of ICOSI.

169. In particular, the ICOSI and the Canadian Tobacco Manufacturers' Council position papers were essentially identical in most respects and include the false and misleading positions that:
- i. No causal relationship between smoking and disease exists
 - ii. No persuasive scientific evidence exists to support the contention that non-smokers are harmed by the tobacco smoke of others
 - iii. Laws and regulations banning smoking are an unwarranted intrusion into the lives and rights of citizens.
170. At all material times, the Lead Companies conspired or acted in concert to ensure that manufacturers complied with, and did not deviate from, the official ICOSI position on the adverse health effects of smoking. In particular, "Issues Binders" were prepared so that ICOSI affiliates, including the Defendants in Canada, would speak with one voice on key issues such as addiction, advertising and sponsorship, the public smoking issue, smoking and health, social costs and warning labels. The Lead Companies instructed their respective Group companies to conform their policies to those of ICOSI. ICOSI developed workshops for the training of NMA personnel, including personnel of the Canadian Tobacco Manufacturers' Council.
171. The Defendants conspired or acted in concert in committing the tobacco-related wrongs particularized in Part III. The Defendants have continued the Conspiracy or have

continued to act in concert to commit tobacco-related wrongs. The Defendants have continued to maintain that environmental tobacco smoke is not harmful, have continued to create doubt and controversy regarding the health effects of exposure to cigarette smoke. The Defendants also have continued to oppose, delay and negate attempts by all levels of government, including municipal governments, and by health authorities, to provide health warnings or to otherwise limit or control cigarette smoking and exposure to cigarette smoke.

172. The Defendants' Conspiracy or concert of action has continued for more than thirty years since the inception of ICOSI. Further particulars of the manner in which the Conspiracy or concert of action was entered into and continued, and of the breaches of duty committed in furtherance of the Conspiracy or concert of action, are within the knowledge of the Defendants.

B. Conspiracy and Concerted Action in Canada

(x) Canadian Tobacco Manufacturer's Council

173. In furtherance of the Conspiracy, from 1953, the Defendants conspired or acted in concert with one another and within each Group to prevent the Government of Saskatchewan and persons in Saskatchewan and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and to commit the tobacco-related wrongs described in Part III. The Defendants conspired or acted in concert in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the Conspiracy or concert of action.

174. The Conspiracy or concert of action was continued in Canada when:

- (a) In 1962, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited secretly agreed not to compete with each other by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of smoking.
- (b) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease.
- (c) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, incorporated as the Canadian Tobacco Manufacturers' Council in 1982 and collectively referred to as the Canadian Tobacco Manufacturers' Council) in order to maintain a united front on smoking and health issues and to respond to what the Defendants viewed as an increasingly vocal anti-tobacco lobby.
- (d) In May 1969, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited, through the Canadian Tobacco Manufacturers' Council, misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.

- (e) The Lead Companies of each of the Groups recruited, approved and coordinated the witnesses who presented the positions and misrepresentations of the Canadian tobacco industry.
175. Upon its formation in 1963 and at all material times thereafter, the Canadian Tobacco Manufacturers' Council provided a means and method to continue the Conspiracy or concert of action in Canada. From its inception, the Canadian Tobacco Manufacturers' Council agreed, adopted and participated in the Conspiracy or concert of action.
176. Through meetings, presentations and position papers, the Canadian Tobacco Manufacturers' Council has maintained that smoking was not the cause of any disease and has misrepresented the risks of smoking to governments and regulatory agencies throughout Canada. Through its misrepresentations and delay tactics, the Canadian Tobacco Manufacturers' Council has opposed or negated government restrictions on the tobacco industry.
177. In accordance with the position of the Lead Companies and its members, the Canadian Tobacco Manufacturers' Council has maintained that smoking is not the cause of any disease and misrepresented the risks of smoking to the Canadian public.
178. Since 1963, the Canadian Tobacco Manufacturers' Council has co-ordinated with its co-Defendants and international tobacco industry associations the Canadian tobacco industry's positions on smoking and health issues. At all material times, the Canadian Tobacco Manufacturers' Council acted as agent for each of its co-Defendants.
179. In furtherance of the Conspiracy or concert of action, the Canadian Tobacco Manufacturers' Council:

- (a) Disseminated false and misleading information regarding the risks of smoking, including making false and misleading submissions to governments and withheld from the federal government research relating to carbon monoxide, addiction, smoker compensation and warnings
- (b) Refused to admit that smoking caused disease
- (c) Suppressed research regarding the risks of smoking
- (d) Participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link between smoking and disease
- (e) Misled governments in order to delay and minimize government initiatives with respect to smoking and health
- (f) Characterized anyone who disagreed with the Canadian tobacco industry on the issue of smoking and health as uninformed, misinformed or extremist
- (g) Participated in coordinated tobacco industry efforts in Canada to dismiss or minimize the risk of exposure to smoke.

(xi) The Conspiracy in Canada Among the Groups

180. As to the Philip Morris Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. Philip Morris Conference on Smoking and Health in June 1976

- ii. International Conference on Smoking Behaviour in November – December 1977
- iii. Conference on May 9, 1978 designed to change public opinion by developing policies to challenge and fight anti-smoking efforts
- iv. Tobacco Technology Group Meetings
- v. Corporate Affairs World Conference
- vi. Philip Morris International Legal Conference
- vii. Philip Morris International Corporate Affairs Presentation
- viii. Meetings of the Canadian Tobacco Manufacturers' Council
- ix. Meetings of ICOSI
- x. Position Papers of the Canadian Tobacco Manufacturers' Council
- xi. Direction by the Lead Companies to Rothmans, Benson & Hedges Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
- xii. The Canadian Tobacco Manufacturers' Council and Rothmans, Benson & Hedges Inc. acting as agents for the Lead Companies in the Philip Morris Group
- xiii. Requests by Rothmans, Benson & Hedges Inc. to the Canadian Tobacco Manufacturers' Council and ICOSI to respond to anti-tobacco campaigns

- xiv. Public statements about the Philip Morris Group's continued efforts, in concert with the other Defendants, to present the smoking and health issue to the public
 - xv. Philip Morris Group and tobacco industry meetings relating to environmental tobacco smoke.
181. As for the RJR Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:
- i. Hounds Ears and Sawgrass conferences
 - ii. Meetings of the Canadian Tobacco Manufacturers' Council
 - iii. Meetings of ICOSI and in particular, the Social Acceptability Working Party chaired by the RJR Group
 - iv. Smoking Issues Coordinator meetings
 - v. Position Papers of the Canadian Tobacco Manufacturers' Council
 - vi. Direction by the Lead Companies to JTI-Macdonald Corp. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research and the importance of maintaining the right to veto any particular research proposal
 - vii. The Canadian Tobacco Manufacturers' Council and JTI-Macdonald Corp. acting as agents for the Lead Companies in the RJR Group

- viii. RJR Group and tobacco industry meetings relating to environmental tobacco smoke.
182. As for the BAT Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:
- i. BAT Group Smoking and Health Policy Meetings, including Chairman's Advisory Conferences and BAT Group Smoking Behaviour Conferences
 - ii. Smoker Reassurance Campaigns, including Project Viking and the September 1976 campaign
 - iii. BAT Group document destruction meetings, including on January 8, 1990, June 21-22, 1990, August 1990 and September 1991
 - iv. Imperial Tobacco Canada Limited's retention of Hill & Knowlton in 1962 to combat certain Health Canada information
 - v. Meetings of the Canadian Tobacco Manufacturers' Council, including those dealing with the threshold nicotine content, procrastination in relation to carbon monoxide warnings and environmental tobacco smoke
 - vi. The Canadian Tobacco Manufacturers' Council Position Papers
 - vii. Meetings of ICOSI at which Imperial Tobacco Canada Limited was present or represented
 - viii. Direction by the Lead Companies to Imperial Tobacco Canada Limited regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council

on issues relating to smoking and health, including the approval and funding of research

- ix. The Canadian Tobacco Manufacturers' Council and Imperial Tobacco Canada Limited acting as agents for the Lead Companies in the BAT Group
 - x. Direction by the Lead Companies to Imperial Tobacco Canada Limited regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
 - xi. Provision of personnel from the Lead Companies to assist Imperial Tobacco Canada Limited in responding to federal government inquiries
 - xii. BAT Group and tobacco industry meetings relating to environmental tobacco smoke.
183. As for the Rothmans Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:
- i. November 22, 1976 meeting among the Philip Morris Group, the BAT Group and Carreras Rothmans Limited relating to the smoker reassurance campaign
 - ii. Meetings of ICOSI
 - iii. Meetings of the Canadian Tobacco Manufacturers' Council
 - iv. Position Papers of the Canadian Tobacco Manufacturers' Council

- v. Pooling of resources with other companies in the tobacco industry to fund studies intended to generate data that supported the industry's position that environmental tobacco smoke is not a health risk
 - vi. Direction by Carreras Rothmans Limited to Rothmans Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
 - vii. The Canadian Tobacco Manufacturers' Council and Rothmans Inc. acting as agents for Carreras Rothmans Limited
 - viii. Rothmans Group and tobacco industry meetings relating to environmental tobacco smoke.
184. Further particulars of the manner in which the Conspiracy or concert of action was entered into or continued, and of the tobacco-related wrongs committed by the Defendants in furtherance and as a result of the Conspiracy or concert of action, are within the knowledge of the Defendants.

C. Joint and Several Liability

185. The Government of Saskatchewan states that by reason of the facts pleaded, all of the Defendants are jointly and severally liable for the Government of Saskatchewan's aggregate cost of health care benefits equal to the Defendants' combined market share in cigarettes.

186. The Government of Saskatchewan also states that by reason of the facts pleaded, the Defendants within each Group are jointly and severally liable.
187. The Government of Saskatchewan pleads and relies on subsections 2(6) and 4(3) and section 5 of the Act.

V. RELIEF

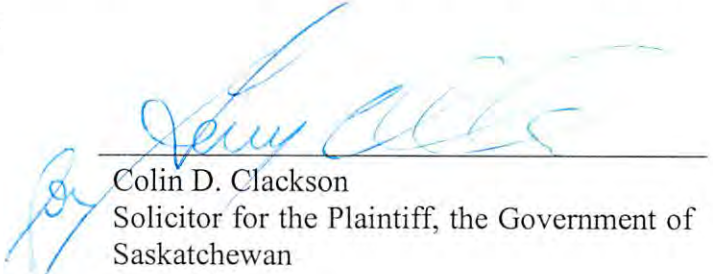
188. The Government of Saskatchewan claims against the Defendants, and each of them:
- (a) Its health care expenditures attributable to tobacco-related disease or the risk of tobacco-related disease, for each fiscal year from 1953, the present value of which for each year will be calculated to the date of trial.
 - (b) The present value of the estimated total expenditure by the Government of Saskatchewan for health care benefits which could reasonably be expected to result from tobacco-related disease or the risk of tobacco-related disease.
 - (c) costs; and
 - (d) such other relief as to this Honourable Court seems just.

DATED at the City of Saskatoon, in the province of Saskatchewan, this 8th day of June, 2012.

“Colin D. Clackson”

Colin D. Clackson
Solicitor for the Plaintiff, the Government of
Saskatchewan

AMENDED AND DATED at the City of Saskatoon, in the province of Saskatchewan, this 5 day of October, 2012.



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Tab D

File No. CI 12-01-78127

**THE QUEEN'S BENCH
WINNIPEG JUDICIAL CENTRE**

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA

PLAINTIFF

- and -

ROTHMANS, BENSON & HEDGES INC., ROTHMANS INC., ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC., PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP., R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH AMERICAN TOBACCO P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED, CARRERAS ROTHMANS LIMITED, and CANADIAN TOBACCO MANUFACTURERS' COUNCIL

DEFENDANTS

FILED
QUEEN'S BENCH

STATEMENT OF CLAIM

MAY 3 1 2012

LAW COURTS
WINNIPEG

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**THE QUEEN'S BENCH
WINNIPEG JUDICIAL CENTRE**

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA

PLAINTIFF

- and -

ROTHMANS, BENSON & HEDGES INC., ROTHMANS INC., ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC., PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP., R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH AMERICAN TOBACCO P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED, CARRERAS ROTHMANS LIMITED, and CANADIAN TOBACCO MANUFACTURERS' COUNCIL

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$300 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$300 for costs and have the costs assessed by the court.

May 31, 2012

Issued by:

m. glacianlar
Deputy Registrar

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AND TO: CARRERAS ROTHMANS LIMITED
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AND TO: CANADIAN TOBACCO MANUFACTURERS' COUNCIL
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STATEMENT OF CLAIM

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I. RELIEF

1. The Province claims against the Defendants, and each of them:

- (a) Its health care expenditures attributable to tobacco-related disease or the risk of tobacco-related disease, for each fiscal year from 1953, the present value of which for each year will be calculated to the date of trial. Further particulars will be furnished as soon as they become available, pursuant to Rule 25.06(13)(b);
- (b) The present value of the estimated total expenditure by the Province for health care benefits which could reasonably be expected to result from tobacco-related disease or the risk of tobacco-related disease. Further particulars will be furnished as soon as they become available, pursuant to Rule 25.06(13)(b);
- (c) costs; and
- (d) such other relief as to this Honourable Court seems just.

II. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

2. The Plaintiff Her Majesty the Queen in right of the Province of Manitoba (the "Province"), provides health care benefits for insured persons. Pursuant to the provisions of *The Tobacco Damages and Health Care Costs Recovery Act*, S.M. 2006, c. 18 (the "Act"), the Province brings this action against the Defendants to recover the cost of health care benefits, on an aggregate basis, for a population of insured persons as a result of exposure to cigarettes. In particular, the Province seeks to recover:

- (a) the present value of the total expenditure by the Province since 1953 for health care benefits provided for insured persons resulting from tobacco-related disease or the risk of tobacco-related disease, and
- (b) the present value of the estimated total expenditure by the Province for health care benefits that could reasonably be expected will be provided for those insured persons resulting from tobacco-related disease or the risk of tobacco-related disease,

caused or contributed to by the tobacco-related wrongs of the Defendants as described below. The Province pleads and relies on sections 2 and 3 of the Act.

3. The Province brings this action as a direct and distinct action for the recovery of health care benefits caused or contributed to by a tobacco-related wrong as defined in the Act, and the Province does so in its own right and not on the basis of a subrogated claim. The Province pleads and relies on subsections 2(1) and 2(2) of the Act.
4. The Province also pleads and relies on the presumptions and population-based evidence provisions under the Act, including subsections 2(5), 3(2) and 3(3) and section 5.
5. The words and terms used in this Statement of Claim including, "cost of health care benefits," "disease," "exposure," "health care benefits," "insured person," "manufacture," "manufacturer," "market share," "promote," "promotion," "tobacco product," "tobacco-related disease" and "tobacco-related wrong," have the meanings ascribed to them in the Act. The Province pleads and relies on the provisions of section 1 of the Act.

6. Also in this Statement of Claim:
- (a) "cigarette" includes loose tobacco intended for incorporation into a cigarette, and
 - (b) "to smoke" or "smoking" means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette and includes exposure to cigarette smoke.
7. Throughout the Statement of Claim, reference to a defendant includes both its predecessors in interest and its predecessors in name as identified in Part C. Reference to the Defendants means all of the Defendants unless otherwise stated.
8. The Defendants' tobacco-related wrongs began in 1950 and continue to the present, unless otherwise stated.

B. Overview of the Province's Claim

9. Each of the Defendants is a Manufacturer of tobacco products (referred to herein as cigarettes), as defined in the Act. At all times material to this action, cigarettes manufactured and promoted by the Defendants were offered for sale in Manitoba. The Defendants owed a duty to persons in Manitoba who have been exposed or might become exposed to cigarettes.
10. By 1950, the Defendants knew or ought to have known that nicotine is addictive and that smoking cigarettes could cause or contribute to disease. By 1960, the Defendants also knew or ought to have known that exposure to cigarette smoke could cause or contribute to disease.

11. From 1950, all of the Defendants have committed tobacco-related wrongs by breaching duties and obligations to persons in Manitoba, particularly their duties and obligations not to misrepresent the risks of smoking, to warn of the risks of smoking, not to promote cigarettes to children and adolescents, to design and manufacture a reasonably safe product, and other common law, equitable and statutory duties and obligations, as pleaded.
12. The Defendants have breached these duties and obligations by misrepresenting the risks of smoking and exposure to smoke, failing to warn the public that cigarettes are addictive and cause disease, engaging in promotional activities to neutralize the effectiveness of the warnings on cigarette packaging, targeting children and adolescents in promotional and marketing activities, suppressing information and scientific and medical data about the risks of smoking and exposure to smoke, manipulating the level and bio-availability of nicotine in their cigarettes and misrepresenting that filters reduce the risks of smoking and that filtered, "mild," "low tar" and "light" cigarettes are healthier and safer than other cigarettes.
13. As a result of these tobacco-related wrongs, persons in Manitoba started or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and have suffered, or will suffer, tobacco-related disease or an increased risk of tobacco-related disease.
14. In committing these tobacco-related wrongs, the Defendants have conspired or acted in concert. From the 1950s, the Defendants have been members of multinational tobacco enterprises or "Groups" whose companies engaged in the manufacture and promotion of cigarettes in Manitoba and throughout the world. The four Groups were:

- (a) the Philip Morris Group
 - (b) the R.J. Reynolds or RJR Group
 - (c) the British American Tobacco or BAT Group
 - (d) the Rothmans Group.
15. Beginning in 1953, these Groups agreed to disseminate false and misleading information, to suppress research and information on the risks of smoking and to orchestrate a false and misleading public relations program on smoking and health issues.
16. From 1953, the Defendants, both within each Group and with each other, have continued to conspire or to act in concert to distort research and to publicize misleading information about smoking and disease. They collectively agreed not to make any statement or admission that smoking caused disease and not to issue cigarette warnings unless they were forced to do so by government action. Since 1960, the Defendants have conspired or acted in concert to misrepresent the risk of exposure to smoke.
17. Beginning in 1953, this conspiracy was implemented in Manitoba and throughout Canada through the defendants Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited, Rothmans Inc., and the Canadian Tobacco Manufacturers' Council.
18. The Defendants have conspired or acted in concert to prevent the Province and persons in Manitoba from acquiring knowledge of the harmful and addictive properties of cigarettes and in committing tobacco-related wrongs.
19. Particulars of the Province's claim are provided below.

C. The Defendants

20. In 1950 and for several decades thereafter, the four tobacco Groups were the Philip Morris Group, the RJR Group, the BAT Group and the Rothmans Group. Within each Group, certain companies (referred to herein as the Lead Companies) were responsible for the direction, control, coordination and implementation of the common policies on smoking and health described below.

(i) The Philip Morris Group**1. Altria Group, Inc.**

21. The defendant Altria Group, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in the United States of America. Altria Group, Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Companies Inc. Altria Group, Inc. is a Lead Company of the Philip Morris Group.

2. Philip Morris U.S.A. Inc.

22. The defendant Philip Morris U.S.A. Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in the United States of America. Philip Morris U.S.A. Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Incorporated. Philip Morris U.S.A. Inc. is a Lead Company of the Philip Morris Group.

3. Philip Morris International, Inc.

23. The defendant Philip Morris International, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 120 Park Avenue, New York, New York, in the United States of America. Philip Morris International, Inc. is responsible in law for the actions and conduct of its predecessor in interest, Philip Morris Overseas, a division of Philip Morris Incorporated. In 1987, Philip Morris International, Inc. was incorporated as a subsidiary of Altria Group, Inc. Philip Morris International, Inc. remained a subsidiary of Altria Group, Inc. until 2008. Philip Morris International, Inc. is a Lead Company of the Philip Morris Group.

4. Rothmans, Benson & Hedges Inc.

24. The defendant Rothmans, Benson & Hedges Inc. is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans, Benson & Hedges Inc. is responsible in law for the actions and conduct of its predecessors in interest, Benson & Hedges (Canada) Limited, Benson & Hedges (Canada) Inc., and Rothmans of Pall Mall Limited.
25. Benson & Hedges (Canada) Limited was incorporated in 1934. In 1958, Benson & Hedges (Canada) Limited became a subsidiary of Philip Morris International, Inc. and an integral part of the Philip Morris Group. In 1979, Benson & Hedges (Canada) Limited changed its name to Benson & Hedges (Canada) Inc.
26. Rothmans, Benson & Hedges Inc. was formed in 1986 by the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited. In 2009, Rothmans, Benson & Hedges Inc. and the defendant Rothmans Inc. amalgamated and continued to operate

as Rothmans, Benson & Hedges Inc. Rothmans, Benson & Hedges Inc. is a wholly owned subsidiary of Philip Morris International, Inc.

5. The Philip Morris Group Lead Companies Control and Direct Rothmans, Benson & Hedges Inc.

27. At all times material to this action, the Canadian company, Rothmans, Benson & Hedges Inc., has been controlled and directed by the Lead Companies of the Philip Morris Group. The control and direction by Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. has extended to the manufacture and promotion of their cigarettes.
28. The means by which the Philip Morris Group Lead Companies have exercised control and direction include:
 - i. Overseeing board meetings of Rothmans, Benson & Hedges Inc.
 - ii. Placing board members of the Lead Companies on the board of directors of Rothmans, Benson & Hedges Inc.
 - iii. Placing senior executives of the Lead Companies as senior executives of Rothmans, Benson & Hedges Inc.
 - iv. Providing technical expertise, smoking and health materials, financial support and direction to Rothmans, Benson & Hedges Inc., including information on the relationship between smoking and health and technical knowledge for the manufacture of cigarettes, the levels of tar and nicotine and the type of tobacco to be used

- v. Organizing Philip Morris Group smoking and health conferences to set common policies for key tobacco companies in the Philip Morris Group, including Rothmans, Benson & Hedges Inc.
 - vi. Developing and implementing Philip Morris Group positions and policies through committees, including the Corporate Issues Management Committee, the Corporate Products Committee and the Committee on Smoking Issues and Management
 - vii. Creating a Public Affairs branch designed to manage smoking and health issues and government relations
 - viii. Orchestrating marketing and promotional campaigns
 - ix. Approving the deployment of funds for subsidiary operations, research into smoking and health, the promotion of cigarettes and smoker reassurance campaigns.
29. The control and direction by the Lead Companies of the Philip Morris Group have involved the implementation of the Philip Morris Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Philip Morris Group has maintained a policy that members of the Philip Morris Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the Philip Morris Group was to create doubt and controversy regarding the adverse health consequences of smoking and to defeat or delay anti-smoking legislation that would impose restrictions on the formulation, marketing, sale or use of cigarettes.

30. From 1960, it has been the Philip Morris Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
31. The Lead Companies of the Philip Morris Group have communicated and directed these policies for Rothmans, Benson & Hedges Inc. by a variety of means, including:
 - i. Establishing directives and communications such as "Smoking and Health Quick Reference Guides" and "Issues Alerts" to the Regions, including Canada
 - ii. Providing training, technical expertise and support
 - iii. Convening conferences, including the Conference on Smoking and Health and the Corporate Affairs World Conference
 - iv. Forming committees, such as the Committee on Smoking Issues Policy and Management and the Scientific Research and Review Committee for Worldwide Tobacco
 - v. Establishing Corporate Affairs and Public Affairs departments of the Lead Companies
 - vi. Conspiring or acting in concert as particularized in Part V below.
32. These common policies of the Philip Morris Group have continued notwithstanding changes in the corporate structure of the Philip Morris Group. These common policies on smoking and health in the Philip Morris Group have been maintained in Canada under the control and direction of Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. from 1950 to the present, such that these defendants are responsible in

law for the Philip Morris Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.

33. In particular, the Province states that:

- i. By reason of the facts pleaded, Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
- ii. Rothmans, Benson & Hedges Inc. has acted as agent for Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada
- iii. As described in Part V, Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

6. The Philip Morris Group Defendants are Manufacturers under the Act

34. Each of Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. (collectively, "the Philip Morris Defendants") is a Manufacturer pursuant to subsection 1(1) of the Act because:

- i. Each of the Philip Morris Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to paragraph (a) of the definition of Manufacturer in subsection 1(1) of the Act, each of the Philip Morris Defendants causes or has caused, directly or

indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.

- iii. Pursuant to paragraph (b) of the definition of Manufacturer in subsection 1(1) of the Act, each of the Philip Morris Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
 - iv. Pursuant to paragraph (c) of the definition of Manufacturer in subsection 1(1) of the Act, each of the Philip Morris Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.
35. From 1950 and continuing to the present, cigarettes manufactured or promoted by the Philip Morris Defendants have been offered for sale in Manitoba. The brand names of the cigarettes of the Philip Morris Defendants offered for sale in Manitoba and the rest of Canada include *Benson & Hedges*, *Belvedere*, *Marlboro*, *Marlboro Lights*, *Rothmans*, *Alpine* and *Parliament*.

(ii) The RJR Group

1. R.J. Reynolds Tobacco Company

36. The defendant R.J. Reynolds Tobacco Company is a company incorporated pursuant to the laws of New Jersey and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco Company is a Lead Company of the RJR Group.

37. R.J. Reynolds Tobacco Company was incorporated in 1922. In 2003, R.J. Reynolds Tobacco Company entered into a business combination with Brown & Williamson Tobacco Corporation, owned by the defendant, British American Tobacco P.L.C.

2. R.J. Reynolds Tobacco International, Inc.

38. The defendant R.J. Reynolds Tobacco International, Inc. is a company incorporated pursuant to the laws of Delaware and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco International, Inc. is a Lead Company of the RJR Group.

3. JTI-Macdonald Corp.

39. The defendant JTI-Macdonald Corp. is a company formed by continuance pursuant to the laws of Canada and has a registered office at 1 Robert Speck Parkway, Mississauga, Ontario. JTI-Macdonald Corp. is responsible in law for the actions and conduct of its predecessors in interest, RJR-Macdonald Corp., RJR-Macdonald Inc. and Macdonald Tobacco Inc.
40. W.C. Macdonald Incorporated was incorporated in 1930 and changed its name to Macdonald Tobacco Inc. in 1957. In 1970, Macdonald Tobacco Inc. became the exclusive Canadian distributor of the cigarette brands of R.J. Reynolds Tobacco Company referred to in paragraph 51. Macdonald Tobacco Inc. became a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1974.
41. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. In 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald

Tobacco Inc. and acquired all or substantially all of Macdonald Tobacco Inc.'s assets and continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc.

42. In 1999, RJR-Macdonald Inc. amalgamated with 3027221 Nova Scotia Company and continued as RJR-Macdonald Corp. JTI-Macdonald Corp. was created in 1999 as a result of an amalgamation between RJR-Macdonald Corp. and JT-Nova Scotia Corporation.

4. The RJR Group Lead Companies Control and Direct JTI-Macdonald Corp.

43. At all times material to this action, the Canadian company, JTI-Macdonald Corp., has been controlled and directed by the Lead Companies of the RJR Group. The control and direction by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. has extended to the manufacture and promotion of their cigarettes.
44. The means by which the RJR Lead Companies have exercised control and direction include:
- i. Developing a reporting system whereby each global "Area," including Canada as Area II, had a smoking issue designee who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to R.J. Reynolds Tobacco Company's Manager of Science Information
 - ii. Convening meetings such as the Winston-Salem Smoking Issues Coordinator Meetings

- iii. Developing and implementing positions and policies such as the "Issues Guide" to direct and control the activities of the RJR Group's subsidiaries, including JTI-Macdonald Corp.
 - iv. Placing senior executives of the Lead Companies as senior executives of JTI-Macdonald Corp.
 - v. Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department
 - vi. Providing technical expertise, including information and knowledge on the manufacture of cigarettes, the use of substitutes and additives, the use of pH controls, the appropriate levels of tar and nicotine and the type and mixture of tobacco used in the manufacture of cigarettes
 - vii. Providing cigarettes and cigarette samples made by the Lead Companies to JTI-Macdonald Corp. for sale in Canada, including Manitoba
 - viii. Maintaining a veto over research funding by the Canadian Tobacco Manufacturers' Council.
45. The control and direction by the Lead Companies of the RJR Group have involved the implementation of the RJR Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the RJR Group has maintained a policy that members of the RJR Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. This policy included the creation of an action plan to respond to health and smoking

issues by distributing information creating a scientific controversy surrounding smoking-related disease and by countering anti-smoking groups and legislation.

46. From 1960, it has been the RJR Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
47. The Lead Companies of the RJR Group have communicated and directed these policies for JTI-Macdonald Corp. by a variety of means, including:
 - i. Establishing directives and communications such as the "Issues Guide"
 - ii. Developing an action plan which set out the RJR Group's position on smoking and health issues to ensure that the personnel in the RJR Group companies, including JTI-Macdonald Corp., understood and disseminated the RJR Group's position
 - iii. Convening meetings including the Winston-Salem Smoking Issues Coordinator Meetings
 - iv. Convening conferences including the "Hounds Ears" and Sawgrass conferences
 - v. Taking a leadership role in the International Committee on Smoking Issues ("ICOSI"), particularly in relation to Canada
 - vi. Conspiring or acting in concert as particularized in Part V below.
48. These common policies of the RJR Group have continued notwithstanding changes in the corporate structure of the RJR Group. These common policies on smoking and health in the RJR Group have been maintained in Canada under the control and direction of R.J.

Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. from 1950 to the present, such that these defendants are responsible in law for the RJR Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of JTI-Macdonald Corp.

49. In particular, the Province states that:

- i. By reason of the facts pleaded, R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of JTI-Macdonald Corp.
- ii. JTI-Macdonald Corp. has acted as agent for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. in committing tobacco-related wrongs in Canada
- iii. As described in Part V, R.J. Reynolds Tobacco Company, R.J. Reynolds International, Inc. and JTI-Macdonald Corp. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

5. The RJR Group Defendants are Manufacturers under the Act

50. Each of R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc. and JTI-Macdonald Corp. (collectively, "the RJR Defendants") is a Manufacturer pursuant to subsection 1(1) of the Act because:

- i. Each of the RJR Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to paragraph (a) of the definition of Manufacturer in subsection 1(1) of the Act, each of the RJR Defendants causes or has caused, directly or indirectly,

through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.

iii. Pursuant to paragraph (b) of the definition of Manufacturer in subsection 1(1) of the Act, each of the RJR Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.

iv. Pursuant to paragraph (c) of the definition of Manufacturer in subsection 1(1) of the Act, each of the RJR Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

51. From 1950 and continuing to the present, cigarettes manufactured or promoted by the RJR Defendants have been offered for sale in Manitoba. The brand names of the cigarettes of the RJR Defendants offered for sale in Manitoba and the rest of Canada include *Export*, *Export "A"*, *Vantage*, *Camel*, *Salem*, *Smooth*, *Contessa*, *Contessa Slims*, *More*, *Macdonald* and *Winston*.

(iii) The BAT Group

1. British American Tobacco P.L.C.

52. The defendant British American Tobacco P.L.C. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England. British American Tobacco P.L.C. is responsible in law for the actions and conduct of its predecessors in interest, British-American Tobacco Company

Limited (now known as British American Tobacco (Investments) Limited) and B.A.T Industries P.L.C. British American Tobacco P.L.C. is a Lead Company of the BAT Group.

53. British American Tobacco P.L.C. has been the parent company of the BAT Group since 1998. British American Tobacco P.L.C. purports to have been in the tobacco business in the Americas for more than 100 years and to be solely focused on tobacco.

2. British American Tobacco (Investments) Limited

54. The defendant British American Tobacco (Investments) Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England. British American Tobacco (Investments) Limited is responsible in law for the actions and conduct of its predecessor in name, British-American Tobacco Company Limited. British American Tobacco (Investments) Limited is a Lead Company of the BAT Group.

55. British American Tobacco (Investments) Limited was the parent company of the BAT Group from 1902 to 1976. British American Tobacco (Investments) Limited was known as British-American Tobacco Company Limited until 1998.

3. B.A.T Industries P.L.C.

56. The defendant B.A.T Industries P.L.C. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England. B.A.T Industries P.L.C. is responsible in law for the actions and conduct of its predecessors in interest, B.A.T Industries Limited and Tobacco Securities Trust Limited. B.A.T Industries P.L.C. is a Lead Company of the BAT Group.

57. B.A.T Industries P.L.C. was the parent company of the BAT Group from 1976 to 1998.

4. Imperial Tobacco Canada Limited

58. The defendant Imperial Tobacco Canada Limited is a company incorporated pursuant to the laws of Canada and has a registered office at 3711 St. Antoine Street West, Montreal, Quebec. Imperial Tobacco Canada Limited is responsible in law for the actions and conduct of its predecessors in interest, Imperial Tobacco Company of Canada Limited, Imperial Tobacco Limited and Imasco Ltd.
59. For 100 years, Imperial Tobacco Canada Limited and its predecessors have been an integral part of the BAT Group and a subsidiary of the parent company of the BAT Group.
60. Imperial Tobacco Company of Canada Limited was incorporated in 1912. In 1970, Imperial Tobacco Company of Canada Limited changed its name to Imasco Limited, and formed a wholly owned subsidiary, Imperial Tobacco Limited. In 2000, Imasco Limited and Imperial Tobacco Limited were amalgamated under the name Imperial Tobacco Canada Limited.
61. In 2000, Imperial Tobacco Canada Limited became a wholly owned subsidiary of British American Tobacco P.L.C., the current parent of the BAT Group.

5. The BAT Group Lead Companies Control and Direct Imperial Tobacco Canada Limited

62. At all times material to this action, the Canadian company, Imperial Tobacco Canada Limited has been controlled and directed by the Lead Companies of the BAT Group. The

control and direction by British American Tobacco P.L.C., British American Tobacco (Investments) Limited, and B.A.T Industries P.L.C. has extended to the manufacture and promotion of their cigarettes.

63. The means by which the BAT Group Lead Companies have exercised control and direction include:

- i. Establishing Smoking and Health Policies to be followed by the members of the BAT Group
- ii. Convening Tobacco Strategy Review Team Policy meetings
- iii. Convening Smoking and Health, Marketing and Research conferences for major international markets, including Canada
- iv. Forming committees including the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board and the Tobacco Executive Committee
- v. Overseeing tobacco-related activities in Canada by the Chairman of the BAT Group Tobacco Division Board
- vi. Making final decisions on which Canadian Tobacco Manufacturers' Council research should be funded by Imperial Tobacco Canada Limited.

64. The control and direction by the Lead Companies of the BAT Group have involved the implementation of the BAT Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the BAT Group has maintained a policy that members of the BAT Group must deny the existence of any relationship between

smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the BAT Group was to maintain that causation had not been scientifically proven and remained controversial and to resist warnings as long as possible.

65. From 1960, it has been the BAT Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
66. The Lead Companies of the BAT Group have communicated and directed these policies for Imperial Tobacco Canada Limited by a variety of means, including:
 - i. Establishing the Smoking and Health Policies which ensured that all BAT Group companies gave uniform answers to similar questions on smoking and health issues, including B.A.T Industries P.L.C.'s Statement of Business Conduct
 - ii. Convening the Chairman's Advisory Conferences, BAT Group Research Conferences and BAT Group Marketing Conferences, all of which included Imperial Tobacco Canada Limited
 - iii. Preparing and distributing to BAT Group members, including Imperial Tobacco Canada Limited, written directives and communications, including "Smoking Issues: Claims and Responses," "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues," "Smoking and Health: The Unresolved Debate," "Smoking: The Scientific Controversy," "Smoking: Habit or Addiction?" and "Legal Considerations on Smoking and Health Policy"

- iv. Ensuring through all of these means that the personnel of the BAT Group companies, including Imperial Tobacco Canada Limited, understood and disseminated the BAT Group's position on smoking and health
 - v. Conspiring or acting in concert as particularized in Part V below.
67. These common policies of the BAT Group have continued notwithstanding changes in the corporate structure of the BAT Group. There continues to be central coordination of the BAT Group's international strategy, of which Canada is an integral part, and central control and management of the BAT Group policies on smoking and health issues. These common policies on smoking and health in the BAT Group have been maintained in Canada under the control and direction of British American Tobacco P.L.C., B.A.T Industries P.L.C. and British American Tobacco (Investments) Limited from 1950 to the present, such that these defendants are responsible in law for the BAT Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited.
68. In particular, the Province states that:
- i. By reason of the facts pleaded, British American Tobacco P.L.C., B.A.T Industries P.L.C. and British American Tobacco (Investments) Limited are jointly liable with and are vicariously liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited
 - ii. Imperial Tobacco Canada Limited has acted as agent for British American Tobacco P.L.C., B.A.T Industries P.L.C. and British American Tobacco (Investments) Limited in committing tobacco-related wrongs in Canada

- iii. As described in Part V, British American Tobacco P.L.C., B.A.T Industries P.L.C., British American Tobacco (Investments) Limited and Imperial Tobacco Canada Limited have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

6. The BAT Group Defendants are Manufacturers under the Act

69. Each of British American Tobacco P.L.C., British American Tobacco (Investments) Limited, B.A.T Industries P.L.C. and Imperial Tobacco Canada Limited (collectively, "the BAT Defendants") is a Manufacturer pursuant to subsection 1(1) of the Act because:
 - i. Each of the BAT Defendants manufactures or has manufactured cigarettes.
 - ii. Pursuant to paragraph (a) of the definition of Manufacturer in subsection 1(1) of the Act, each of the BAT Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
 - iii. Pursuant to paragraph (b) of the definition of Manufacturer in subsection 1(1) of the Act, each of the BAT Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
 - iv. Pursuant to paragraph (c) of the definition of Manufacturer in subsection 1(1) of the Act, each of the BAT Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

70. From 1950 and continuing to the present, cigarettes manufactured or promoted by the BAT Defendants have been offered for sale in Manitoba. The brand names of the cigarettes of the BAT Defendants offered for sale in Manitoba and the rest of Canada include *du Maurier, Peter Jackson, Player's Matinee, Goldcrest, John Player, Avanti, Cameo, Kool, Marlboro, Sweet Caporal, Pall Mall, Medallion, Matinee Slims, Matinee Special Mild, Matinee Extra Mild* and *Vogue*.

(iv) The Rothmans Group

1. Carreras Rothmans Limited

71. The defendant Carreras Rothmans Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England. Carreras Rothmans Limited is responsible in law for the actions and conduct of its predecessors in interest Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada and Carreras Limited. Carreras Rothmans Limited was a Lead Company of the Rothmans Group. Since 1999, Carreras Rothmans Limited has been part of the BAT Group.

72. Carreras Rothmans Limited was formed in 1958 when Rothmans of Pall Mall Limited acquired a controlling interest in Carreras Limited. At that time, Rothmans of Pall Mall Limited controlled Rothmans of Pall Mall Canada Limited and Carreras Limited controlled Rock City Tobacco Company of Quebec. By 1963, Rothmans of Pall Mall Canada had assumed all outstanding shares of Rock City Tobacco Company of Quebec.

2. Rothmans Inc.

73. The defendant Rothmans Inc. is a company incorporated pursuant to the laws of Ontario and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans Inc. has represented itself to have been a part of the Canadian tobacco industry for the past 100 years. Rothmans Inc. is responsible for the actions and conduct of its predecessor in name Rothmans of Pall Mall Canada Limited.

74. Rothmans of Pall Mall Canada Limited was incorporated in 1956. In 1985, Rothmans of Pall Mall Canada Limited changed its name to Rothmans Inc. Between 1986 and 2008, Rothmans Inc. was a co-owner with Altria Group, Inc. of Rothmans, Benson & Hedges Inc. In 2009, Rothmans Inc. amalgamated with and continued as Rothmans, Benson & Hedges Inc. as a wholly owned subsidiary of Philip Morris International, Inc.

3. The Rothmans Group Lead Companies Controlled and Directed Rothmans Inc.

75. Prior to 1986, the Canadian company, Rothmans Inc., was controlled and directed by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group. The control and direction by the Rothmans Group Lead Companies extended to the manufacture and promotion of their cigarettes.

76. Since 1980, the Philip Morris Group exercised substantial influence over Rothmans International through the creation of a partnership with the Rothmans Group and the placement of board members of the Philip Morris Group Lead Companies on the board of Rothmans International.

77. The means by which Carreras Rothmans Limited and Rothmans International exercised control and direction included:
- i. Coordinating the research strategy of all of the Rothmans Group companies worldwide, including Canada
 - ii. Facilitating a constant exchange of information, knowledge and ideas of all of the Rothmans Group companies worldwide, including Canada
 - iii. Directing its subsidiaries and affiliates, including Rothmans Inc., to conform their policies to those of the broader tobacco industry
 - iv. Creating the International Advisory Board for the development of common policies and strategies for the benefit of the Rothmans Group
 - v. Providing technical expertise and other support to members of the Rothmans Group
 - vi. Placing board members of the Lead Companies on the board of directors of Rothmans Inc.
78. The control and direction by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group involved the implementation of the Rothmans Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Rothmans Group maintained a policy that members of the Rothmans Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed.

79. From 1960, it was the Rothmans Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
80. The Lead Companies of the Rothmans Group, including Carreras Rothmans Limited and Rothmans International, communicated and directed these policies for Rothmans Inc. by a variety of means, including:
- i. Directing Rothmans Inc. to maintain the Rothmans Group's position that more research was needed in order to determine whether cigarettes cause disease
 - ii. Instructing Rothmans Inc. not to agree voluntarily to cautionary warnings in advertising
 - iii. Creating the International Advisory Board
 - iv. Conspiring or acting in concert as particularized in Part V below.
81. These common policies on smoking and health in the Rothmans Group were maintained in Canada under the control and direction of Carreras Rothmans Limited and Rothmans International from 1950 to 1986 such that Carreras Rothmans Limited is responsible in law for its own tobacco-related wrongs and is jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
82. Altria Group, Inc. and Philip Morris International, Inc. controlled and directed the Rothmans Group such that from 1980 to the present, Altria Group, Inc. and Philip Morris International, Inc. are responsible in law for their own tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.

83. In particular, the Province states that:
- i. By reason of the facts pleaded, Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans Inc.
 - ii. Rothmans Inc. has acted as agent for Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada
 - iii. As described in Part V, Carreras Rothmans Limited, Altria Group, Inc., Philip Morris International, Inc. and Rothmans Inc. have, together and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

4. The Rothmans Group Defendants are Manufacturers under the Act

84. Each of Carreras Rothmans Limited and Rothmans Inc. (together, the "Rothmans Defendants") is a Manufacturer pursuant to subsection 1(1) of the Act because:
- i. Each of the Rothmans Defendants has manufactured cigarettes.
 - ii. Pursuant to paragraph (a) of the definition of Manufacturer in subsection 1(1) of the Act, each of the Rothmans Defendants has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
 - iii. Pursuant to paragraph (b) of the definition of Manufacturer in subsection 1(1) of the Act, each of the Rothmans Defendants derived at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.

- iv. Pursuant to paragraph (c) of the definition of Manufacturer in subsection 1(1) of the Act, each of the Rothmans Defendants engaged in, or caused, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of tobacco cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.
85. From 1950 until 2008, cigarettes manufactured or promoted by the Rothmans Group were offered for sale in Manitoba. The brand names of the cigarettes of the Rothmans Group offered for sale in Manitoba and the rest of Canada are now offered for sale through the defendant, Rothmans, Benson & Hedges Inc. and include *Rothmans*, *Dunhill*, *Craven "A"*, *Craven "A" Super Slims*, *Sportsman* and *Black Cat*.
- (v) The Canadian Tobacco Manufacturers' Council**
86. The defendant Canadian Tobacco Manufacturers' Council is a company incorporated pursuant to the laws of Canada and has a registered office at 6 Rue D'Angers, Gatineau, Quebec. The Canadian Tobacco Manufacturers' Council is the trade association of the Canadian tobacco industry and was originally formed as an ad hoc committee of members of the Canadian tobacco industry in 1963 to influence government authorities on the question of smoking and health.
87. The founding members of the Canadian Tobacco Manufacturers' Council were Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans Inc.

88. As described in paragraphs 168 - 185, the Canadian Tobacco Manufacturers' Council provided a means by which the Defendants' Conspiracy (defined in Part V) was implemented and continues to be implemented in Canada. In addition, the Canadian Tobacco Manufacturers' Council itself was and remains a participant in the Conspiracy.
89. The Canadian Tobacco Manufacturers' Council is a Manufacturer pursuant to paragraph (d) of the definition of Manufacturer in subsection 1(1) of the Act because it has been and is engaged in all of the following activities:
- (a) the advancement of the interests of Manufacturers
 - (b) the promotion of cigarettes
 - (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes.

III. THE DEFENDANTS' KNOWLEDGE OF THE RISKS OF SMOKING AND EXPOSURE TO SMOKE

90. The Defendants designed and manufactured cigarettes to deliver nicotine to smokers.
91. Nicotine is an addictive drug that affects the brain and central nervous system, the cardiovascular system, the lungs, other organs and body systems and endocrine function. Addicted smokers physically and psychologically crave nicotine.
92. Smoking causes or contributes to disease, including, but not limited to:
- (a) chronic obstructive pulmonary disease and related conditions, including:
 - i. emphysema

- ii. chronic bronchitis
 - iii. chronic airways obstruction
 - iv. asthma
- (b) cancer, including:
- i. cancer of the lung
 - ii. cancer of the lip, oral cavity and pharynx
 - iii. cancer of the larynx
 - iv. cancer of the esophagus
 - v. cancer of the bladder
 - vi. cancer of the kidney
 - vii. cancer of the pancreas
 - viii. cancer of the stomach
- (c) circulatory system diseases, including:
- i. coronary heart disease
 - ii. pulmonary circulatory disease
 - iii. cerebrovascular disease
 - iv. atherosclerosis, aortic and other aneurysms

- v. peripheral vascular disease
 - (d) pneumonia and influenza
 - (e) peptic ulcers
 - (f) increased morbidity and general deterioration of health
 - (g) fetal harm.
93. Since 1950, the Defendants have been aware that cigarettes:
- (a) contain substances and produce by-products which can cause or contribute to disease including, nitrosamines, carbon monoxide, benzene, benzo[a]pyrene, dibenz[a,h]anthracene, benzo[e]pyrene, chrysene, dibenzo[a,i]pyrene, n'nitrosornicotine, acrolein, hydrogen cyanide, isoprene, chromium, chloracetophenone and arsenic
 - (b) cause or contribute to addiction.
94. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that smoking cigarettes could cause or contribute to disease.
95. By 1950, the Defendants knew or ought to have known that:
- (a) nicotine is an addictive and active ingredient in cigarettes
 - (b) smokers crave nicotine
 - (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.

IV. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS**A. Deceit and Misrepresentation**

96. At all material times, the Defendants have owed a duty to persons in Manitoba not to misrepresent the risks of smoking, those risks being the risks of addiction and disease.

97. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Manitoba started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

(i) The Misrepresentations

98. From 1950, the Defendants have misrepresented the risks of addiction and disease and in particular, without limiting the generality of the foregoing, have misrepresented in Manitoba and throughout Canada that:

- (a) smoking has not been shown to cause any known diseases
- (b) there is no medical or scientific link between smoking and disease
- (c) they were not aware of any research, or any credible research, establishing a link between smoking and disease
- (d) environmental and genetic factors are to blame for many diseases rather than smoking
- (e) cigarettes are not addictive

- (f) smoking is merely a habit or custom, not an addiction
 - (g) they have not manipulated nicotine levels
 - (h) they have not included substances in their cigarettes designed to increase the bio-availability of nicotine
 - (i) certain of their cigarettes, such as "filter," "mild," "low tar" and "light" brands, are safer than other cigarettes
 - (j) machine measurements of tar and nicotine are representative of actual intake
 - (k) smoking is consistent with a healthy lifestyle
 - (l) smoking is not harmful to health
 - (m) exposure to cigarette smoke is not harmful to health
 - (n) smoking and exposure to cigarette smoke are not a serious health risk
 - (o) they are interested in the health and well-being of smokers.
99. The misrepresentations by the Philip Morris Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons

- Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)
- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
 - iii. Public and media statements to Canadian newspapers and on North American television (including a statement in the Toronto Daily Star (September 1967) and a speech in Halifax (June 1978))
 - iv. Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.)
 - v. Publications (including in the 1978 Booklet "The Facts" published by Benson & Hedges (Canada) Inc.)
 - vi. Advertising, marketing and promotional campaigns
 - vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part V below.
100. The misrepresentations by the RJR Group in Canada have been continuous and have been made through a variety of means, including:

- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)
- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
- iii. Publications (including "R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina" in *The Tobacco Industry in Transition*)
- iv. Speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts)
- v. Public statements (including the 1983 Revised Mission Statement on Smoking and Health)
- vi. Advertising, marketing and promotional campaigns
- vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part V below.

101. The misrepresentations by the BAT Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969), the National Association of Tobacco and Confectionery Distributors Convention (October 1969), federal Legislative Committees (including in November 1987 and January 1988) and the House of Commons Standing Committee on Health (December 1996)
 - ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
 - iii. Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited)
 - iv. Public and media statements to Canadian newspapers and on national television, (including CBC television (December 1969) and in the Toronto Daily Star (June 1971))
 - v. Publications (including on the topics of smoking and health, "habit or addiction" and environmental tobacco smoke)

- vi. British American Tobacco P.L.C.'s website relating to environmental tobacco smoke
 - vii. Advertising, marketing and promotional campaigns
 - viii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part V below.
102. The misrepresentations by the Rothmans Group in Canada were continuous and were made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and the National Association of Tobacco and Confectionery Distributors Convention (October 1969)
 - ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), and with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981)
 - iii. Full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart "vital information" as soon as available

- iv. Public and media statements to Canadian newspapers and on national television (including in the Toronto Daily Star (September 1962, June 1969) and in the Globe and Mail (June 1967))
 - v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part V below.
103. Since 1963, the Canadian Tobacco Manufacturers' Council's misrepresentations have been continuous and have been made through a variety of means including:
- i. Presentations, including the 1963 presentation to the Canadian Medical Association, the 1963 presentation to the federal Department of National Health and Welfare, the 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs, the 1969 presentation to the National Association of Tobacco and Confectionery Distributors Convention and the 1987 and 1988 presentations to federal Legislative Committees
 - ii. Meetings with the federal Department of National Health and Welfare, the purpose of which was to oppose and delay regulatory measures
 - iii. Position papers
 - iv. Public statements characterizing warnings as misstatements and exaggerations of the scientific evidence, and representing environmental tobacco smoke as a symptom of inadequate ventilation in buildings
 - v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part V below.

(ii) Suppression and Concealment of Scientific and Medical Data

104. From 1950, the Defendants have suppressed and concealed scientific and medical data which revealed the serious health risks of smoking and exposure to cigarette smoke. Each Group had policies in accordance with which the Defendants have withheld, altered and destroyed research on addiction and disease causation.
105. Particulars of this suppression of scientific and medical data and research by the Philip Morris Group include:
- i. Agreeing with British American Tobacco (Investments) Limited and the RJR Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
 - ii. Destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group
 - iii. Closing of research laboratories and destroying related scientific information
 - iv. Withdrawing internal research relating to nicotine from peer review
 - v. Destroying internal research relating to nicotine
 - vi. Prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the additive effect of smoking
 - vii. Establishing INBIFO, a facility in Europe where unfavourable research was destroyed

- viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
106. Particulars of this suppression of scientific and medical data by the RJR Group include:
- i. Agreeing with British American Tobacco (Investments) Limited and the Philip Morris Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
 - ii. Ceasing research on the effects of smoke because of its potential bearing on product liability
 - iii. Removing 150 boxes of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina
 - iv. Imposing restrictions on the use of terms, including "drug," "marketing" and "dependency," in scientific studies
 - v. Destroying research relating to the biological activity of Camel cigarettes
 - vi. Invalidating and destroying research reports
 - vii. Terminating and destroying research associated with R.J. Reynolds Tobacco Company's "The Mouse House" experiments
 - viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
107. Particulars of this suppression of scientific and medical data by the BAT Group include:

- i. Agreeing with the Philip Morris and RJR Groups to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
 - ii. Agreeing with the Rothmans Group to suppress research relating to carbon monoxide and smoke intake
 - iii. Implementing a policy with Imperial Tobacco Canada Limited to avoid written documentation on issues relating to smoking and health
 - iv. Agreeing within the BAT Group not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the BAT Group
 - v. Directing that certain research reports in Canada be destroyed (1992)
 - vi. Suppressing information and developments relating to potentially safer products
 - vii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
108. Particulars of this suppression of scientific and medical data by the Rothmans Group include:
- i. Agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake
 - ii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

109. Particulars of the Canadian Tobacco Manufacturers' Council's suppression of scientific and medical data include:

- i. Refusing to approve and fund research where there was a concern that the results could be adverse to the tobacco industry
- ii. Sponsoring studies only where there was no likelihood that the results could be harmful to the tobacco industry.

(iii) Misleading Campaigns to Enhance Their Own Credibility

110. From 1950, the Defendants have participated in misleading campaigns to enhance their own credibility and to diminish the credibility of health authorities and anti-smoking groups for the purposes of reassuring smokers that cigarettes were not as dangerous as authorities were saying and of maintaining the social acceptability of smoking.

111. The misleading campaigns were at least two-pronged: (a) public denials as to the harmful effects of smoking and the calls for more research (while concealing research findings and suppressing further research); and (b) implementing misleading campaigns designed to reassure smokers which (as described in paragraphs 99 to 103) included advertising campaigns and numerous public statements relating both to cigarette smoking and exposure to cigarette smoke.

(iv) Misrepresentations Relating to Filtered, "Mild," "Low Tar" and "Light" Cigarettes

112. Beginning in the 1960s, the Defendants have wrongfully promoted filtered, "mild," "low tar" and "light" cigarettes to the public and government agencies, including the federal

government and the federal Department of Health and Welfare, with the purpose of deceiving the public and these agencies into believing that these cigarettes were healthier and safer.

113. From the 1960s, the Defendants have known that filtered, "mild," "low tar" and "light" cigarettes were not healthier or safer because smokers would compensate by increasing their inhalation of smoke to obtain as much or more nicotine.
114. The Defendants have also misled the public by linking a healthy image and lifestyle to filtered, "mild," "low tar" and "light" cigarettes. In this way, the Defendants have reassured the public and furthered their campaign of misrepresentation. The tobacco industry's research confirmed that smokers and the public mistakenly believed that filtered, "mild," "low tar" and "light" cigarettes meant healthier or safer cigarettes.
115. Particulars of the Defendants' research are as follows:
 - i. The Philip Morris Group's research confirmed that smokers develop a daily nicotine intake quota and that when smoking a cigarette lower in nicotine delivery than their regular cigarettes, smokers will adjust their smoking patterns to obtain their normal nicotine intake.
 - ii. The RJR Group's research confirmed that smokers will subconsciously adjust their intake volume and frequency, and smoking frequency, to obtain and maintain their hourly and daily requirements of nicotine. The RJR Group also knew that "low tar, low nicotine" cigarettes did not offer a health advantage compared to regular filter cigarettes.

- iii. The BAT Group's research confirmed that smokers must maintain a threshold amount of nicotine. BAT Group scientists found that when nicotine content was reduced, smokers would adjust their smoking patterns to obtain their threshold nicotine intake. These scientists also found that smokers would obtain a tar yield proportionately higher than that which the cigarette was designed to produce and could more than double the amount of nicotine intake reported in league tables.
 - iv. The Rothmans Group possessed research which confirmed that when a smoker changes to a brand of cigarette with purportedly lower delivery of nicotine the smoker will compensate by increasing inhalation of tar and carbon monoxide.
- (v) **Campaigns to Increase Smoking Rates Among Women**
- 116. From 1950, the Defendants have engaged in deceitful advertising, marketing and promotional campaigns to increase smoking rates among women.
 - 117. The Defendants have advertised, marketed and promoted their cigarettes to women as being reasonably healthy and safe, both expressly, through public statements including denials that cigarettes are harmful, and impliedly, through campaigns which equate smoking cigarettes with physical activities and a healthy lifestyle.
 - 118. Each of the four Groups has targeted women as smokers and as potential smokers through advertising and branding campaigns. In Manitoba, and throughout Canada, brands targeted at women include the Philip Morris Group's *Marlboro Lights* and *Virginia Slims*, the RJR Group's *Contessa* and *Contessa Slims*, the BAT Group's *Matinee*, *Matinee Slims*, *Matinee Special Mild* and *Matinee Extra Mild*, and the Rothmans Group's *Craven "A" Superslims*.

B. Failure to Warn

119. At all material times, the Defendants knew or ought to have known that their cigarettes were addictive and could cause or contribute to disease. At all material times, the Defendants owed a duty to persons in Manitoba to warn of the risks of smoking, being addiction and disease. As Manufacturers, the Defendants have owed a duty to persons in Manitoba as consumers of cigarettes and as persons who would be exposed to cigarette and tobacco smoke.
120. As described below, from 1950, the Defendants have breached this duty, thereby committing tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Manitoba started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.
121. Beginning in 1950, the Defendants breached their duty by failing to provide any warning, or any adequate warning after 1972, of:
- (a) the risk of tobacco-related disease or
 - (b) the risk of addiction to the nicotine contained in their cigarettes.
122. Any warnings that were provided were inadequate and ineffective in that they:
- (a) failed to warn of the actual and known risks
 - (b) failed to give smokers, prospective smokers, and the public a true indication of the risks

- (c) were introduced for the purpose of delaying more accurate government mandated warnings
 - (d) were combined with marketing plans and campaigns designed to reassure smokers
 - (e) failed to make clear, credible, complete and current disclosure of the harmful substances in their cigarettes.
123. From 1950, the Defendants have breached their duty to warn by wrongfully engaging in advertising, marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings on cigarette packaging and of warnings and advertising by governments and other agencies concerned with public health. These activities include the campaigns to reassure the public and governments, all as previously described.
124. From 1950, the Defendants have breached their duty to warn by misinforming and misleading the public about the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 96-103.
125. From 1950, the Defendants have breached their duty to warn by selectively promoting and publicising misleading research to create doubt and controversy regarding the risks of smoking and of exposure to cigarette smoke. This selective promotion and publication of misleading research was facilitated, in part, by the Defendants' creation of tobacco organizations, as particularized in paragraphs 152-158, and the Canadian Tobacco Manufacturers' Council, and by presentations made by the Lead Companies to the public.
126. From 1950, the Defendants have breached their duty to warn by suppressing and concealing information regarding the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 104 to 109.

127. From 1950, the Defendants have breached their duty to warn children and adolescents. The Defendants knew or ought to have known that children (under the age of 13) and adolescents (between the ages of 13 and 18) in Manitoba either were smoking or might start smoking. Despite their knowledge, the Defendants failed to provide warnings sufficient to inform children and adolescents of the risks. The Defendants wrongfully directed advertising, marketing and promotional material to children and adolescents who were unable to make informed decisions about smoking.

C. Promotion of Cigarettes to Children and Adolescents

128. At all material times, the Defendants have owed a duty to children and adolescents in Manitoba to take all reasonable measures to prevent them from starting or continuing to smoke.

129. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, children and adolescents in Manitoba started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

130. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age. The Defendants were also aware that children and adolescents are unable to make informed decisions about smoking.

131. From 1950, the Defendants knew or ought to have known that children and adolescents in Manitoba were smoking or might start to smoke and that it was contrary to law, including the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act*

(Canada) and the 1997 *Tobacco Act* (Canada), and public policy, to sell cigarettes to children and adolescents or to promote smoking by such persons.

132. From 1950, the Defendants knew or ought to have known that children and adolescents in Manitoba who smoked cigarettes would become addicted and would suffer tobacco-related disease.
133. From 1950, the Defendants have failed to take any reasonable and effective measures to prevent children and adolescents from starting or continuing to smoke. Instead, the Defendants have effectively done the opposite: they have targeted children and adolescents in their advertising, promotional and marketing activities; they have advertised in publications accessed by children and adolescents; they have marketed cigarettes for sale in places frequented by children and adolescents; and they have engaged in marketing campaigns directed at children and adolescents.
134. These activities were undertaken to induce children and adolescents in Manitoba to start or continue to smoke and to undermine government initiatives and legislation (including that set out in paragraph 131) aimed at preventing children and adolescents in Manitoba from starting or continuing to smoke.
135. In particular:
 - (a) The Philip Morris Group targeted youth as a means to both attract new smokers and develop those smokers into a "young adult franchise" and through Rothmans, Benson & Hedges Inc., undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands.

- (b) The RJR Group recognized the importance of imagery for the youth market and developed marketing criteria (including the use of cartoons and celebrities) and specific brands it believed would assist in obtaining and maintaining the youth marketing position.
- (c) The BAT Group targeted what it described as "starters", that is, children and adolescents, by studying their smoking habits and adopting advertising strategies which focused on youth-oriented and youth-appealing activities.
- (d) The Rothmans Group targeted youth and undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands in Canada.

D. Negligent Design and Manufacture

- 136. At all material times, the Defendants have owed a duty to design and manufacture a reasonably safe product and a duty to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking the cigarettes they manufactured and promoted.
- 137. As described below, since 1950, the Defendants have breached these duties by failing to design a reasonably safe product – a product that is not addictive and does not cause disease – and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking. In breaching these duties, the Defendants have committed tobacco-related wrongs.
- 138. As a result of these tobacco-related wrongs, persons in Manitoba started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and

promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

139. From the 1960s, the Defendants have halted research and development of alternative products because of concerns that such products would imply that cigarettes were unsafe. As described in paragraph 106, the RJR Group stopped work on the alleged positive effects of smoke due to concerns about product liability. As described in paragraph 107, through its control of Imperial Tobacco Canada Limited, B.A.T Industries P.L.C. suppressed information relating to potentially safer products because of the negative implications for cigarettes.
140. From the 1960s, the Defendants have increased the risks of smoking by manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
 - (a) blending of tobacco
 - (b) adding nicotine or substances containing nicotine
 - (c) increasing the pH level to increase the rate of nicotine intake into the body
 - (d) introducing substances, such as ammonia and menthol, to enhance the bio-availability of nicotine to smokers or to compensate for the variability in the nicotine content
 - (e) such further and other activities known to the Defendants.
141. From the 1960s, the Defendants have increased the risks of smoking by adding to their cigarettes ineffective filters and by misleading the public and government agencies, including the federal government and the federal Department of Health and Welfare, that

Corp. marketed its brands, including *Vantage*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette.

E. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations

144. The Defendants, in their role as Manufacturers of cigarettes for human use and consumption, were under legal, equitable and statutory duties and obligations to ensure that their cigarettes were reasonably safe, and they expressly or impliedly warranted that their cigarettes were reasonably safe. In particular, from 1950, the Defendants advertised and promoted their cigarettes as being reasonably safe, both expressly, through public statements including denials that they are harmful, and impliedly, through campaigns which related cigarettes to a healthy lifestyle and physical activities. The Defendants also have repeatedly proclaimed to be interested in the health and well-being of smokers.

145. Knowing that cigarettes are addictive and cause and contribute to disease, from 1950, the Defendants inflicted harm on persons in Manitoba by manufacturing, promoting and selling cigarettes for profit and in disregard of public health.

146. From 1950, the Defendants engaged in unconscionable acts or practices and exploited the vulnerabilities of children and adolescents, and persons addicted to nicotine, particulars of which include:

(a) manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:

i. sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine

these filters made smoking safer. At all material times, the Defendants have known that smokers compensated for the filters by increasing their inhalation and by adopting other means to increase the assimilation of smoke into their lungs. The Defendants have known that the design of these filters resulted in a larger dose of nicotine to be inhaled by the smoker.

142. From the 1960s, the Defendants have designed and manufactured filtered, “mild,” “low tar” and “light” cigarettes which they promoted as healthier than regular cigarettes, with knowledge that this was not the case. The Defendants have misled the public by linking a healthy image to a low tar – low nicotine cigarette through the use of descriptors and the portrayal of filtered, "mild," "low tar" and "light" cigarettes in the context of a lifestyle or activities that misrepresented smoking and health.
143. These filtered, "mild," "low tar" and "light" cigarettes were designed and manufactured notwithstanding the Defendants' own research and knowledge. In particular, the BAT Group's research confirmed that smokers and the public mistakenly believed that "light" or "low tar" meant a healthier cigarette and Imperial Tobacco Canada Limited marketed its brands, including *Medallion*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The Philip Morris Group's research confirmed that smokers mistakenly believed that low delivery was healthy and that the public's positive perception of filtration was more important than the filtration's actual effectiveness. Rothmans, Benson & Hedges Inc. marketed its brands, including *Benson & Hedges Lights*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The RJR Group's research confirmed that younger people believed "mild," "low tar" and "light" cigarettes to be more healthy and JTI-Macdonald

- ii. deliberately increasing the level of nicotine through blending of tobaccos
 - iii. deliberately increasing the level of nicotine by adding nicotine or other substances containing nicotine
 - iv. adding ammonia and menthol
- (b) adding ineffective filters to cigarettes and misleading the public into believing these filters made smoking safer
 - (c) failing to disclose to consumers the risks inherent in smoking, those being the risks of disease and addiction
 - (d) engaging in marketing, promotional and public relations activities to neutralize or negate the effectiveness of safety warnings provided to the public
 - (e) suppressing or concealing scientific and medical information regarding the risks of smoking and of exposure to cigarette smoke
 - (f) marketing and promoting smoking in a manner designed to mislead the public into believing that cigarettes have performance characteristics, ingredients, uses, benefits and approval that they did not have
 - (g) using innuendo, exaggeration and ambiguity to misinform and mislead the public about the risks of smoking and of exposure to cigarette smoke by mischaracterizing any health concerns relating to smoking and exposure to smoke or attempts at regulation as unproven, controversial, extremist and an infringement of liberty or authoritarian

- (h) failing to take any reasonable measures to prevent children and adolescents from starting or continuing to smoke
- (i) targeting children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents to start smoking or to continue to smoke
- (j) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that they are addictive and cause or contribute to disease and death
- (k) misrepresenting that:
 - i. smoking has not been shown to cause any known diseases
 - ii. there is no medical or scientific link between smoking and disease
 - iii. they were not aware of any research, or any credible research, establishing a link between smoking and disease
 - iv. environmental and genetic factors are to blame for many diseases rather than smoking
 - v. cigarettes are not addictive
 - vi. smoking is merely a habit or custom, not an addiction
 - vii. they have not manipulated nicotine levels

- viii. they have not included substances in their cigarettes designed to increase the bio-availability of nicotine
 - ix. certain of their cigarettes, such as filtered, "mild," "low tar" and "light" brands, are safer than other cigarettes
 - x. machine measurements of tar and nicotine are representative of actual intake
 - xi. smoking is consistent with a healthy lifestyle
 - xii. smoking is not harmful to health
 - xiii. exposure to cigarette smoke is not harmful to health
 - xiv. smoking and exposure to cigarette smoke are not a serious health risk
 - xv. they are interested in health and well-being of smokers.
- (l) failing to correct statements regarding the risks of smoking which they knew were incomplete or inaccurate, thereby misrepresenting the risks of smoking by omission or silence
- (m) misrepresenting the characteristics of their cigarettes without proper testing, investigation or research concerning:
- i. the risk of disease
 - ii. the risk of addiction to nicotine
 - iii. the feasibility of eliminating or minimizing these risks

- (n) misrepresenting as safer products, cigarettes with filters, and "mild," "low tar" or "low nicotine" tobacco, which adequate and proper testing would have revealed were ineffective to safeguard the health of smokers
- (o) failing to make clear, credible, complete and current disclosure of the risks inherent in smoking their cigarettes
- (p) misleading the public about the risks of smoking and of exposure to cigarette smoke
- (q) deliberately and unconscionably discrediting various testing and research which showed a link between smoking and disease and addiction
- (r) such further and other activities known to the Defendants.

147. The Defendants breached their legal, equitable and statutory duties and obligations, provincially and federally, including the provisions of *Combines Investigation Act*, R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act*, S.C. 1968-69, chapter 38 and amendments thereto (and in particular, section 33D) and subsequently the *Competition Act*, R.C.S. 1985, chapter C-34 and amendments thereto (and in particular, section 74.01), the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and statutory and regulatory obligations in the province of Manitoba.

148. As a result of these tobacco-related wrongs, persons in Manitoba started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and increased risk of such disease.

V. CONSPIRACY AND CONCERT OF ACTION IN COMMITTING TOBACCO-RELATED WRONGS

A. Role of the Lead Companies

149. At various times beginning in 1953 and continuing to the present, in response to reports in medical and other publications linking smoking and disease, the Defendants conspired or acted in concert to prevent the Province and persons in Manitoba and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their actions would cause increased health care costs (the "Conspiracy").

150. The Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups were acting throughout on their own behalf and on behalf of their respective Groups. As particularized below, the Conspiracy was renewed at numerous meetings and through various campaigns and policies, all of which are known to the Defendants.

(i) The Industry Conspiracy is Hatched

151. The Conspiracy or concert of action secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco (Investments) Limited), American Tobacco Company, Lorillard Tobacco Company and the public relations firm, Hill & Knowlton. At least two of these meetings were held at the Plaza Hotel in New York on December 15 and 28, 1953. These companies agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking
- (b) make no statement or admission that smoking caused disease
- (c) orchestrate a public relations program on smoking and health issues with the object of:
 - i. promoting cigarettes
 - ii. protecting cigarettes from attack based upon health risks
 - iii. reassuring the public that smoking was not hazardous (sometimes referred to as the campaign of reassurance).

(ii) Use of Research Organizations in Furtherance of the Conspiracy

152. Between late 1953 and the early 1960s, the Lead Companies of each of the Groups formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964, both referred to herein as TIRC), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Manufacturers' Standing Committee (the "TMSC", renamed the Tobacco Research Council in 1963 and renamed the Tobacco Advisory Council in 1978, collectively referred to herein as TMSC) and Verband der Cigarettenindustrie ("Verband").
153. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, CORESTA, TMSC and Verband, would objectively conduct research and gather data concerning the link between smoking and disease and

would publicize the results of this research throughout the world. Particulars of these misrepresentations are within the knowledge of the Defendants but include:

- i. The issuance of the TIRC's 1954 "Frank Statement to Cigarette Smokers" which received coverage in the Canadian press
 - ii. Statements made to the Canadian Medical Association in May 1963
 - iii. November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare
 - iv. May 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs
 - v. Statements to the national press and news organizations in Canada
 - vi. Communications through the Canadian Tobacco Manufacturers' Council in Canada, including to the federal Department of Health and Welfare
 - vii. As to British American Tobacco P.L.C. and the Philip Morris Group in particular, misleading statements on environmental tobacco smoke.
154. From 1953, the Lead Companies conspired with the TIRC, CORESTA, TMSC and Verband to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Defendants misled the public and the Province, into believing that there was a medical or scientific controversy about whether smoking is addictive and causes disease. The Defendants' position and policy has been that causation remains an "open question." As described below, this policy was enforced through ICOSI and the Canadian Tobacco Manufacturers' Council.

155. In 1963 and 1964 the Lead Companies and the Defendants agreed to co-ordinate their research with research conducted by the TIRC in the United States, for the purpose of suppressing any findings which might indicate that cigarettes are harmful and dangerous. In particular, the Lead Companies contributed to research and vetted and selected the persons who were to conduct such research.
156. In April and September 1963, the Lead Companies, and in particular, British American Tobacco (Investments) Limited, through its agent Brown & Williamson Tobacco Corporation, and Imperial Tobacco Canada Limited, Philip Morris U.S.A. Inc. and R.J. Reynolds Tobacco Company, together with TIRC and Hill & Knowlton, agreed to develop a public relations campaign to counter the Royal College of Physicians Report in England, the forthcoming Surgeon General's Report in the United States and a Report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes. This public relations campaign was part of the broader ongoing public relations campaign which continues to the present to reassure the public and to suppress information.
157. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease unless and until they were forced to do so by government action.
158. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes and risks of smoking, including research funded by British American Tobacco (Investments) Limited at Harrogate Labs in England. In particular, the Lead Companies agreed to suppress and conceal all information which confirmed scientific work on the carcinogenicity of tobacco smoke

condensate, and to avoid reference to nicotine, nicotine dependence and nicotine pharmacology in the development of research proposals.

(iii) Operation Berkshire and the Establishment of ICOSI

159. By the mid-1970s, the Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups decided that an increased international misinformation campaign ("Operation Berkshire") was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease could lead to a "domino effect" to the detriment of the industry world-wide.
160. Through Operation Berkshire, the Defendants further advanced their campaign of misinformation. Operation Berkshire was aimed at Canada and other major markets and led by both the Philip Morris Group in concert with the Rothmans Group and the BAT Group.
161. Operation Berkshire was implemented as a scheme among the Defendants. This scheme involved an agreement among the Defendants not to make concessions voluntarily and to oppose, through legal or other means, the imposition of anti-smoking legislation. The Defendants also agreed not to concede that adverse health effects had been linked to smoking and, instead, agreed to create "controversy" concerning any research or studies suggesting otherwise.
162. In June, 1977, Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries P.L.C. and Rothmans International, as Lead Companies of each of the four Groups and acting on behalf of the

members of those Groups, met in England to establish ICOSI.

163. The primary objective of ICOSI was to implement the Conspiracy. The smoking and health scheme denying the relationship between smoking and disease was directed at major international markets, including Canada. This scheme included an agreement by all members that the issue of causation remains controversial and unresolved and that warning notices would be strenuously resisted with all means at their disposal.
164. On June 2 and 3, 1977 and November 11 and 12, 1977, the founding members of ICOSI, including Philip Morris U.S.A. Inc., the R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries P.L.C. and Rothmans International, adopted a position paper and then a revised version thereof, developed jointly by the BAT and Philip Morris Groups. The position paper and the revised version required that the tobacco industry as a whole take the position that there was "medical controversy" regarding the relationship between smoking and disease.
165. Through ICOSI, the Defendants resisted attempts by governments to provide warnings about smoking and disease and sought to attribute warnings to governments. In furtherance of the Conspiracy, all of the Defendants pledged to:
 - (a) jointly disseminate false and misleading information regarding the risks of smoking
 - (b) make no statement or admission that smoking caused disease
 - (c) suppress research regarding the risks of smoking

- (d) resist government attempts to restrict advertising, sponsorship and smoking in public places
 - (e) not compete with each other by making health claims with respect to their cigarettes – in other words, not advertise "safer" cigarettes - and thereby avoid direct or indirect admissions about the risks of smoking
 - (f) attribute quotes on smoking and health to "appropriate non-ICOSI sources"
 - (g) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring smokers, the public and authorities in Manitoba and other jurisdictions that smoking was not hazardous.
166. In and after 1977 the members of ICOSI, including the Lead Companies of each of the Groups, in furtherance of the Conspiracy, agreed orally and in writing, to ensure that:
- (a) the members of their respective Groups, including those in Canada, would act in accordance with the ICOSI position on smoking and health (as described in paragraph 165), including the decision to mislead the public about the link between smoking and disease
 - (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, the Canadian Tobacco Manufacturers' Council, to ensure compliance in the various tobacco markets worldwide

- (c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves
- (d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.

167. In 1980, ICOSI was renamed the International Tobacco Information Centre/Centre International d'Information du Tabac – INFOTAB. In 1992, INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are referred to collectively as ICOSI). The objectives of ICOSI have remained the same notwithstanding these name changes and the Defendants maintained and have continued their Conspiracy to commit tobacco-related wrongs.

(iv) ICOSI and the Canadian Tobacco Manufacturers' Council

168. At all times from 1977 onward, the policies of ICOSI were identical to the policies of the NMAs, including the Canadian Tobacco Manufacturers' Council, and were presented as the policies and positions of the NMAs, including the Canadian Tobacco Manufacturers' Council and its member companies, so as to conceal from the public and from governments the existence of the Conspiracy or concert of action. ICOSI organized conferences of the NMAs, including the Canadian Tobacco Manufacturers' Council, to ensure compliance with ICOSI initiatives.

169. The Lead Companies were members of the Canadian Tobacco Manufacturers' Council through their respective operating companies in Canada, the predecessors of the

defendants Imperial Tobacco Canada Limited, JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Rothmans Inc. The Canadian Tobacco Manufacturers' Council was an allied member of ICOSI.

170. In particular, the ICOSI and the Canadian Tobacco Manufacturers' Council position papers were essentially identical in most respects and include the false and misleading positions that:

- i. No causal relationship between smoking and disease exists
- ii. No persuasive scientific evidence exists to support the contention that non-smokers are harmed by the tobacco smoke of others
- iii. Laws and regulations banning smoking are an unwarranted intrusion into the lives and rights of citizens.

171. At all material times, the Lead Companies conspired or acted in concert to ensure that manufacturers complied with, and did not deviate from, the official ICOSI position on the adverse health effects of smoking. In particular, "Issues Binders" were prepared so that ICOSI affiliates, including the Defendants in Canada, would speak with one voice on key issues such as addiction, advertising and sponsorship, the public smoking issue, smoking and health, social costs and warning labels. The Lead Companies instructed their respective Group companies to conform their policies to those of ICOSI. ICOSI developed workshops for the training of NMA personnel, including personnel of the Canadian Tobacco Manufacturers' Council.

172. The Defendants conspired or acted in concert in committing the tobacco-related wrongs particularized in Part IV. The Defendants have continued the Conspiracy or have

continued to act in concert to commit tobacco-related wrongs. The Defendants have continued to maintain that environmental tobacco smoke is not harmful, have continued to create doubt and controversy regarding the health effects of exposure to cigarette smoke. The Defendants also have continued to oppose, delay and negate attempts by all levels of government, including municipal governments, and by health authorities, to provide health warnings or to otherwise limit or control cigarette smoking and exposure to cigarette smoke.

173. The Defendants' Conspiracy or concert of action has continued for more than thirty years since the inception of ICOSI. Further particulars of the manner in which the Conspiracy or concert of action was entered into and continued, and of the breaches of duty committed in furtherance of the Conspiracy or concert of action, are within the knowledge of the Defendants.

B. Conspiracy and Concerted Action in Canada

(i) Canadian Tobacco Manufacturer's Council

174. In furtherance of the Conspiracy, from 1953, the Defendants conspired or acted in concert with one another and within each Group to prevent the Province and persons in Manitoba and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and to commit the tobacco-related wrongs described in Part IV. The Defendants conspired or acted in concert in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the Conspiracy or concert of action.

175. The Conspiracy or concert of action was continued in Canada when:

- (a) In 1962, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited secretly agreed not to compete with each other by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of smoking.
- (b) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease.
- (c) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, incorporated as the Canadian Tobacco Manufacturers' Council in 1982 and collectively referred to as the Canadian Tobacco Manufacturers' Council) in order to maintain a united front on smoking and health issues and to respond to what the Defendants viewed as an increasingly vocal anti-tobacco lobby.
- (d) In May 1969, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited, through the Canadian Tobacco Manufacturers' Council, misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.
- (e) The Lead Companies of each of the Groups recruited, approved and coordinated the witnesses who presented the positions and misrepresentations of the Canadian tobacco industry.

176. Upon its formation in 1963 and at all material times thereafter, the Canadian Tobacco Manufacturers' Council provided a means and method to continue the Conspiracy or concert of action in Canada. From its inception, the Canadian Tobacco Manufacturers' Council agreed, adopted and participated in the Conspiracy or concert of action.
177. Through meetings, presentations and position papers, the Canadian Tobacco Manufacturers' Council has maintained that smoking was not the cause of any disease and has misrepresented the risks of smoking to governments and regulatory agencies throughout Canada. Through its misrepresentations and delay tactics, the Canadian Tobacco Manufacturers' Council has opposed or negated government restrictions on the tobacco industry.
178. In accordance with the position of the Lead Companies and its members, the Canadian Tobacco Manufacturers' Council has maintained that smoking is not the cause of any disease and misrepresented the risks of smoking to the Canadian public.
179. Since 1963, the Canadian Tobacco Manufacturers' Council has co-ordinated with its co-Defendants and international tobacco industry associations the Canadian tobacco industry's positions on smoking and health issues. At all material times, the Canadian Tobacco Manufacturers' Council acted as agent for each of its co-Defendants.
180. In furtherance of the Conspiracy or concert of action, the Canadian Tobacco Manufacturers' Council:
- (a) Disseminated false and misleading information regarding the risks of smoking, including making false and misleading submissions to governments and withheld

from the federal government research relating to carbon monoxide, addiction, smoker compensation and warnings

- (b) Refused to admit that smoking caused disease
- (c) Suppressed research regarding the risks of smoking
- (d) Participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link between smoking and disease
- (e) Misled governments in order to delay and minimize government initiatives with respect to smoking and health
- (f) Characterized anyone who disagreed with the Canadian tobacco industry on the issue of smoking and health as uninformed, misinformed or extremist
- (g) Participated in coordinated tobacco industry efforts in Canada to dismiss or minimize the risk of exposure to smoke.

(ii) The Conspiracy in Canada Among the Groups

181. As to the Philip Morris Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. Philip Morris Conference on Smoking and Health in June 1976
- ii. International Conference on Smoking Behaviour in November – December 1977

- iii. Conference on May 9, 1978 designed to change public opinion by developing policies to challenge and fight anti-smoking efforts
- iv. Tobacco Technology Group Meetings
- v. Corporate Affairs World Conference
- vi. Philip Morris International Legal Conference
- vii. Philip Morris International Corporate Affairs Presentation
- viii. Meetings of the Canadian Tobacco Manufacturers' Council
- ix. Meetings of ICOSI
- x. Position Papers of the Canadian Tobacco Manufacturers' Council
- xi. Direction by the Lead Companies to Rothmans, Benson & Hedges Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
- xii. The Canadian Tobacco Manufacturers' Council and Rothmans, Benson & Hedges Inc. acting as agents for the Lead Companies in the Philip Morris Group
- xiii. Requests by Rothmans, Benson & Hedges Inc. to the Canadian Tobacco Manufacturers' Council and ICOSI to respond to anti-tobacco campaigns
- xiv. Public statements about the Philip Morris Group's continued efforts, in concert with the other Defendants, to present the smoking and health issue to the public

- xv. Philip Morris Group and tobacco industry meetings relating to environmental tobacco smoke.
182. As for the RJR Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:
- i. Hounds Ears and Sawgrass conferences
 - ii. Meetings of the Canadian Tobacco Manufacturers' Council
 - iii. Meetings of ICOSI and in particular, the Social Acceptability Working Party chaired by the RJR Group
 - iv. Smoking Issues Coordinator meetings
 - v. Position Papers of the Canadian Tobacco Manufacturers' Council
 - vi. Direction by the Lead Companies to JTI-Macdonald Corp. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research and the importance of maintaining the right to veto any particular research proposal
 - vii. The Canadian Tobacco Manufacturers' Council and JTI-Macdonald Corp. acting as agents for the Lead Companies in the RJR Group
 - viii. RJR Group and tobacco industry meetings relating to environmental tobacco smoke.

183. As for the BAT Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. BAT Group Smoking and Health Policy Meetings, including Chairman's Advisory Conferences and BAT Group Smoking Behaviour Conferences
- ii. Smoker Reassurance Campaigns, including Project Viking and the September 1976 campaign
- iii. BAT Group document destruction meetings, including on January 8, 1990, June 21-22, 1990, August 1990 and September 1991
- iv. Imperial Tobacco Canada Limited's retention of Hill & Knowlton in 1962 to combat certain Health Canada information
- v. Meetings of the Canadian Tobacco Manufacturers' Council, including those dealing with the threshold nicotine content, procrastination in relation to carbon monoxide warnings and environmental tobacco smoke
- vi. The Canadian Tobacco Manufacturers' Council Position Papers
- vii. Meetings of ICOSI at which Imperial Tobacco Canada Limited was present or represented
- viii. Direction by the Lead Companies to Imperial Tobacco Canada Limited regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research

- ix. The Canadian Tobacco Manufacturers' Council and Imperial Tobacco Canada Limited acting as agents for the Lead Companies in the BAT Group
 - x. Direction by the Lead Companies to Imperial Tobacco Canada Limited regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
 - xi. Provision of personnel from the Lead Companies to assist Imperial Tobacco Canada Limited in responding to federal government inquiries
 - xii. BAT Group and tobacco industry meetings relating to environmental tobacco smoke.
184. As for the Rothmans Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:
- i. November 22, 1976 meeting among the Philip Morris Group, the BAT Group and Carreras Rothmans Limited relating to the smoker reassurance campaign
 - ii. Meetings of ICOSI
 - iii. Meetings of the Canadian Tobacco Manufacturers' Council
 - iv. Position Papers of the Canadian Tobacco Manufacturers' Council
 - v. Pooling of resources with other companies in the tobacco industry to fund studies intended to generate data that supported the industry's position that environmental tobacco smoke is not a health risk

- vi. Direction by Carreras Rothmans Limited to Rothmans Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
 - vii. The Canadian Tobacco Manufacturers' Council and Rothmans Inc. acting as agents for Carreras Rothmans Limited
 - viii. Rothmans Group and tobacco industry meetings relating to environmental tobacco smoke.
185. Further particulars of the manner in which the Conspiracy or concert of action was entered into or continued, and of the tobacco-related wrongs committed by the Defendants in furtherance and as a result of the Conspiracy or concert of action, are within the knowledge of the Defendants.

C. Joint and Several Liability

186. The Province states that by reason of the facts pleaded, all of the Defendants are jointly and severally liable for the Province's aggregate cost of health care benefits equal to the Defendants' combined market share in cigarettes.
187. The Province also states that by reason of the facts pleaded, the Defendants within each Group are jointly and severally liable.
188. The Province pleads and relies on subsections 1(6) and 3(3) and section 4 of the Act.

VI. SERVICE OUT OF THE JURISDICTION

189. This Statement of Claim attached is being served outside Manitoba without leave of the court pursuant to Rule 17.02(h), (k), (l), (m), and by analogy, (g).

DATED at the City of Winnipeg, in the Province of Manitoba, this 31st day of May, 2012.

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Solicitors for the Plaintiff, Her Majesty the
Queen in right of the Province of Manitoba

Tab E

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

**ROTHMANS INC., ROTHMANS, BENSON & HEDGES INC., CARRERAS
ROTHMANS LIMITED, ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC.,
PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP., R.J.
REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO INTERNATIONAL
INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH AMERICAN TOBACCO
P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH AMERICAN TOBACCO
(INVESTMENTS) LIMITED, and CANADIAN TOBACCO MANUFACTURERS'
COUNCIL**

Defendants

SECOND AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THAT PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM AND \$1,500 FOR COSTS WITHIN THE TIME FOR SERVING AND FILING YOUR STATEMENT OF DEFENCE, YOU MAY MOVE TO HAVE THIS PROCEEDING DISMISSED BY THE COURT. IF YOU BELIEVE THE AMOUNT CLAIMED FOR COSTS IS EXCESSIVE, YOU MAY PAY THE PLAINTIFF'S CLAIM AND HAVE THE COSTS ASSESSED BY THE COURT.

Date:

Issued by:

Local Registrar

Address: 393 University Avenue, 10th Floor
Toronto, Ontario
M5G 1E6

TO: Rothmans Inc.
1500 Don Mills Road
Toronto, Ontario

AND TO: Rothmans Benson & Hedges Inc.
1500 Don Mills Road,
Toronto, Ontario.

AND TO: Carreras Rothmans Limited
Globe House
1 Water Street, London.

AND TO: Altria Group, Inc.
6601 Broad Street, Richmond
Virginia, USA

AND TO: Philip Morris USA Inc
6601 Broad Street, Richmond
Virginia, USA

- AND TO:** Philip Morris International Inc
120 Park Ave.,
New York, New York.
- AND TO:** JTI-Macdonald Corp.
5151 George Street, Box 247
Halifax, Nova Scotia
- AND TO:** R.J. Reynolds Tobacco Company
401 North Main Street
Winston-Salem
North Carolina, USA
- AND TO:** R.J. Reynolds Tobacco International, Inc.
401 North Main Street
Winston-Salem
North Carolina, USA
- AND TO:** Imperial Tobacco Canada Limited
3711 St. Antoine Street
Montreal, Quebec
- AND TO:** British American Tobacco p.l.c.,
Globe House, 4 Temple Place,
London, England.
- AND TO:** B.A.T Industries p.l.c.
Globe House
4 Temple Place
London, England
- AND TO:** British American Tobacco (Investments) Limited
Globe House
1 Water Street,
London, England.
- AND TO:** Canadian Tobacco Manufacturers' Council
1808 Sherbrooke St. West
Montreal, Quebec

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I. RELIEF CLAIMED

1. The Plaintiff, Her Majesty the Queen in right of Ontario (the “Crown”), claims against the Defendants, jointly and severally:
 - (a) recovery in the amount of \$50330,000,000.00 (~~fifty~~ three hundred and thirty billion dollars) for the cost of health care benefits, resulting from tobacco related disease or the risk of tobacco related disease, which have been paid or will be paid by the Crown for insured persons;
 - (b) its costs of this action on a substantial indemnity basis;
 - (c) pre-judgment and post-judgment interest in accordance with the provisions of s. 128 of the *Courts of Justice Act*, 1990, R.S.O. and amendments thereto; and
 - (d) such further and other relief as this Honourable Court deems just.

II. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

2. The Crown provides health care benefits for the population of insured persons who suffer tobacco related disease or the risk of tobacco related disease as a result of the tobacco related wrongs committed by the Defendants. Pursuant to section 2 of the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, S.O. 2009 C.13 (the “Act”), the Crown claims against the Defendants for recovery of the cost of health care benefits,

namely:

- (a) the present value of the total expenditure by the Crown for health care benefits provided for insured persons resulting from tobacco related disease or the risk of tobacco related disease, and
- (b) the present value of the estimated total expenditure by the Crown for health care benefits that could reasonably be expected will be provided for those insured persons resulting from tobacco related disease or the risk of tobacco related disease,

caused or contributed to by the tobacco related wrongs hereinafter described. Further particulars of the costs incurred by the Crown will be provided prior to trial.

3. Pursuant to subsection 2(1) and section 2(4)(b) of the Act, the Crown brings this action to recover the costs of health care benefits, on an aggregate basis, for a population of insured persons as a result of exposure to cigarettes.
4. Pursuant to subsections 2(1) and 2(2) of the Act, the Crown brings this action as a direct and distinct action for the recovery of health care benefits caused or contributed to by a tobacco related wrong as defined in the Act. The Crown does so in its own right and not on the basis of a subrogated claim.
5. The words and terms used in this Statement of Claim including, “cost of health care benefits”, “disease”, “exposure”, “health care benefits”, “insured person”, “manufacture”, “manufacturer”, “promote”, “promotion”, “tobacco product”, “tobacco related disease”, and “tobacco related wrong”, have the meanings ascribed to them in the Act.

6. Also in this Statement of Claim:

- (a) "cigarette" includes loose tobacco intended for incorporation into a cigarette, and
- (b) "to smoke" or "smoking" means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette.

B. The Defendants

- 7. The Defendant, Rothmans Inc., is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, Toronto, Ontario.
- 8. The Defendant, Rothmans, Benson & Hedges Inc. (created through the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited), is a company incorporated pursuant to the laws of Canada with a registered office at 1500 Don Mills Road, North York, Ontario.
- 9. The Defendant, Carreras Rothmans Limited (formerly known as John Sinclair, Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London.
- 10. The Defendant, Altria Group, Inc. (formerly known as Philip Morris Companies Inc.), is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 Broad Street, Richmond, Virginia, in the United States of America.
- 11. The Defendant, Philip Morris USA Inc. (formerly known as Philip Morris Incorporated), is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 Broad Street, Richmond, Virginia in the United States of America and it engaged, directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario.

12. The Defendant, Philip Morris International Inc., is a company incorporated pursuant to the laws of Virginia and has a registered office at 120 Park Ave., New York, New York.
13. The Defendant, JTI-Macdonald Corp. (formerly RJR-Macdonald Corp., RJR-Macdonald Inc., and Macdonald Tobacco Inc.), is a company incorporated pursuant to the laws of Nova Scotia with a registered office at 5151 George Street, Box 247, Halifax, Nova Scotia.
14. The Defendant, R.J. Reynolds Tobacco Company, is a company incorporated pursuant to the laws of North Carolina and has its principal office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America and it engaged, directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario.
15. The Defendant, R.J. Reynolds Tobacco International, Inc., is a company incorporated pursuant to the laws of Delaware and has its principal office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America.
16. The Defendant, Imperial Tobacco Canada Limited (created through the amalgamation of, *inter alia*, Imperial Tobacco Limited and Imasco Ltd.), is a company incorporated pursuant to the laws of Canada and has a registered office at 3711 St. Antoine Street, Montreal, Quebec.
17. The Defendant, British American Tobacco p.l.c., is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England and is a successor in interest to the Defendants, B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited.
18. The Defendant, B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and Tobacco

Securities Trust Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England and is a successor in interest to the Defendant, British American Tobacco (Investments) Limited.

19. The Defendant, British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited), is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England.
20. All of the Defendants described above or their predecessors in interest for whom they are in law responsible are “manufacturers” pursuant to the Act by reason of one or more of the following:
 - (a) they manufacture, or have manufactured, tobacco products, including cigarettes;
 - (b) they cause, or have caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of tobacco products, including cigarettes;
 - (c) they engage in, or have engaged in, or cause, or have caused, directly or indirectly, other persons to engage in, the promotion of tobacco products, including cigarettes; or
 - (d) for one or more of the material fiscal years, each has derived at least 10% of its revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products, including cigarettes, by itself or by other persons.
21. The Defendant, Canadian Tobacco Manufacturers’ Council (“CTMC”), is a company incorporated pursuant to the laws of Canada and has a registered office at 1808 Sherbrooke St. West, Montreal, Quebec. It is the trade association of the Canadian tobacco industry, particulars of which are set out in paragraphs 110-116.

22. CTMC is a manufacturer pursuant to the Act by reason of its having been primarily engaged in one or more of the following activities:

- (a) the advancement of the interests of manufacturers,
- (b) the promotion of cigarettes, and
- (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes,

particulars of which are set out in paragraphs 110-116.

III. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

A. Canadian Tobacco Companies

The Defendant Rothmans Inc.

23. Rothmans Inc., and its predecessor corporations, have been part of the Canadian tobacco industry for the past 100 years. Its predecessor companies include Rothmans of Pall Mall Canada Limited, which was incorporated in 1956 and changed its name in 1985 to ROTHMANS INC. Rothmans Inc. was incorporated in 2000 as an amalgamation of ROTHMANS INC., ROTHMANS OF CANADA LTD., and ROTHMANS PARTNERSHIP IN INDUSTRY CANADA LIMITED.

24. Rothmans Inc. has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.

The Defendant Rothmans, Benson & Hedges Inc.

25. Rothmans of Pall Mall Limited, incorporated pursuant to the laws of Canada in 1980, acquired part of the tobacco related business of ROTHMANS INC. in 1985 and engaged, until it amalgamated with Benson & Hedges (Canada) Inc. in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.
26. Benson & Hedges (Canada) Inc., incorporated in 1934, engaged, until it amalgamated with Rothmans of Pall Mall Limited in 1986 to form Rothmans, Benson & Hedges Inc., directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.
27. Rothmans, Benson & Hedges Inc., formed in 1986 by the amalgamation of Rothmans of Pall Mall Limited and Benson & Hedges (Canada) Inc., has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario, including cigarettes manufactured by the Defendant Philip Morris USA Inc.
28. Rothmans, Benson & Hedges Inc. manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names, including Rothmans and Benson & Hedges.
29. Rothmans, Benson & Hedges Inc. is 60% owned by Rothmans Inc. and 40% owned by FTR Holding S.A., a Swiss company. FTR Holding S.A. is a subsidiary of the Defendant, Philip Morris International Inc. and, at one time, was a subsidiary of the Defendant Altria Group, Inc. It is also affiliated with the Defendant, Philip Morris U.S.A. Inc.

The Defendant JTI-Macdonald Corp.

30. MacDonald Brothers and Company Tobacco Merchants carried on business commencing in 1858 and was renamed W.C. MacDonald Incorporated, Tobacco Merchant and Manufacturer, and then renamed W.C. MacDonald Incorporated in 1930, and again changed its name to Macdonald Tobacco Inc. in 1957, and became a wholly owned subsidiary of the Defendant, R.J. Reynolds Tobacco Company, in 1974.
31. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. In 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald Tobacco Inc. and acquired all of Macdonald Tobacco Inc.'s assets and liabilities and continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc. RJR-Macdonald Inc. was a wholly owned subsidiary of RJR Nabisco Holdings Corp., which was the ultimate parent of R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International. In March 1999, RJR Nabisco sold RJR-Macdonald Corp., which was the amalgamation of RJR-Macdonald Inc. and a subsidiary of RJR-Macdonald Inc., to Japan Tobacco Inc. As a result of that transaction, the name of the RJR-Macdonald Corp. was changed to JTI-Macdonald Corp.
32. JTI-Macdonald Corp. (and its predecessor corporations, Macdonald Tobacco Inc., RJR-Macdonald Inc. and RJR-Macdonald Corp., for whom it is responsible at law) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario, including cigarettes manufactured by the Defendant R.J. Reynolds Tobacco Company.

33. JTI-Macdonald Corp. manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names including Export "A" and Vantage.

The Defendant Imperial Tobacco Canada Limited

34. Imperial Tobacco Company of Canada Limited, incorporated in 1912, changed its name, effective December 1, 1970, to Imasco Limited ("Imasco").
35. In or about 1970, part of the tobacco related business of Imasco was acquired by Imperial Tobacco Limited, (a wholly owned subsidiary).
36. In or about February, 2000, a 58% shareholding interest in Imasco was acquired by a wholly owned subsidiary of British American Tobacco p.l.c., British American Tobacco (Canada) Limited. At that time, British American Tobacco p.l.c. was the owner of 42% of the issued and outstanding shares in Imasco. Imasco and British American Tobacco (Canada) Limited were then amalgamated and the name of the amalgamated entity was changed to Imperial Tobacco Canada Limited ("Imperial"). In the result, British American Tobacco p.l.c. became the owner of 100% of the issued and outstanding shares in Imperial.
37. Imperial is a wholly owned subsidiary of the Defendant, British American Tobacco p.l.c.
38. Imperial (and its predecessor corporations) has engaged, directly or indirectly, in the manufacture and promotion of cigarettes sold in Ontario.
39. Imperial manufactures and promotes cigarettes sold in Ontario and the rest of Canada under several brand names, including Player's and duMaurier.

B. Multinational Tobacco Enterprises

40. There are four multinational tobacco enterprises ("Groups") whose member companies engage directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario and throughout the world. The four Groups are:
- (a) the Rothmans Group;
 - (b) the Philip Morris Group;
 - (c) the RJR Group; and
 - (d) the BAT Group.
41. At all material times, cigarettes sold in Ontario have been manufactured and promoted by manufacturers who are, or were, members of one of the four Groups, as set out above in paragraphs 23-39.
42. The manufacturers of cigarettes sold in Ontario within each Group have had common policies relating to smoking and health. The common policies have been directed or coordinated by the Defendants within each group ("Lead Companies") or their predecessors in interest for whom they are in law responsible. Particulars of the common policies and the manner in which they were implemented are set out in paragraphs 86 to 141.
43. At all material times since 1950, the Lead Companies of the four Groups were as follows:

Group	Lead Companies
Rothmans Group	Carreras Rothmans Limited [1950 to present]
Philip Morris Group	Altria Group, Inc. (formerly Philip Morris Companies Inc.) [1985 to present] Philip Morris USA Inc. [1950 to present] Philip Morris International, Inc. [1987 to present]

Group	Lead Companies
RJR Group	R.J. Reynolds Tobacco Company [1875 to present] R.J. Reynolds Tobacco International, Inc. [1976 to present]
BAT Group	British American Tobacco p.l.c. [1998 to present] B.A.T Industries p.l.c. (formerly B.A.T. Industries Limited and before that Tobacco Securities Trust Limited) [1976 to present] British American Tobacco (Investments) Limited (formerly British-American Tobacco Company Limited) [1902 to present]

44. The members of the Rothmans Group have included the following companies:

- (a) Rothmans, Benson & Hedges Inc. (federally incorporated in Canada) [1986 to 2009];
- (b) Rothmans Inc. (federally incorporated in Canada) [2000 to 2009];
- (c) Rothmans of Pall Mall Limited (incorporated in the United Kingdom) [1960 to present];
- (d) John Sinclair, Limited (incorporated in the United Kingdom) [1905 to 1972], later renamed Carreras Rothmans Limited [1972 to present];
- (e) Carreras, Limited (incorporated in the United Kingdom) [1903 to 1972], later renamed Rothmans International Limited [1972 to 1981], Rothmans International p.l.c. [1981 to 1993], and Ryesekks p.l.c. [1993];
- (f) Rothmans of Pall Mall Canada Limited (federally incorporated in Canada) [1956 to 1985], later renamed ROTHMANS INC. [1985 to 2000];
- (g) Rothmans of Canada Kings Limited (federally incorporated in Canada) [1980 to 1985], later renamed Rothmans of Pall Mall Limited [1985 to 1986]; and
- (h) Lintpenny Limited (incorporated in the United Kingdom) [1986], later renamed Rothmans International Services Limited [1986 to 1991], Rothmans International Tobacco Limited [1991 to 1993], and then Rothmans International Services Limited [1993 to present].

45. The members of the Philip Morris Group have included the following companies:

- (a) Philip Morris Companies Inc. (incorporated in Virginia) [1985 to 2003], later renamed Altria Group, Inc. [2003 to present];

- (b) Philip Morris & Co. Limited (incorporated in Virginia), later renamed Philip Morris USA Inc. [1919 to present];
 - (c) Philip Morris International, Inc. (incorporated in Virginia) [1987 to present];
 - (d) Rothmans, Benson & Hedges Inc. (federally incorporated in Canada) [1986 to present]; and
 - (e) Benson & Hedges (Canada) Inc. (federally incorporated in Canada) [1934 to 1986].
46. The members of the RJR Group have included the following companies:
- (a) R.J. Reynolds Tobacco Company [1875 to present];
 - (b) R.J. Reynolds Tobacco International, Inc. [1976 to 1999];
 - (c) Macdonald Tobacco Inc. [1974 to 1979];
 - (d) RJR-Macdonald Inc. [1978 to 1999]; and
 - (e) RJR-Macdonald Corp. [1999], later renamed JTI-Macdonald Corp. [1999 to present].
47. The members of the BAT Group have included the following companies:
- (a) Imperial Tobacco Company of Canada, Limited (federally incorporated in Canada) [1912 to 1966], later renamed Imperial Tobacco Company of Canada Limited [1966 to 1970], and then Imasco Limited [1970 to 2000];
 - (b) B.A.T Industries p.l.c. [1976 to present];
 - (c) British American Tobacco (Investments) Limited [1902 to present];
 - (d) British American Tobacco p.l.c. [1998 to present];
 - (e) Imperial Tobacco Canada Limited (incorporated in Canada) [2000 to present];
 - (f) Imperial Tobacco Sales Company of Canada Limited (incorporated in Canada) [1931 to 1966], later renamed Imperial Tobacco Sales Limited [1966 to 1969], Imperial Tobacco Products Limited [1969 to 1974], and Imperial Tobacco Limited [1970 to 2000];
 - (g) Brown & Williamson Tobacco Corporation [1927 to 2004]; and
 - (h) American Tobacco Company [1994 to present].

IV. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

48. The Crown states that the Defendants, R.J. Reynolds Tobacco Company, Rothmans Inc. (and its predecessor corporations), Rothmans, Benson & Hedges Inc. (and its predecessor corporations), Philip Morris USA Inc. (formerly known as Philip Morris Incorporated), JTI-Macdonald Corp. (and its predecessor corporations) and Imperial (and its predecessor corporations), all of which engaged directly or indirectly in the manufacture and promotion of cigarettes sold in Ontario, have committed tobacco related wrongs as that term is defined in the *Act*. In particular, these Defendants, hereinafter referred to as Direct Breach Defendants, have committed the following breaches of common law, equitable or statutory duties or obligations owed by these Defendants to persons in Ontario who have been exposed or might become exposed to a tobacco product manufactured by them and offered for sale in Ontario. As a result of these tobacco related wrongs, insured persons in Ontario have suffered tobacco related disease or the risk of tobacco related disease and the Crown has incurred expenditures for health care benefits provided to these insured persons.

A. Breaches of Common Law, Equitable or Statutory Duties or Obligations

The Defendants' Knowledge

49. The Direct Breach Defendants designed and manufactured cigarettes sold in Ontario to deliver nicotine to smokers.

50. Nicotine is an addictive drug that affects the brain and central nervous system, the cardiovascular system, the lungs, other organs and body systems and endocrine function.

Addicted smokers physically and psychologically crave nicotine.

51. Smoking and exposure to second hand smoke cause or contribute to disease including,

but not limited to:

(a) chronic obstructive pulmonary disease and related conditions, including:

- (i) emphysema;
- (ii) chronic bronchitis;
- (iii) chronic airways obstruction; and
- (iv) asthma;

(b) cancer, including:

- (i) cancer of the lung;
- (ii) cancer of the lip, oral cavity and pharynx;
- (iii) cancer of the larynx;
- (iv) cancer of the esophagus;
- (v) cancer of the bladder;
- (vi) cancer of the kidney;
- (vii) cancer of the pancreas; and
- (viii) cancer of the stomach;

(c) circulatory system diseases, including:

- (i) coronary heart disease;
- (ii) pulmonary circulatory disease;
- (iii) vascular disease; and
- (iv) peripheral vascular disease;

(d) increased morbidity and general deterioration of health; and

(e) fetal harm.

52. The Defendants have been aware since 1950, or from the date of their incorporation if subsequent to that date, that, when smoked as intended, cigarettes:
- (a) contain substances which can cause or contribute to disease;
 - (b) produce by-products which can cause or contribute to disease; and
 - (c) cause or contribute to addiction to nicotine.
53. By 1950, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that smoking cigarettes could cause or contribute to the diseases set out in paragraph 51 herein.
54. By 1950, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that the nicotine present in cigarettes is addictive. In the alternative, at all material times, the Defendants knew or ought to have known that:
- (a) nicotine is an active ingredient in cigarettes;
 - (b) smokers crave nicotine; and
 - (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.
55. By 1970 or thereabouts, or from the date of the Defendants' incorporation if subsequent to that date, and at all material times thereafter, the Defendants knew or ought to have known based on research which was known to them on smoking and health that exposure to second hand smoke could cause or contribute to disease.

Breach of the Duty - Design and Manufacture

56. At all material times since 1950, the Direct Breach Defendants owed a duty of care to persons exposed to cigarettes manufactured by them to design and manufacture a reasonably safe product which would not cause addiction and disease, and to take all reasonable measures to eliminate, minimize, or reduce the risks of addiction and disease from smoking the cigarettes they manufactured and promoted.
57. The Direct Breach Defendants have breached, and continue to breach, these duties since 1950 by failing to design a reasonably safe product which would not cause addiction and disease, and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of addiction and disease from smoking cigarettes manufactured by them.
58. The Direct Breach Defendants, in the design, manufacture and promotion of their cigarettes, created, and continue to create, an unreasonable risk of harm to the public from addiction and disease as a result of smoking or exposure to second hand smoke from which they have failed to protect the public, particulars of which are set out below.
59. The Direct Breach Defendants increased the risks of addiction and disease from smoking by manipulating the level and bio-availability of nicotine i.e. the biological availability of nicotine in the body from smoking their cigarettes, for purposes of maintaining and increasing sales of their cigarettes, particulars of which include:
 - (a) special blending of tobacco;
 - (b) adding nicotine or substances containing nicotine;

- (c) introducing substances, including ammonia, to enhance the bio-availability of nicotine to smokers; and
 - (d) such further and other particulars known to the Direct Breach Defendants.
60. The Direct Breach Defendants increased the risks of addiction and disease from smoking by adding to their cigarettes ineffective filters which did not reduce the risks of addiction and disease from smoking, since, as was known or should have been known by these Defendants, based on the research known to them into smoking practices, smokers would fully compensate for the presence of the filters by taking deeper inhalations of smoke and/or blocking the air holes in the filter; and by nevertheless misleading the public and government agencies by misrepresenting, particulars of which are set out in paragraph 72, that these filters made smoking safer contrary to their knowledge.
61. The Direct Breach Defendants further misled the public from 1950 on through marketing and advertising campaigns, by misrepresenting, particulars of which are set out in paragraph 72, in written and visual material, that “mild”, “low tar” and “light” filter cigarettes were healthier than regular cigarettes contrary to their knowledge.
62. As a result of these tobacco related wrongs, persons in Ontario started to smoke or continued to smoke cigarettes manufactured and promoted by the Direct Breach Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty to Warn

63. At all material times since 1950, the Direct Breach Defendants knew or ought to have

known that their cigarettes, when smoked as intended, were addictive and could cause or contribute to disease, and as manufacturers of cigarettes sold to persons in Ontario they owed a duty of care to warn the public who smoked cigarettes or might become exposed to cigarette smoke of the risks of addiction and disease from smoking or exposure to cigarette smoke, as was known, or should have been known to them based on research known to them on smoking and health.

64. The Direct Breach Defendants breached their duty to persons in Ontario by failing to provide any warning prior to 1972, or any adequate warning thereafter, of:

- (a) the risk of tobacco related disease; or
- (b) the risk of addiction to the nicotine contained in their cigarettes,

which was known to them, or should have been known to them based on research known to them on smoking and health from 1950 on.

65. Any warnings that were provided by the Direct Breach Defendants were inadequate and ineffective in that they did not accurately reveal the true extent of what they knew or should have known of addiction and disease from smoking or exposure to cigarette smoke based on research known to them on smoking and health and:

- (a) failed to warn of the actual and known risks of addiction and disease from smoking;
- (b) were insufficient to give users, prospective users, and the public a true indication of the risks of addiction and disease from smoking or exposure to cigarette smoke;
- (c) were introduced for the purpose of delaying more accurate government-mandated warnings of the risks of addiction and disease from smoking or exposure to cigarette smoke;

- (d) failed to make clear, credible, complete and current disclosure of the risks of addiction and disease inherent in the ordinary use of their cigarettes and therefore failed to permit free and informed decisions concerning smoking; and
 - (e) and failed to inform persons who might become exposed to cigarette smoke of the risks of disease from such exposure so that they could take measures to limit or eliminate such exposure.
66. The Direct Breach Defendants knew or ought to have known based on research known to them since 1950 that children under the age of 13 and adolescents under the age of 19 in Ontario were smoking or might smoke their cigarettes, but failed to provide warnings sufficient to inform children and adolescents of the risks of addiction and disease, which would have accurately conveyed their knowledge of these risks to children and adolescents.
67. The Direct Breach Defendants engaged in collateral marketing and promotional and public relations activities to neutralize or negate the effectiveness of the stated warnings on cigarette packaging in advertising and in warnings given by governments and other agencies concerned with public health, by mischaracterizing any health concerns relating to smoking, either with respect to addiction or disease, or attempts at regulation by health authorities or governments, as unproven, controversial, extremist, authoritarian, and an infringement of liberty.
68. The Direct Breach Defendants suppressed the information which was known to them or should have been known to them based on research conducted by them or by their Lead Companies or on their behalf, regarding the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke, as directed by their Lead Companies as set out in paragraphs 88 to 107 herein.
69. The Direct Breach Defendants misinformed and misled the public, particulars of which

are set out in paragraph 72, about the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke.

70. As a result of these tobacco related wrongs, persons in Ontario started or continued to smoke cigarettes manufactured and promoted by the Direct Breach Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty - Misrepresentation

71. As manufacturers of tobacco products, the Direct Breach Defendants owed a duty of care to persons in Ontario who consumed, or were exposed to, cigarette smoke from cigarettes manufactured by them and sold in Ontario and ought reasonably to have foreseen that persons in Ontario who smoked would rely on any representations made by them with respect to the risks of addiction and disease from smoking and the risk of disease from exposure to second hand smoke. Such reliance by persons in Ontario was reasonable in all of the circumstances since as set out below the Direct Breach Defendants took steps to assure persons in Ontario of the truth of their misrepresentations and to conceal from them the true extent of the risks of smoking and exposure to second hand smoke. As a result, since 1950 the Direct Breach Defendants owed a duty to persons in Ontario not to misrepresent the risks of addiction and disease from smoking and the risk of disease from exposure to second hand smoke as was known, or should have been known to them based on research known to them on smoking and health.
72. The Direct Breach Defendants, with full knowledge of the risks of addiction and disease,

misrepresented the risks of smoking and exposure to second hand smoke since 1950 by denying any link between smoking and addiction and disease and denying any link between exposure to second hand smoke and disease contrary to what was known or should have been known to them, based on research known to them on smoking and health. In particular, since 1950 and continuing to the present the Direct Breach Defendants misrepresented to persons in Ontario that:

- (a) smoking and exposure to second hand smoke have not been shown to cause any known diseases;
- (b) they were aware of no research, or no credible research, establishing a link between smoking or exposure to second hand smoke and disease;
- (c) many diseases shown to have been caused by smoking tobacco or exposure to second hand smoke were in fact caused by other environmental or genetic factors;
- (d) cigarettes were not addictive;
- (e) they were aware of no research, or no credible research, establishing that smoking is addictive;
- (f) smoking is merely a habit or custom;
- (g) they did not manipulate nicotine levels in their cigarettes;
- (h) they did not include substances in their cigarettes designed to increase the bio-availability of nicotine;
- (i) the intake of tar and nicotine associated with smoking their cigarettes was less than they knew or ought to have known it to be;
- (j) certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes;
- (k) smoking is consistent with a healthy lifestyle; and
- (l) the risks of smoking and exposure to second hand smoke were less serious than they knew them to be.

72.1. The above misrepresentations were conveyed to persons in Ontario by the Direct Breach Defendants:

- (a) in cigarette brand advertising and related marketing and promotional materials in all media, including radio, television, billboards, bus shelters, posters, displays, signs, print media and various electronic media including the internet. Advertising includes commercials, posters, print ads, news releases, press kits, contest materials, coupons, brand merchandising materials, sampling items and activities, discounting and other marketing activities;
- (b) on cigarette packaging, including carton wrappings;
- (c) at cigarette brand-promoting activities, including cultural, sporting and other events and activity sponsorships, and in promotional materials prepared in relation to such activities, including news releases, press kits, contests, coupons, brand merchandising materials, sampling items and activity materials, discounting and other marketing activities;
- (d) in paid advocacy carried out in media including newspapers, magazines, radio, television, and the internet paid for in whole or in part by the Direct Breach Defendants;
- (e) in research results presented to the public, governments, news and information media and other organizations as objective and independent when in fact these results were not and the research itself had been funded by the Direct Breach Defendants;
- (f) in media interviews, correspondence and other materials prepared on behalf of, and discussions, speeches and presentations given by, company officials, tobacco industry spokespersons acting on behalf of Direct Breach Defendants directly or indirectly (such as CTMC lobbyists, and public relations experts), to persons in Ontario, elected officials, government bureaucrats, medical, health and scientific organizations and bodies, conferences, columnists and journalists, writers, media editors, publishers and scientists; and
- (g) via company or tobacco industry spokespersons who did not represent themselves as such at the time or who held themselves out as 'independent' of the Direct Breach Defendants' interests, but who were in fact acting as agents for the Direct Breach Defendants, having received money or money's worth from the Direct Breach Defendants, directly or indirectly. These individuals communicated to, and corresponded with, and provided information to the public, members of the news and information media, elected officials, government officials, members of scientific and health promotion and research entities as well as members of the general public.

72.2. Since 1950, Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors, as members of the Rothmans Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually

by Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors through a variety of means, including the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969)~~ and the National Association of Tobacco and Confectionery Distributors Convention (October 1969);
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), and with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981);
- (c) full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart “vital information” as soon as available; and
- (d) public and media statements to Canadian newspapers and on national television (including in the Toronto Daily Star (September 1962, June 1969) and in the Globe and Mail (June 1967).

72.3. Since 1950, Rothmans, Benson & Hedges Inc. and its predecessors, as members of the Philip Morris Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by Rothmans, Benson & Hedges Inc. and its predecessors through a variety of means, including the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), and the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)~~;
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);

- (c) public and media statements to Canadian newspapers and on North American television (including a statement in the Toronto Daily Star (September 1967) and a speech in Halifax (June 1978));
- (d) Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.);
- (e) publications (including in the 1978 Booklet “The Facts” published by Benson & Hedges (Canada) Inc.); and
- (f) advertising, marketing and promotional campaigns.

72.4. Since 1950, R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors, as members of the RJR Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors through a variety of means, including the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), and the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and 1995), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988);~~
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);
- (c) publications (including “R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina” in The Tobacco Industry in Transition);
- (d) speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts);
- (e) public statements (including the 1983 Revised Mission Statement on Smoking and Health); and
- (f) advertising, marketing and promotional campaigns.

72.5. Since 1950, Imperial Tobacco Canada Limited and its predecessors, as members of the BAT Group in Canada, have made all of the misrepresentations set out in paragraph 72 above. These misrepresentations have been repeated continually by Imperial Tobacco Canada Limited and its predecessors through a variety of means, including the following:

- (a) presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), ~~the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969), and~~ the National Association of Tobacco and Confectionery Distributors Convention (October 1969), ~~federal Legislative Committees (including in November 1987 and January 1988) and the House of Commons Standing Committee on Health (December 1996);~~
- (b) meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the federal Assistant Deputy Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986);
- (c) Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited);
- (d) public and media statements to Canadian newspapers and on national television, (including CBC television (December 1969) and in the Toronto Daily Star (June 1971));
- (e) publications (including on the topics of smoking and health, “habit or addiction” and environmental tobacco smoke); and
- (f) advertising, marketing and promotional campaigns.

73. The Direct Breach Defendants suppressed from persons in Ontario scientific and medical data, which was known or should have been known to them based on research on smoking and health which was known to them, which revealed the serious health risks of smoking and second hand smoke, for the purpose of continuing to misrepresent and conceal the risks of addiction and disease from smoking and exposure to second hand smoke.

73.1. Particulars of this suppression of scientific and medical data by Rothmans Inc. and Rothmans, Benson & Hedges Inc. and their predecessors, as members of the Rothmans Group:

- (a) agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake; and
- (b) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.2. Particulars of this suppression of scientific and medical data and research by Rothmans, Benson & Hedges Inc. and its predecessors, as members of the Philip Morris Group:

- (a) agreeing with British American Tobacco (Investments) Limited and the RJR Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);
- (b) destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group;
- (c) closing research laboratories and destroying related scientific information;
- (d) withdrawing internal research relating to nicotine from peer review;
- (e) destroying internal research relating to nicotine;
- (f) prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the addictive effect of smoking; and
- (g) participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.3. Particulars of this suppression of scientific and medical data by R.J. Reynolds Tobacco Company and JTI-Macdonald Corp. and their predecessors, as members of the RJR Group:

- (a) agreeing with British American Tobacco (Investments) Limited and the Philip Morris Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);

- (b) ceasing research on the effects of smoke because of its potential bearing on product liability;
- (c) imposing restrictions on the use of terms, including “drug,” “marketing” and “dependency,” in scientific studies;
- (d) invalidating and destroying research reports;
- (e) terminating and destroying research associated with R.J. Reynolds Tobacco Company’s “The Mouse House” experiments; and
- (f) participating in ICOSI’s total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

73.4. Particulars of this suppression of scientific and medical data by Imperial Tobacco Canada

Limited and its predecessors, as members of the BAT Group:

- (a) agreeing with the Philip Morris and RJR Groups to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966);
- (b) agreeing with Rothmans Group to suppress research relating to carbon monoxide and smoke intake;
- (c) implementing a policy to avoid written documentation on issues relating to smoking and health;
- (d) agreeing within the BAT Group not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the BAT Group;
- (e) destroying research reports indicating the adverse health effects of smoking and exposure to second hand smoke (1992);
- (f) suppressing information and developments relating to potentially safer products; and
- (g) participating in ICOSI’s total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

74. The Direct Breach Defendants misinformed the public in Ontario, particulars of which are set out in paragraph 72, as to the harm of both smoking and of exposure to cigarette smoke, which was known or should have been known to them based on research on

smoking and health which was known to them.

75. The Direct Breach Defendants participated in a misleading campaign, particulars of which are set out in paragraph 72, to enhance their own credibility and diminish the credibility of health authorities and anti-smoking groups, for the purpose of reassuring smokers, contrary to what they knew or should have known based on research on smoking and health which was known to them, that cigarettes were not as dangerous as authorities were saying.
76. The Direct Breach Defendants intended that these misrepresentations be relied upon by individuals in Ontario for the purpose of inducing them to start smoking or to continue to smoke their cigarettes. It was reasonably foreseeable that persons in Ontario would and they did, in fact, rely upon these misrepresentations made by the Direct Breach Defendants for the purpose of persuading persons in Ontario to purchase cigarettes manufactured by them.
77. As a result of these misrepresentations, which were either made fraudulently, (contrary to their actual knowledge of the risks of addiction and disease from smoking or exposure to second hand smoke or recklessly without any reasonable basis or belief in their truth) or, in the alternative, negligently (in disregard of research into smoking and health which was available to them and which was known or should have been known to them) persons in Ontario started to, or continued to, purchase and smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke from such cigarettes, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Breach of the Duty - Manufacturing or Promoting Products for Children and Adolescents

78. Further to the duty of care alleged in paragraph 71, at all material times since 1950, the Direct Breach Defendants as manufacturers of cigarettes sold in Ontario owed a duty of care to children and adolescents in Ontario to take all reasonable measures to prevent them from starting or continuing to smoke.
79. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age.
80. The Direct Breach Defendants knew or ought to have known that children and adolescents in Ontario were smoking or might start to smoke and that it was contrary to law as further particularized in paragraphs 142 to 147 herein, or public policy to sell cigarettes to children and adolescents or to promote smoking by such persons.
81. The Direct Breach Defendants knew or ought to have known based on research known to them on smoking and health of the risk that children and adolescents in Ontario who smoked their cigarettes would become addicted to cigarettes and would suffer tobacco related disease.
82. The Direct Breach Defendants failed to take reasonable and appropriate measures to prevent children and adolescents from starting or continuing to smoke cigarettes manufactured by them and sold in Ontario.
83. The Direct Breach Defendants targeted children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents

in Ontario to start or continue to smoke.

84. The Direct Breach Defendants, in further breach of their duty of care failed to take all reasonable measures to prevent children and adolescents from starting or continuing to smoke and undermined government initiatives and legislation which were intended to prevent children and adolescents in Ontario from starting or continuing to smoke.
85. As a result of these tobacco related wrongs, children and adolescents in Ontario started to or continued to smoke cigarettes manufactured and promoted by the Direct Breach Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

Conspiracy, Concert of Action and Common Design

86. At all material times, the Defendants conspired, and acted in concert in committing the tobacco related wrongs alleged in paragraphs 48 to 85 and paragraphs 142 to 147, particulars of which are set out below. The Defendants are accordingly all deemed to have jointly breached the duties alleged in paragraphs 48 to 85 and paragraphs 142 to 147 under section 4 of the Act.

(i) Conspiracy within the International Tobacco Industry

87. Commencing in or about 1953, in response to mounting publicity and public concern about the link between smoking and disease, the Lead Companies of the four Groups or their predecessors in interest for whom the Lead Companies are in law responsible,

conspired and acted in concert to prevent the Crown and persons in Ontario and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their actions would cause increased health care costs.

88. This conspiracy, concert of action and common design secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris Incorporated, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco Company Limited through meetings it attended on behalf of and as directed by its parent corporation British American Tobacco Company Limited), and American Tobacco Company. These companies, on their own behalf and on behalf of their respective Groups, contrary to their knowledge, agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of addiction and disease from smoking cigarettes;
- (b) make no statement or admission that smoking caused disease;
- (c) suppress or conceal research that was known or should have been known to them regarding the risks of addiction and disease from smoking cigarettes; and
- (d) orchestrate a public relations program on smoking and health issues with the object of:
 - (i) promoting cigarettes;
 - (ii) protecting cigarettes from attack based upon health risks that were known or should have been known to them; and
 - (iii) reassuring the public that smoking was not hazardous.

89. This conspiracy, concert of action and common design was continued at secret committees, conferences and meetings involving senior personnel of the Lead Companies

and through written and oral directives issued by the Lead Companies to members of their Groups who manufactured cigarettes sold in Ontario.

90. Between late 1953 and the early 1960s, the Lead Companies formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964 (the "CTR")), the Centre for Cooperation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Institute ("TI"), and the Tobacco Manufacturers' Standing Committee, (renamed the Tobacco Research Council ("TRC") and then the Tobacco Advisory Council), collectively referred to as TRC, and Verband der Cigarettenindustrie ("Verband") which was the German equivalent of the Tobacco Institute to which the Lead Companies were affiliated.

91. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, the CTR, CORESTA, the TRC, CTMC, TI, Verband and similar organizations, would objectively conduct research and gather data concerning the link between smoking and disease and would publicize the results of this research throughout the world. Particulars of these misrepresentations are within the knowledge of the Defendants but include:
 - (a) The issuance of the TIRC's 1954 "Frank Statement to Cigarette Smokers" which received coverage in the Canadian press;
 - (b) Statements made to the Canadian Medical Association in May 1963;
 - (c) November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare;
 - ~~(d) May 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs;~~
 - (e) Statements to the national press and news organizations in Canada; and

- (f) Communications through the CTMC in Canada, including to the federal Department of Health and Welfare.
92. In reality, the Lead Companies conspired with the TIRC, the CTR, CORESTA, the TRC, CTMC, TI, Verband and similar organizations, to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Lead Companies intended to mislead persons in Ontario and the Crown, into believing that there was a real medical or scientific controversy about whether smoking caused addiction and disease contrary to their knowledge.
93. In 1963 and 1964, the Lead Companies agreed to co-ordinate their research with research conducted by the TIRC in the United States, for the purpose of suppressing any findings which might indicate that cigarettes were a harmful and dangerous product.
94. In April and September 1963, the Lead Companies agreed to develop a public relations campaign to counter the Royal College of Physicians report in England, the forthcoming Surgeon General's Report in the United States and a report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes, contrary to their knowledge.
95. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease, as was known to them or should have been known to them based on research on smoking and health which was known to them, unless and until they were forced to do so by government action.
96. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes, which was known to them or should have been known to them based on research on smoking and health which was known to them.

97. By the mid-1970s, the Lead Companies decided that an increased international misinformation campaign was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease as was known to them or should have been known to them based on research on smoking and health which was known to them, could lead to a “domino effect” to the detriment of the industry world-wide.
- 97.1. In 1974, the Lead Companies as members of TI formed a Research Review Committee, which became known as the Research Liaison Committee to achieve a coordinated approach to all industry research into smoking and health. In 1978, the Research Liaison Committee was replaced with the Industry Research Committee.
98. As a result, in June, 1977, the Lead Companies met in England to establish the International Committee on Smoking Issues ("ICOSI").
99. Through ICOSI, the Lead Companies resisted attempts by governments including in Canada to provide adequate warnings about smoking and disease including the effects of second hand smoke, and pledged to:
- (a) jointly disseminate false and misleading information regarding the risks of addiction and disease from smoking;
 - (b) make no statement or admission that smoking caused disease;
 - (c) suppress research that was known or should have been known to them regarding the risks of addiction and disease from smoking;
 - (d) not compete with each other by making health claims with respect to their cigarettes, and thereby avoid direct or indirect admissions about the risks of addiction and disease from smoking; and
 - (e) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health

risks, and reassuring smokers, the public and authorities in Ontario and other jurisdictions that smoking was not hazardous;

hereinafter referred to as the ICOSI policies and position on smoking.

100. In and after 1977, the members of ICOSI, including each of the Lead Companies, agreed orally and in writing, to ensure that:
- (a) the members of their respective Groups, including the Direct Breach Defendants, would act in accordance with the ICOSI position on smoking and health set out above, including the decision to mislead the public about the link between smoking and disease;
 - (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, CTMC, to ensure compliance in the various tobacco markets world wide;
 - (c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves; and
 - (d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.
101. In the late 1970s, the Lead Companies launched Operation Berkshire, which was aimed at Canada and other major markets, to further advance their campaign of misinformation and to promote smoking. Operation Berkshire was led by Lead Companies of the Philip Morris Group in concert with the Rothmans Group and the BAT Group.
102. In 1980, ICOSI was renamed the International Tobacco Information Centre / Centre International d'Information du Tabac - INFOTAB ("INFOTAB"). In or before 1992, INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are hereinafter referred to collectively as "ICOSI").
103. At all material times, the policies of ICOSI were identical to the policies of the NMAs

including CTMC, and were presented as the policies and positions of the NMAs and their member companies so as to conceal from the public and from governments including in Canada the existence of the conspiracy, concert of action and common design.

104. The Lead Companies at all times acted to ensure that the manufacturers of cigarettes sold in Ontario within their Group complied, and did not deviate, from the official ICOSI position on the adverse health effects of smoking, particulars of which are set out below in paragraphs 117 to 140.
105. In addition to the foregoing, the Lead Companies engaged in a conspiracy, concert of action and common design specifically with respect to the issue of second hand smoke, as set out below.
106. In the early 1970s, the Lead Companies began to combine their resources and coordinate their activities specifically with respect to second hand smoke. In 1975, the Lead Companies formed the first of several committees to specifically address second hand smoke, which they also called Environmental Tobacco Smoke (ETS) and passive smoking. The first committee, sometimes referred to as the Public Smoking Committee or Advisory Group, met under the direction of the Research Liaison Committee. Although the Lead Companies claimed that the Committees were formed to conduct “sound science” regarding the emerging issue of second hand smoke, their actual purpose was to fund projects that would counter the public’s growing concern regarding the harmful effects of second hand smoke, despite the knowledge amongst the Lead Companies of these harmful effects. The Committee formed in 1975 and its various successors, including the Tobacco Institute ETS Advisory Committee (“TI-ETSAG”) founded in 1984 and the Committee for Indoor Air Research (“CIAR”) founded in 1988,

carried out the mandate of the Lead Companies of challenging the growing consensus regarding second hand smoke by:

- (a) coordinating and funding efforts to generate evidence to support the notion that there remained an “open controversy” as to the health implications of second hand smoke;
- (b) leading the attack on government efforts to act on evidence linking second hand smoke to disease;
- (c) acting as a “front” organization for flowing tobacco industry funds to research projects so that the various committees appeared to be independent organizations and the role of the tobacco industry was hidden;
- (d) in the case of TI-ETSAG, meeting monthly to propose, review, and manage scientific projects approved for funding;
- (e) in 1988 when it was formed, the Chairman of the CIAR Board told the TI that the purpose of CIAR was providing ammunition for the tobacco industry on the ETS battlefield;
- (f) from 1988 until its dissolution in 1999, funding of 150 projects by CIAR at 75 institutions resulting in 250 peer reviewed publications, in addition to special studies on the effects of second hand smoke, 18 of which were released;
- (g) creating a consultancy program in June 1987 at a conference called “Operation Down Under” to train and deploy scientists worldwide;
- (h) in 1988 forming and funding of the Association for Research on Indoor Air (ARIA) by the Defendants’ consultants on second hand smoke; and
- (i) in 1989, forming of the Indoor Air International (IAI), a group to address scientific issues related to indoor air quality that the Defendants promoted publicly as learned societies dedicated to promote indoor air quality but failed to disclose that they were funded by the tobacco industry.

The policies and positions referenced above are hereinafter referred to as the CIAR policies and position on second hand smoke.

107. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued, and of the breaches of duty committed in furtherance of the conspiracy, concert of action and common design are within the

knowledge of the Defendants.

(ii) Conspiracy within the Canadian Tobacco Industry

108. At all material times since in or about 1950, the Direct Breach Defendants, in furtherance of the conspiracy and concerted action within the International Tobacco Industry and within their particular Corporate Groups, conspired and acted in concert to prevent the Crown and persons in Ontario from acquiring knowledge of the harmful and addictive properties of cigarettes, and committed tobacco related wrongs, as set out above in paragraphs 48 to 85 and below in paragraphs 142 to 147, in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the conspiracy, concert of action and common design.
109. This conspiracy, concert of action and common design was entered into or continued at or through committees, conferences and meetings established, organized and convened by the Defendants Rothmans Inc., Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp. and Imperial Tobacco Canada Limited and their predecessors in interest for whom they are liable, hereinafter referred to as the Canadian Tobacco Company Defendants, and attended by their senior personnel and through written and oral directives and communications amongst them.
110. The conspiracy, concert of action and common design was continued when, contrary to their knowledge:
- (a) in or about 1962, the Canadian Tobacco Company Defendants agreed not to compete with each other by making health claims with respect to their cigarettes

so as to avoid any admission, directly or indirectly, concerning the risks of addiction and disease from smoking;

- (b) in 1963, the Canadian Tobacco Company Defendants misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease;
- (c) in or about 1963, the Canadian Tobacco Company Defendants formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, and incorporated as CTMC in 1982) in order to maintain a united front on smoking and health issues (the Ad Hoc Committee on Smoking and Health, the pre-incorporation Canadian Tobacco Manufacturers' Council and CTMC are hereinafter collectively referred to as CTMC"); and
- ~~(d) in or about 1969, the Canadian Tobacco Company Defendants misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.~~

111. Upon its formation, and at all material times thereafter, CTMC provided a means and method to continue the conspiracy, concert of action and common design and, upon its incorporation, agreed, adopted and participated in the conspiracy, concert of action and common design.
112. In furtherance of the conspiracy, concert of action and common design, CTMC has lobbied governments and regulatory agencies throughout Canada on behalf of and as agent for their members which included all of the Canadian Tobacco Company Defendants' since about 1963, with respect to tobacco industry matters, including delaying and minimizing government initiatives in respect of warnings to be placed on cigarette packages and imposing limitations on smoking in public places, as well as misrepresenting the risks of addiction and disease from smoking to the Canadian public, in accordance with the tobacco industry's position, which is the same as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

113. CTMC has co-ordinated, with the Canadian Tobacco Company Defendants and the international tobacco industry associations ICOSI and INFOTAB, through its membership in these organizations, the Canadian cigarette industry's positions on smoking and health issues.
114. In furtherance of the conspiracy, concert of action and common design, CTMC on behalf of and as agent for their members which included all of the Canadian Tobacco Company Defendants:
- (a) disseminated false and misleading information regarding the risks of addiction and disease from smoking including making false and misleading submissions to governments denying any connection contrary to its knowledge;
 - (b) refused to admit that smoking caused disease contrary to its knowledge;
 - (c) suppressed research regarding the risks of addiction and disease from smoking which was known or should have been known to them;
 - (d) participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link, which was known or should have been known to them, between smoking and disease;
 - (e) lobbied governments in order to delay and minimize government initiatives with respect to smoking and health, including initiatives to place warnings on cigarettes packaging and limiting smoking in public places contrary to its knowledge;
 - (f) in a 1963 presentation to the Conference on Smoking and Health of the Department of National Health and Welfare, the Ad Hoc Committee of the Canadian Tobacco Industry (the predecessor to the CTMC) claimed that the evidence that tobacco causes disease was inconclusive and used this to undermine the scientific case against tobacco;
 - (g) stated in a 1968 paper that there is no established proof that tobacco causes harm;
 - ~~(h) in June 1969 made a statement to the House of Commons Standing Committee on Health and Welfare denying that smoking is a major cause of illness or death;~~
 - (i) at a 1971 meeting of technical representatives of the members of CTMC called by the head of the CTMC, representatives of the CTMC and the Canadian tobacco companies noted the need for minimum nicotine levels in cigarettes;

- (j) denied at a 1971 press conference that tobacco causes disease;
 - (k) in a 1977 Position Paper, stated that there is no persuasive scientific evidence to support the contention that the non-smoker is harmed by the tobacco smoke of others;
 - (l) in a 1987 Position Statement, stated that:
 - (i) smoking had not been proven to cause disease;
 - (ii) smoking is not addictive; and
 - (iii) there was no conclusive evidence that second hand smoke causes adverse health effects and stated that the scientific community holds the view that there are no proven health consequences to exposure to second hand smoke;
 - (m) in a 1987 press release denied that second hand smoke is harmful to health; and
 - ~~(n) in 1987 advised a House of Commons Legislative Committee that there was uncertainty regarding the role of smoking in causing disease; and~~
 - (o) in a 1990 letter wrote to the Canadian government to voice the Industry's opposition to the federal government's proposed amendments to the Tobacco Products Regulations which would require, inter alia, the placing of addiction warnings on cigarette packages. In its letter, the CTMC questioned whether smoking was addictive and whether second hand smoke was dangerous.
115. At all material times, CTMC acted as the agent of the Canadian Tobacco Company Defendants, as members of the CTMC, and as agent of the Lead Companies through its membership with them in the International Associations, ICOSI and INFOTAB. In 1982 CTMC became an associate member of INFOTAB and was a full participant from 1982 to 1989.
116. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued, and of the tobacco related wrongs committed by the Defendants in Canada in furtherance of the conspiracy, concert of action and common design are within the knowledge of these Defendants and the CTMC.

(iii) Conspiracy within Corporate Groups

The Rothmans Group

117. In or about 1953 the Rothmans Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized, convened and attended by senior personnel of the Rothmans Group members, including those of Rothmans International Limited, Rothmans Inc., Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Carreras Rothmans Limited, as well as those of the Philip Morris Group, and through written and oral directives and communications amongst the Rothmans Group members.
118. Carreras Rothmans Limited and affiliated companies were involved in directing or co-ordinating the Rothmans Group's common policies on smoking and health by preparing and distributing statements which set out the Rothmans Group's position on smoking and health issues. Rothmans International Limited functioned as a central body to coordinate and establish policies for all Rothmans Group members worldwide, creating an International Advisory Board for this particular purpose. These positions were then adopted by member companies.
- 118.1. From 1950 onwards, Rothmans Group policies included denying the existence of any relationship between smoking and adverse health effects, and strenuously opposing the introduction of warning labels on tobacco products. From 1960 onwards, these policies included denying or minimizing the relationship between exposure to cigarette smoke,

including second hand smoke, and adverse health effects.

- 118.2. Rothmans International Limited and Carreras Rothmans Limited directed Rothmans Inc. (and its predecessor corporations) to maintain the Rothmans Group's position that more research was required to determine whether cigarettes cause disease, and instructed Rothmans Inc. to resist cautionary warnings in advertising. Carreras Rothmans Limited also directed Rothmans Inc. (and its predecessor corporations) on how to vote at CTMC meetings on issues relating to smoking and health, including the approval and funding of research. Rothmans Inc. (and its predecessor corporations) acted as an agent for and as directed by Carreras Rothmans Limited.
- 118.3. Within the Rothmans Group, scientists worked collaboratively, exchanged research results, and advised senior management of the companies that were part of the Rothmans Group from time to time, through specific committees. From 1978 to 1986, Carreras Rothmans Limited and its research division were designated responsibility for providing direction on tobacco-related health issues and for coordinating the Rothmans Group's research strategy. Rothmans Inc. (and its predecessor corporations) in particular relied on Carreras Rothmans Limited's expertise and direction on smoking-related health issues. Rothmans Group companies also held meetings on issues related to second-hand smoke. Through its conferences, meetings, directives and policies, Carreras Rothmans Limited directed the Rothmans Group to take the same positions on smoking and health as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.
119. Carreras Rothmans Limited and affiliated companies also were involved in directing or

co-ordinating the smoking and health policies of Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc. (and its predecessor corporations), by influencing or advising how they should vote in committees of the Canadian manufacturers of cigarettes sold in Ontario and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.

120. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed by Rothmans, Benson & Hedges Inc., its amalgamating company Rothmans of Pall Mall Limited, and Rothmans Inc. (and its predecessor corporations), in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Rothmans Group members.

The Philip Morris Group

121. In or about 1953 the Philip Morris Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized and convened by Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc., and attended by senior personnel of the Philip Morris Group companies, including those of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., and through written and oral directives and communications amongst the Philip Morris Group members.

122. The committees used by Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Committee on Smoking Issues and Management and the Corporate Products Committee.
123. The conferences used by Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International, Inc. to direct or co-ordinate the Philip Morris Group's common policies on smoking and health include the Conference on Smoking and Health and the Corporate Affairs World Conference.
124. Altria Group, Inc., Philip Morris USA Inc., and Philip Morris International Inc. further directed or co-ordinated the Philip Morris Group's common policies on smoking and health by means of their respective Corporate Affairs and Public Affairs Departments which directed or advised various departments of the other members of the Philip Morris Group, including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., concerning the Philip Morris Group position on smoking and health issues.
125. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or co-ordinated the common policies of the Philip Morris Group on smoking and health by preparing and distributing to the members of the Philip Morris Group including Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., written directives and communications including "Smoking and Health Quick Reference Guides" and "Issues Alerts". These directives and communications set out the Philip Morris Group's position on smoking and health issues to ensure that the personnel of the Philip Morris Group companies, including Rothmans, Benson & Hedges

Inc., and its amalgamating company Benson & Hedges (Canada) Ltd., understood and disseminated the Philip Morris Group's position, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein.

126. Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris International, Inc. further directed or co-ordinated the smoking and health policies of Rothmans, Benson & Hedges Inc. and its amalgamating company Benson & Hedges (Canada) Ltd., by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers of cigarettes sold in Ontario and by CTMC.
- 126.1 In furtherance of the conspiracy, concert of action and common design, Altria Group, Inc., Philip Morris USA Inc., Philip Morris International, Inc., and Rothmans Benson & Hedges Inc. and their predecessors participated in the establishment and operation of INBIFO, a research facility in Europe. At INBIFO, research was carried out into the health effects of both smoking and second hand smoke. When the research indicated that smoking and second hand smoke was harmful to health, the research was suppressed and/or destroyed.
127. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed by Rothmans, Benson & Hedges Inc., its amalgamating company Benson & Hedges (Canada) Inc., and by Altria Group, Inc., Philip Morris U.S.A. Inc., and Philip Morris

International, Inc. in furtherance of the conspiracy, concert of action and common design are within the knowledge of the Philip Morris Group members.

The RJR Group

128. In or about 1953 the RJR Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized and convened by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. and attended by senior personnel of the RJR Group members, including those of JTI-Macdonald Corp. (and its predecessor corporations), and through written and oral directives and communications amongst the RJR Group members.
129. The meetings used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common policies on smoking and health included the Winston-Salem Smoking Issues Coordinator Meetings.
130. The conferences used by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. to direct or co-ordinate the RJR Group's common policies on smoking and health include the "Hound Ears" and Sawgrass conferences.
131. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc., further directed or co-ordinated the RJR Group's position on smoking and health by means of a system of reporting whereby each global "Area" had a "smoking issue designee" who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to the Manager

of Science Information in the R.J. Reynolds Tobacco Company. In the case of Area II (Canada), this "designee" was, from 1974, a senior executive of Macdonald Tobacco Inc., and later of JTI-Macdonald Corp. (and its predecessor corporations).

132. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the RJR Group's common policies on smoking and health by preparing and distributing to the members of the RJR Group, including JTI-Macdonald Corp. (and its predecessor corporations), written directives and communications including an "Issues Guide" and a "Media Guide".
133. R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. further directed or co-ordinated the smoking and health policies of JTI-Macdonald Corp. (and its predecessor corporations) by directing or advising how they should vote in committees of the Canadian manufacturers and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC and maintaining the right to veto any particular research proposal.
 - 133.1 The direction and co-ordination of the RJR Lead Companies over the RJR Group was also carried out by:
 - (a) Developing an action plan which set out the RJR Group's position on smoking and health issues to ensure that the personnel in the RJR Group companies, including its Canadian subsidiaries, understood and disseminated the RJR Group's position;
 - (b) Taking a leadership role in the International Committee on Smoking Issues (ICOSI), particularly in relation to Canada and coordinating CTMC's positions to align with those of ICOSI as particularized in paragraph 99 herein, as well as the CIAR policies on second hand smoke particularized in paragraph 106 herein;
 - (c) Placing senior executives of the Lead Companies as senior executives of the Canadian subsidiaries;

- (d) Advising the RJR Group's sales representatives that cigarettes did not pose a health hazard to the non-smoker;
- (e) Making public statements on behalf of the entire Group denying or marginalizing the link between health and second hand smoke;
- (f) Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department;
- (g) Providing technical expertise, including information and knowledge on the manufacture of cigarettes, the use of substitutes and additives, the use of pH controls, the appropriate levels of tar and nicotine and the type and mixture of tobacco used in the manufacture of cigarettes; and
- (h) Holding RJR Group and tobacco industry meetings relating to environmental tobacco smoke.

133.2 These directives and communications set out the RJR Group's position on smoking and health issues, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein. These directives and communications were meant to ensure that the personnel of the RJR Group companies, including those of JTI-Macdonald Corp. (and its predecessor corporations) understood and disseminated the RJR Group's position.

133.3 In furtherance of the conspiracy, concert of action and common design, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc., and JTI-Macdonald Corp. (and its predecessor corporations) participated in the removal and destruction of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina and destroyed research relating to the biological activity of cigarettes manufactured and promoted by members of the RJR Group for sale in Ontario.

134. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed by

JTI-Macdonald Corp., (and its predecessor corporations), and the Defendants, R.J. Reynolds Tobacco International and R.J. Reynolds Tobacco Company, in furtherance of the conspiracy, concert of action and common design are within the knowledge of the RJR Group members.

The BAT Group

135. In or about 1953 the BAT Group members entered into the conspiracy, concert of action and common design referred to above, and continued the conspiracy, concert of action and common design within the International Tobacco Industry and the Canadian Tobacco Industry at or through committees, conferences and meetings established, organized and convened by British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and British American Tobacco p.l.c. and attended by senior personnel of the BAT Group members, including those of Imperial Tobacco Limited and Imasco Limited, and through written and oral directives and communications amongst the BAT Group members.
- 135.1 The Lead Companies of the BAT Group have consistently held the BAT Group out to the public as a single corporate entity and tobacco enterprise, continuously in operation since 1902, and, as a result, each of the Lead Companies, by its words and conduct, continued and thereby adopted and assumed the benefits of and the liabilities of its predecessors for the conspiracy and acting in concert within the International Tobacco Industry and the Canadian Tobacco Industry and its own Group. British American Tobacco p.l.c. stands where its predecessors stood, at the head of the BAT Group, representing a continuity of control, purpose and policies throughout the past 100 years or more. British American

Tobacco p.l.c., like B.A.T Industries p.l.c. before it, has represented to the public in its annual financial statements and otherwise, that it has been in existence since 1902, employing tens of thousands of people and is one of the largest tobacco companies in the world. British American Tobacco p.l.c. has continued the BAT Group's practice of misleading the public and governments about the dangers of smoking and the risks of second-hand smoke.

136. The committees used by British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c. to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Policy Committee, the Research Policy Group, the Scientific Research Group, the Tobacco Division Board, the Tobacco Executive Committee, and the Tobacco Strategy Review Team (which later became known as the Tobacco Strategy Group).
137. The conferences used by the Defendants, British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c., to direct or co-ordinate the BAT Group's common policies on smoking and health include the Chairman's Advisory Conferences, BAT Group Research Conferences, and BAT Group Marketing Conferences. Some of these conferences took place in Canada.
138. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and B.A.T Industries p.l.c. further directed or co-ordinated the BAT Group's common policies on smoking and health, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the the CIAR policies and position on second hand smoke particularized in paragraph 106 herein, by creating a Tobacco Strategy Review Team (TSRT) and preparing and distributing to the members of the

BAT Group, including Imperial Tobacco Limited and Imasco Limited, written directives and communications including "Smoking Issues: Claims and Responses", "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues" (that addressed inter alia second hand smoke), "Smoking and Health: The Unresolved Debate", "Smoking: The Scientific Controversy", "Smoking: Habit or Addiction?", and "Legal Considerations on Smoking and Health Policy", "Smoking and Health – Assumptions – Policy – Guidelines", "Environmental Tobacco Smoke – Improving the Quality of Public Debate, Smoking and Health – The End Result Debate", and "Answering the Critics". These directives and communications set out the BAT Group's position on smoking and health issues, which was the same position as the ICOSI policies and position on smoking particularized in paragraph 99 herein and the CIAR policies and position on second hand smoke particularized in paragraph 106 herein and were meant to ensure that the personnel of the BAT Group companies, including the personnel of Imperial Tobacco Limited and Imasco Limited, understood and disseminated the BAT Group's position.

138.1 Direction, to this end, was further provided at meetings of the Tobacco Strategy Review Team and recorded in notes of meetings of the Tobacco Strategy Review Team. This strategy for the BAT Group was further set out in corporate documents such as the Listing Particulars of British American Tobacco p.l.c. in 1998, the statement of Policy of the Group on Regulatory and Taxation Issues and through various websites operated by the Lead Companies from and after 1998, including statements made by British American Tobacco p.l.c. on its website in 2003 and thereafter questioning research that exposure to second hand smoke causes disease.

139. British American Tobacco (Investments) Limited, British American Tobacco p.l.c. and

B.A.T Industries p.l.c., further directed or co-ordinated the smoking and health policies of Imperial Tobacco Limited and Imasco Limited, by directing or advising how they should vote in committees of the Canadian manufacturers of cigarettes sold in Ontario and at meetings of CTMC on issues relating to smoking and health, including the approval and funding of research by the Canadian manufacturers and by CTMC.

140. Further particulars of the manner in which the conspiracy, concert of action and common design was entered into or continued and of the tobacco related wrongs committed in furtherance of the conspiracy, concert of action and common design are within the knowledge of the BAT Group members.
141. As a result of the aforementioned conspiracy, concert of action and common design, set out in paragraphs 86 to 140, persons in Ontario started to, or continued to, smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of tobacco related disease.

**Breach of *Consumer Protection Act, 2002*, the *Competition Act* and their
Predecessor Statutes**

142. The Direct Breach Defendants, in breach of their statutory duties or obligations pursuant to the *Business Practices Act* S.O. 1974, c.131, s.2 and successor legislation including the *Consumer Protection Act, 2002* S.O. 2002, s.14 and 17, engaged in unfair practices by making false, misleading or deceptive representations in respect of cigarettes sold to persons in Ontario, by word or by conduct. These Defendants further breached these statutes by making unconscionable representations in respect of cigarettes sold by them to

persons in Ontario, contrary to the *Consumer Protection Act*, 2002 S.O. 2002, s.15. Particulars of the false, misleading or deceptive and unconscionable representations are set out in paragraphs 56 to 85 and 145 herein.

143. In addition, these Defendants, for the purpose of promoting, directly or indirectly, the supply to or use of cigarettes by persons in Ontario, breached their statutory duties or obligations to consumers in Ontario under the *Combines Investigation Act* R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act* S.C. 1968-69, chapter 38, section 116 and amendments thereto and subsequently the *Competition Act* R.C.S. 1985, chapter C-34, sections 52(1), 52(4), 74.1 and 74.03 and amendments thereto. Specifically, the Defendants made representations to the public in Ontario that were false or misleading in a material respect and made representations to the public in Ontario in the form of statements regarding the performance and efficacy of cigarettes that were not based on adequate and proper testing, particulars of which are set out in paragraphs 56 to 85 and 145.
144. Knowing that cigarettes were addictive and would cause and contribute to disease, these Defendants intentionally inflicted harm on persons in Ontario by manufacturing, promoting and selling cigarettes, for profit and in disregard of public health, with knowledge of the risks of addiction and disease and failing to disclose and suppressing this information as particularized herein.
145. These Defendants engaged in unconscionable acts or practices and exploited the vulnerabilities of children and adolescents, and persons addicted to nicotine from smoking cigarettes, particulars of which include:

- (a) manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include the following:
 - (i) sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine,
 - (ii) increasing the level of nicotine through the blending of tobaccos contained in their cigarettes,
 - (iii) increasing the level of nicotine in their cigarettes by the addition of nicotine or substances containing nicotine,
 - (iv) introducing substances, including ammonia, into their cigarettes to enhance the bio-availability of nicotine to smokers;
- (b) incorporating into the design of their cigarettes ostensible safety features such as filters which they knew or ought to have known were ineffective in reducing the risks of addiction and disease from smoking, yet which would lead a reasonable consumer to believe that the product was safer to use than it was in fact;
- (c) failing to disclose to such consumers the risks inherent in the ordinary use of their cigarette products including the risks of disease and addiction which was known or should have been known to them based on research on smoking and health which was known to them;
- (d) engaging in collateral marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings regarding the risks of addiction and disease from smoking provided to such consumers;
- (e) suppressing or concealing from such consumers scientific and medical information regarding the risks of addiction and disease from smoking;
- (f) engaging in marketing and promotional activities having the tendency to lead such consumers to believe that cigarettes have performance characteristics, ingredients, uses and benefits and approval that they did not have;
- (g) misinforming and misleading such consumers about the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke by using innuendo, exaggeration and ambiguity having the tendency to mislead them about the material facts regarding smoking and health;
- (h) misrepresenting the actual intake of tar and nicotine associated with smoking their cigarettes;
- (i) providing misleading information to the public in Ontario about the risks of addiction and disease from smoking and the risks of disease from exposure to second hand smoke based upon a failure to provide any or any adequate research or testing of their cigarettes;

- (j) publicly discrediting the testing and research undertaken, and information provided by others, regarding the link between smoking and disease and smoking and addiction;
- (k) failing to take any, or any reasonable, measures to prevent children and adolescents from starting or continuing to smoke;
- (l) targeting children and adolescents in their advertising, promotional and marketing activities with the object of inducing children and adolescents to start or continue to smoke;
- (m) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that, when smoked as intended, they are addictive and inevitably cause or contribute to disease and death in large numbers of consumers of cigarettes and persons exposed to cigarette smoke and provide no benefit to either class of persons;
- (n) making the following representations to such consumers which they knew or ought to have known were false or misleading:
 - (i) representing that smoking and exposure to second hand smoke has not been shown to cause any known diseases,
 - (ii) representing that they were aware of no research, or no credible research, establishing a link between smoking or exposure to second hand smoke and disease,
 - (iii) representing that many diseases shown to have been caused by smoking tobacco or exposure to second hand smoke were in fact caused by other environmental or genetic factors,
 - (iv) representing that cigarettes were not addictive,
 - (v) representing that they were aware of no research, or no credible research, establishing that smoking is addictive,
 - (vi) representing that smoking is merely a habit or custom,
 - (vii) representing that they did not manipulate nicotine levels in their cigarettes,
 - (viii) representing that they did not include substances in their cigarettes designed to increase the bio-availability of nicotine,
 - (ix) representing that the actual intake of tar and nicotine associated with smoking their cigarettes was less than they knew it to be,
 - (x) representing that certain of their cigarettes, such as “filter”, “mild”, “low tar” and “light” brands, were safer than other cigarettes,

- (xi) representing that smoking is consistent with a healthy lifestyle,
 - (xii) representing that the risks of smoking were less serious than they knew them to be; and
- (o) making representations about the characteristics of their cigarettes that were not based upon any or any adequate and proper testing of and investigation and research into:
- (i) the risk of disease caused or contributed to by smoking their cigarettes and exposure to second hand smoke,
 - (ii) the risk of addiction to nicotine contained in their cigarettes, and
 - (iii) the feasibility of eliminating or minimizing the risks referred to in subparagraphs (i) and (ii);
- (p) failing to correct statements made by others on their behalf to such consumers regarding the risks of smoking and exposure to second hand smoke, which they knew were incomplete or inaccurate, and thereby misrepresenting the risks of smoking by omission or silence.
146. In making the representations referred to in paragraph 145, these Defendants knew or ought to have known:
- (a) that the consumers are not reasonably able to protect their interests because of disability, ignorance, illiteracy, or similar factors; and
 - (b) that the consumers are unable to receive a substantial benefit from the subject-matter of the representations (ie. cigarettes).
147. As a result of the aforementioned breaches of statutory duties and obligations by the Direct Breach Defendants, persons in Ontario started to smoke or continued to smoke cigarettes manufactured and promoted by these Defendants, or were exposed to cigarette smoke, and thereby suffered tobacco related disease and an increased risk of such disease. The Crown has provided and will continue to provide health care benefits for the population of insured persons who have suffered tobacco related disease or have an increased risk of such disease.

V. CONCLUSION

148. Exposure to cigarettes can cause or contribute to disease. During the period in which the Defendants committed the tobacco related wrongs referred to in Part IV above, cigarettes manufactured or promoted by the Direct Breach Defendants were offered for sale in Ontario.
149. But for the above described tobacco related wrongs, insured persons in Ontario exposed to tobacco products manufactured or promoted by the Direct Breach Defendants would not have been exposed to these products, and as a result, insured persons in Ontario have suffered tobacco related disease or the risk of tobacco related disease. The Crown has incurred expenditures for health care benefits provided to these insured persons. In accordance with the Act, the Crown is entitled to recover these health care costs from the Direct Breach Defendants. The Crown pleads and relies on section 3 of the Act.
150. Furthermore, in accordance with section 4 of the *Act* and as a result of the facts set out in paragraphs 86 through 141, the Crown pleads that all Defendants conspired and acted in concert in committing the tobacco related wrongs committed by the Direct Breach Defendants and as a result, all Defendants are jointly and severally liable for the cost of health care benefits provided to insured persons in Ontario resulting from tobacco related disease or the risk of tobacco related disease caused or contributed to by the breaches of duty of the Direct Breach Defendants.
151. The Crown relies on Rules 17.02(g), (h), (o) and (p) in serving the Statement of Claim on Defendants outside Ontario without leave.

The Crown proposes that this action be tried at Toronto.

Date: ~~March 28, 2014~~ May 29, 2018

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

- and -

ROTHMANS INC., et al

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

SECOND AMENDED FRESH AS AMENDED
STATEMENT OF CLAIM

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Tab F

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL**C O U R S U P É R I E U R E**

N° : 500-17-072363-123

PROCUREUR GÉNÉRAL DU
QUÉBEC

Demandeur

c.

IMPERIAL TOBACCO CANADA
LIMITÉE et autres

Défenderesses

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AU SOUTIEN DE SON RECOURS, LE DEMANDEUR DÉCLARE :

I. INTRODUCTION

A. LE DEMANDEUR ET LA NATURE DE SON RECOURS

1. Le gouvernement du Québec, représenté par le Procureur général du Québec, réclame aux défenderesses le coût des soins de santé liés au tabac qu'il assume depuis 1970, année de l'entrée en vigueur du régime universel d'assurance maladie.
2. Les défenderesses sont solidairement responsables de ce coût qui résulte des fautes qu'elles ont commises, séparément ou en commun, envers les personnes du Québec, au nombre desquelles on compte de nombreux manquements à leur devoir d'information du public quant aux risques et dangers que comportent les produits du tabac.
3. Le demandeur réclame le coût des soins de santé liés au tabac, qui est la somme de la valeur actualisée:
 - a) de toutes les dépenses engagées par le gouvernement ou l'un de ses organismes relativement à des soins de santé liés au tabac, comprenant le coût des services médicaux, des services hospitaliers, des autres services de santé et services sociaux, dont les services pharmaceutiques et les médicaments; et
 - b) des dépenses que le gouvernement ou l'un de ses organismes prévoient raisonnablement faire à cet égard jusqu'en 2030.
4. Ce coût des soins de santé inclut également le coût des programmes ou services établis ou assurés par le gouvernement ou l'un de ses organismes

relativement à la maladie ou à la détérioration générale de l'état de santé associées au tabac, y compris les programmes ou services destinés à informer le public des risques et dangers que comportent les produits du tabac ou à lutter contre le tabagisme.

5. Le coût des soins de santé liés au tabac constitue un fardeau considérable sur les finances publiques de l'État québécois.
6. La *Loi sur le recouvrement du coût des soins de santé et des dommages-intérêts liés au tabac*, L.R.Q., c. R-2.2.0.0.1 (la «**Loi**») a été adoptée, entre autres, afin d'encadrer et d'aménager le présent recours.
7. Le demandeur entend invoquer toutes les présomptions et les règles particulières prévues par la Loi.

B. LA NOCIVITÉ DES PRODUITS DU TABAC

8. Le tabac est constitué de plus de 3 800 composés.
9. Lors de la combustion, de nombreuses substances toxiques sont formées et ne se retrouvent que dans la fumée.
10. La fumée de cigarette contient ainsi de 4 800 à 5 300 composés dont:
 - a) plus de 70 cancérigènes, tels:
 - i. des hydrocarbures aromatiques polycycliques (HAP), comme le benzo(a)pyrène;
 - ii. des nitrosamines, comme la N-nitrosonornicotine (NNN) et la 4-(N-méthylnitrosoamino)-1-(3-pyridyl)-1-butanone (NNK);
 - iii. le 2-naphtylamine;

- iv. le 4-aminobiphényle;
- v. le formaldéhyde;
- vi. le 1,3-butadiène;
- vii. le benzène;
- viii. le chlorure de vinyle;
- ix. l'oxyde d'éthylène;
- x. l'acétaldéhyde;
- xi. le naphthalène;
- xii. la toluidine;
- xiii. l'uréthane;
- xiv. le nickel;
- xv. le chrome;
- xvi. le cadmium;
- xvii. le polonium 210;
- xviii. le béryllium;

b) des irritants pour le système respiratoire, tels:

- i. l'acroléine;
- ii. des phénols;
- iii. des aldéhydes;
- iv. des quinones;
- v. l'acétone;

- c) des produits toxiques, tels:
 - i. le monoxyde de carbone;
 - ii. l'acide cyanhydrique;
 - iii. l'oxyde d'azote;
 - iv. l'ammoniac:

- R.R. Baker et al., *Smoke Chemistry and the Risks of Smoking*, Project Report No P.145, British American Tobacco, 6 décembre 2000, **pièce PG-1**;

- R.R. Baker, «Smoke Generation Inside a Burning Cigarette: Modifying Combustion to Develop Cigarettes that May Be Less Hazardous to Health», (2006) 32 *Progress in Energy and Combustion Science* 373, **pièce PG-2**.

11. Le tabagisme cause ou contribue à causer:

- a) le cancer du poumon;
- b) le cancer des bronches;
- c) le cancer de la trachée;
- d) le cancer du larynx;
- e) le cancer du pharynx;
- f) le cancer de l'œsophage;
- g) le cancer de la bouche;
- h) le cancer du pancréas;
- i) le cancer des reins;
- j) le cancer de la vessie;
- k) le cancer de l'estomac;
- l) le cancer du colon;

- m) le cancer du rectum;
- n) le cancer du foie;
- o) le cancer du nez;
- p) le cancer du col de l'utérus;
- q) la leucémie:

➤ World Health Organization, International Agency for Research on Cancer, *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 100, A Review of Human Carcinogens, Part E: Personal Habits and Indoor Combustions*, Lyon, France, octobre 2009, pages 1 à 214, **pièce PG-3**.

12. Les substances irritantes de la fumée de tabac attaquent les muqueuses respiratoires, affectent la capacité de respiration et, combinées aux goudrons, favorisent l'inflammation des bronches et la toux.
13. Le tabagisme cause ou contribue à causer:
 - a) la maladie pulmonaire obstructive chronique, incluant l'emphysème et la bronchite chronique;
 - b) la toux chronique.
14. Le monoxyde de carbone produit par la combustion du tabac:
 - a) entraîne une baisse du taux d'oxygène dans les globules rouges et épaissit le sang;
 - b) augmente la fréquence cardiaque ainsi que la pression artérielle;
 - c) provoque un rétrécissement et un épaississement des artères.

15. Le tabagisme entraîne également une diminution du taux de «bon cholestérol» (HDL) qui joue un rôle protecteur des artères.
16. La nicotine contenue dans le tabac agit par ailleurs sur le cœur, la pression sanguine et les artères, provoquant:
- a) une accélération du rythme cardiaque;
 - b) une augmentation de l'agrégation des plaquettes sanguines à l'origine des caillots;
 - c) une augmentation de la tension artérielle.
17. Ces phénomènes causent ou contribuent à causer:
- a) de l'athérosclérose;
 - b) des maladies cardiaques;
 - c) des maladies vasculaires;
 - d) des accidents vasculaires cérébraux.
18. Le juge LaForest de la Cour suprême a d'ailleurs reconnu les dangers du tabagisme pour la santé en 1995:

«31. [...] On a déposé en première instance une preuve abondante établissant que l'usage du tabac est une cause principale de cancer, ainsi que de maladies cardiaques et pulmonaires causant la mort. De nos jours, cette conclusion est devenue presque un truisme. [...]

32. Il appert donc que les effets nocifs de l'usage du tabac sur la santé sont à la fois saisissants et importants. En deux mots, le tabac tue. [...]

- *RJR-MacDonald Inc. c. Canada (Procureur général)*, [1995] 3 R.C.S. 199.

19. La Cour réitère ces dangers en 2007:

«9. [...] Nous savons aujourd'hui que la moitié des fumeurs mourront d'une maladie liée au tabac, ce qui représente des coûts énormes pour le système de santé public. [...]

[...]

13. Quelque 45 000 Canadiens décèdent chaque année de maladies liées au tabac. Dans cette mesure, le tabagisme est le principal problème de santé publique au Canada.»

- *Canada (Procureur général) c. JTI-Macdonald Corp.*, [2007] 2 R.C.S. 610.

20. Le tabagisme a également des effets nocifs sur la grossesse et la santé du fœtus, notamment en augmentant les risques:

- a) de fausse couche;
- b) de décollement placentaire;
- c) de prématurité;
- d) de [...] retard de croissance intra-utérine;
- e) de mortinaissance;
- f) de mortalité néonatale.

21. Les défenderesses reconnaissent elles aussi aujourd'hui que le tabagisme est dangereux pour la santé et, notamment, qu'il cause le cancer du poumon, l'emphysème, la bronchite chronique, les maladies cardiaques et d'autres maladies:

- Site Internet de British American Tobacco, **pièce PG-4**;
- Site Internet d'Imperial Tobacco Canada, **pièce PG-5**;

- Site Internet de Philip Morris International Canada, **pièce PG-6**;
 - Site Internet de Philip Morris International, **pièce PG-7**;
 - Site Internet de Philip Morris USA, **PG-8**;
 - Site Internet de R.J. Reynolds Tobacco Company, **pièce PG-9**;
 - Site Internet de JTI, **pièce PG-10** (anglais) et **pièce PG-11**(français).
22. Par ailleurs, en plus de son caractère nocif sur la santé, la nicotine est une drogue à renforcement, c'est-à-dire que les fumeurs veulent en consommer, quels qu'en soient les effets dommageables.
23. Elle stimule le système nerveux central et entraîne des changements chimiques et biologiques dans le cerveau.
24. Elle crée une dépendance très puissante, de sorte qu'une forte proportion de fumeurs est incapable de cesser de fumer, comme l'a reconnu la Cour suprême en 2007:
- «9. [...] Selon les conclusions tirées en l'espèce par le juge de première instance, il est désormais indéniable que le tabac crée une forte dépendance et engendre des coûts personnels et sociaux exorbitants. [...] Nous savons également que la dépendance au tabac est l'une des plus difficiles à surmonter et que nombreux sont les fumeurs qui ont tenté, et tentent encore, en vain de cesser de fumer.
- [...]
- Le tabac contient de la nicotine, une drogue qui crée une forte dépendance. Environ 80 p. 100 des fumeurs souhaitent cesser de fumer, mais en sont incapables. [...]»
- *Canada (Procureur général) c. JTI-Macdonald Corp.*, [2007] 2 R.C.S. 610.

25. Sur leur site Internet, pièces PG-4 à PG-11, les défenderesses reconnaissent également aujourd'hui que le tabagisme crée une dépendance et que certaines personnes ont beaucoup de difficulté à cesser de fumer.

C. RAPPEL HISTORIQUE

26. Au début des années 1950, différentes revues scientifiques américaines et britanniques publient des études épidémiologiques faisant état d'un lien statistique entre le tabagisme et le cancer du poumon, dont les suivantes:

- E. L. Wynder, E. A. Graham, «Tobacco Smoking as a Possible Etiologic Factor in Bronchiogenic Carcinoma : A Study of Six Hundred and Eighty-Four Proved Cases», (1950) 143, *JAMA*, 329, **pièce PG-12**;
- R. Doll, A.B. Hill, «Smoking and Carcinoma of the Lung», (1950) *British Medical Journal*, 739, **pièce PG-13**.

27. En 1953, une autre étude conclut que l'application de condensé de fumée de cigarette sur la peau des souris provoque des tumeurs malignes chez 44 % d'entre elles:

- E. L. Wynder et al., «Experimental Production of Carcinoma with Cigarette Tar», (1953) *Cancer Research*, 855, **pièce PG-14**.

28. À la même période, le *Sélection du Reader's Digest* publie un article liant le cancer au tabac et faisant état de l'article de Wynder, pièce PG-12:

- R. Norr, «Le cancer et le tabac», *Sélection du Reader's Digest*, janvier 1953, pages 72-73, **pièce PG-15**.

29. En décembre 1953, les fabricants américains de produits du tabac se regroupent pour former le *Tobacco Industry Research Committee*, renommé le *Council for Tobacco Research* en 1964 (le «**CTR**»).
30. C'est sous ce nom que, le 4 janvier 1954, ils font paraître, aux États-Unis, une publicité sous le titre *A Frank Statement to Cigarette Smokers*, **pièce PG-16**, pour rassurer les fumeurs, faire valoir qu'il n'existe pas de preuve que la cigarette cause la maladie et annoncer qu'ils s'engagent à financer la recherche sur «all phases of tobacco use and health».
31. Par la suite, ils utilisent le CTR pour présenter et défendre la position de l'industrie américaine voulant que le lien entre le cancer et le tabagisme n'ait pas été prouvé.
32. Le CTR se donne comme mission de financer des recherches afin de tenter de résoudre la controverse scientifique qui, selon lui, existe au sujet de ce lien.
33. En juin 1956, les fabricants britanniques de produits du tabac fondent le *Tobacco Manufacturers Standing Committee*, renommé le *Tobacco Research Council* en 1963 (le «**TRC (U.K.)**»).
34. Le TRC (U.K.) est un organisme qui a pour objet de financer des recherches sur le tabagisme et la santé, soit par l'octroi de subventions à des chercheurs externes, soit en menant ses propres recherches dans le laboratoire de Harrogate, au Royaume-Uni, ouvert en 1962.

35. En 1958, les fabricants américains créent le *Tobacco Institute*, une société à but non lucratif, pour promouvoir les intérêts de l'industrie.
36. Le *Tobacco Institute* joue un rôle clé dans le développement et le maintien de la controverse scientifique par la diffusion de nombreuses publications.
37. En 1962, le *Royal College of Physicians* du Royaume-Uni conclut que le tabagisme est une cause du cancer du poumon et qu'il contribue probablement aux maladies coronariennes:
 - *Smoking and Health, A Report of The Royal College of Physicians of London on Smoking in Relation to Cancer of the Lung and Other Diseases*, London, 1962, **pièce PG-17**.
38. En novembre 1963, à l'initiative de la ministre de la santé du Canada, Judy LaMarsh, la Conférence nationale sur le tabac et la santé (la «**Conférence de 1963**») a lieu à Ottawa.
39. C'est à cette occasion que les quatre fabricants canadiens de produits du tabac – Imperial Tobacco Company of Canada, Limited, Macdonald Tobacco inc., Rothmans of Pall Mall Canada Limited. et Benson & Hedges (Canada) Limited – se regroupent pour former le Comité ad hoc de l'industrie canadienne qui deviendra le Conseil canadien des fabricants des produits du tabac (le «**Conseil canadien**»).
40. En 1964, le *Surgeon General*, la plus haute autorité en santé publique aux États-Unis, conclut à son tour que fumer la cigarette cause le cancer du poumon, constitue la principale cause de bronchite chronique, augmente le risque de mourir d'emphysème et est directement relié aux maladies cardiaques:

- *Smoking and Health, Report on the Advisory Committee to the Surgeon General of the Public Health Service*, U.S. Department of Health, Education, and Welfare, Public Health Service, 1964, **pièce PG-18**.
41. Le 16 juin 1964, le Conseil canadien adopte son premier code volontaire de publicité:
- *Cigarette Advertising Code of Canadian Tobacco Manufacturers*, 16 juin 1964, **pièce PG-19**.
42. En 1964 également, le Service de l'Information du ministère de la Santé nationale et du Bien-être social du Canada publie *Tabac et Santé*, un manuel de référence qui réunit les connaissances tirées de recherches effectuées au Canada et à l'étranger, dont les rapports du *Royal College of Physicians* et du *Surgeon General*:
- *Tabac et Santé, Manuel de référence (Canada)*, Service de l'information du ministère de la Santé nationale et du Bien-être social, Canada, Ottawa, 1964, **pièce PG-20**.
43. En 1969, le *Surgeon General* constate que les femmes qui fument pendant la grossesse risquent davantage d'accoucher avant terme et présentent plus de risques d'avortement spontané, de mortinatalité ou de mortalité néonatale:
- *The Health Consequences of Smoking*, 1969 Supplement to the 1967 Public Health Service Review, U.S. Department of Health, Education, and Welfare, Public Health Service, **pièce PG-21**.
44. Le 5 juin 1969, le Conseil canadien dépose un mémoire et ses représentants témoignent devant le Comité permanent de la santé, du bien-être social et des affaires sociales sur l'usage du tabac et de la cigarette de la Chambre des communes (le «**Comité Isabelle**»):

- Comité permanent de la santé, du bien-être social et des affaires sociales, *Procès-verbaux et témoignages*, 5 juin 1969, **pièce PG-22**;
 - Comité Ad Hoc de l'Industrie canadienne du tabac, *Une proposition de l'industrie canadienne du tabac concernant la santé et l'usage du tabac au Comité parlementaire de la santé, du bien-être social et des affaires sociales*, juin 1969, **pièce PG-23**.
45. Dans son rapport déposé en décembre 1969, le Comité Isabelle conclut que la cigarette « représente un grave danger pour la santé » puisqu'elle est vraisemblablement le facteur le plus important dans la naissance du cancer pulmonaire, de la bronchite chronique et de l'emphysème et « un facteur de risque important dans la genèse des maladies coronariennes »:
- Canada, Chambre des communes, *Rapport du Comité permanent de la santé, du bien-être social et des affaires sociales sur l'usage du tabac et de la cigarette*, 1969, pages 13 et 19, **pièce PG-24**.
46. Le Comité Isabelle recommande alors de:
- a) éliminer progressivement la promotion des ventes de cigarettes (publicité, coupons et primes, distribution gratuite);
 - b) accroître les efforts éducatifs pour décourager la consommation de cigarettes;
 - c) exiger une mise en garde adéquate sur les emballages ainsi que dans la publicité de cigarettes;
 - d) réglementer les teneurs maximales en goudron et en nicotine;
 - e) encourager les fumeurs à s'en tenir aux marques ayant une faible teneur en goudron et en nicotine;
 - f) exiger que la teneur en goudron et en nicotine soit imprimée sur les paquets et cartouches de cigarettes;

- g) publier des tableaux donnant la teneur en goudron et en nicotine des cigarettes;
 - h) déclarer les composés de la fumée de cigarette;
 - i) mettre au point des produits moins dangereux;
 - j) effectuer des recherches sur des substances et des façons de fumer moins dangereuses;
 - k) réduire les dangers de la consommation de cigarettes en utilisant des cigarettes à faible teneur en goudron et en nicotine, en fumant moins et en évitant d'inhaler.
47. En 1971 et en 1973, le *Surgeon General* constate que les bébés des mères fumeuses naissent avec un plus petit poids, que fumer pendant la grossesse retarde la croissance du fœtus et que le taux de mortalité périnatale est plus élevé chez les mères fumeuses:
- *The Health Consequences of Smoking, A Report of the Surgeon General: 1971*, page 413, **pièce PG-25**;
 - *The Health Consequences of Smoking, January 1973*, Public Health Service, U.S. Department of Health, Education, and Welfare, pages 122 et 134, **pièce PG-26**.
48. Le 1^{er} janvier 1972, les fabricants canadiens modifient leur code volontaire de publicité pour fixer la teneur maximale en goudron à 22 mg et en nicotine à 1,6 mg par cigarette.
49. Ce code prévoit également que les fabricants doivent indiquer sur le côté des paquets de cigarettes la première mise en garde relative à la santé, qui se lit comme suit:

*Avis: Fumer à l'excès peut nuire à votre santé.
Warning: Excessive smoking may be hazardous to your health.*

- Communiqué du Conseil canadien, 21 septembre 1971, **pièce PG-27**.

50. Cette mise en garde sera modifiée comme suit en mai 1972:

*Avis: Santé et Bien-être social Canada considère
que le danger croît avec l'usage.*

*Warning: National Health and Welfare advises that danger
to health increases with amount smoked.*

- Lettre d'Imperial Tobacco Group Ltd, Bristol à A.D. McCormick, British-American Tobacco Co. Ltd., 17 décembre 1971, **pièce PG-28**.

51. À compter de 1974, les fabricants canadiens:

- a) indiquent la teneur en goudron et en nicotine sur les paquets de cigarettes;
- b) lancent les premières versions légères de leurs principales marques de cigarettes.

52. Ils modifient aussi volontairement les mises en garde relatives à la santé imprimées sur le côté des paquets de cigarettes, qui se lisent dorénavant comme suit:

*Avis: Santé et Bien-être social Canada considère que
le danger croît avec l'usage – éviter d'inhaler*

*Warning: Health and Welfare advises that danger to health
increases with amount smoked- avoid inhaling.*

53. À compter de 1976, les fabricants de produits du tabac européens et nord-américains mettent sur pied des organismes internationaux pour défendre leurs intérêts, à savoir:

- a) l'International Committee on Smoking Issues («**ICOSI**») de 1977 à 1981;

- b) le Centre International d'Information du Tabac («**INFOTAB**») de 1981 à 1991;
 - c) le Tobacco Documentation Centre («**TDC**») de 1992 jusqu'à la fin des années 1990 au moins.
54. En 1979, le *Surgeon General* confirme à nouveau les effets délétères causés par le tabagisme sur la santé des fœtus:
- *Smoking and Health, a Report of the Surgeon General, 1979, pièce PG-29.*
55. En 1987 et en 1988, les présidents des fabricants canadiens témoignent devant le Comité législatif de la Chambre des communes chargé d'étudier deux projets de loi:
- a) le *Projet de loi C-204, Loi régissant l'usage du tabac dans les lieux de travail fédéraux et les véhicules de transport en commun et modifiant la Loi sur les produits dangereux en ce qui concerne la publicité des cigarettes*; et
 - b) le *Projet de loi C-51, Loi interdisant la publicité en faveur des produits du tabac, réglementant leur étiquetage et prévoyant certaines mesures de contrôle* (titre abrégé: *Loi réglementant les produits du tabac*):
 - *Chambre des communes, Procès-verbaux et témoignages du Comité législatif, 24 novembre 1987, pièce PG-30;*
 - *Chambre des communes, Procès-verbaux et témoignages du Comité législatif, 20 janvier 1988, pièce PG-31.*
56. En 1988, le *Surgeon General* conclut que la nicotine crée la dépendance et que les processus pharmacologiques et comportementaux qui déterminent

cette dépendance sont similaires à la toxicomanie provoquée par l'héroïne et la cocaïne:

➤ *The Health Consequences of Smoking: Nicotine Addiction: a Report of the Surgeon General*, 1988, U.S. Department of Health and Human Services, Public Health Service, **pièce PG-32**.

57. La *Loi réglementant les produits du tabac*, L.C. 1988, ch. 20, est adoptée le 28 juin 1988 et entre en vigueur le 1^{er} janvier 1989.
58. Elle prévoit le pouvoir d'interdire toute publicité sur le tabac, de restreindre et d'éliminer progressivement les activités de promotion ainsi que la commandite et d'exiger sur les paquets de produits du tabac des mises en garde plus explicites au sujet d'un des quatre dangers pour la santé (cancer du poumon, maladies cardiaques, espérance de vie plus courte et dommages au fœtus durant la grossesse), lesquelles doivent couvrir 20 % de la surface des emballages.
59. Les fabricants canadiens contestent la validité constitutionnelle de la *Loi réglementant les produits du tabac* devant les tribunaux.
60. En 1989, la Société royale du Canada publie un rapport intitulé *Tabac, nicotine et toxicomanie*, **pièce PG-33**, dans lequel elle conclut que la nicotine crée la dépendance.
61. Entre 1994 et 1998, cinquante États américains intentent des poursuites contre les principaux fabricants de produits du tabac américains et britanniques, pour le recouvrement du coût des soins de santé.
62. En septembre 1995, dans l'arrêt *RJR-MacDonald Inc. c. Canada (Procureur général)*, [1995] 3 R.C.S. 199, la Cour suprême du Canada invalide la *Loi*

réglementant les produits du tabac au motif que l'interdiction de publicité viole l'alinéa 2b) de la *Charte canadienne des droits et libertés*.

63. En 1997, en réponse à cet arrêt, le gouvernement fédéral adopte la *Loi sur le tabac* (projet de loi C-71), L.C. 1997, ch. 13, limitant la publicité et prévoyant une interdiction complète de la promotion de commandite qui entrera en vigueur le 1^{er} octobre 2003.
64. Les fabricants canadiens contestent de nouveau la validité constitutionnelle de la *Loi sur le tabac*.
65. En 1997 et 1998, les cinquante poursuites américaines font l'objet de cinq règlements hors cour dont le *Master Settlement Agreement* qui intervient entre 46 États et les fabricants de produits du tabac:
 - *Master Settlement Agreement*, 1998, **pièce PG-34**.
66. En juin 2000, au Canada, le *Règlement sur l'information relative aux produits du tabac* (DORS/2000-272), adopté en vertu de la *Loi sur le tabac*, impose que de nouveaux avertissements de santé avec images en couleur soient affichés sur au moins 50 % des surfaces principales de l'emballage des cigarettes et que des messages d'information sur la santé soient insérés dans chaque paquet.
67. En août 2006, la juge américaine Gladys Kessler rend un jugement (*Amended Final Opinion*) relativement à une poursuite intentée en 1999 par le gouvernement fédéral des États-Unis en vertu de la *Racketeer Influenced and Corrupt Organizations Act*, et conclut que les fabricants de produits du tabac américains et britanniques savent depuis 1964 que le tabagisme est nocif pour la santé, mais qu'ils se sont concertés et ont conspiré afin de

cachez leurs connaissances au public, de mentir aux consommateurs ainsi qu'aux autorités publiques et d'entretenir la dépendance des fumeurs:

➤ *United States v. Philip Morris USA Inc. et al.*, 449 F. Supp. 2d 1, 940-44 (D.D.C. 2006), confirmé en partie par 566 F. 3d 1095 (D.C. Cir. 2009), permission d'appeler refusée, 130 S. Ct. 3501 (2010), **pièce PG-35**.

68. En novembre 2006, dans le cadre d'une enquête du Bureau canadien de la concurrence menée à la suite du dépôt d'une plainte pour utilisation frauduleuse des descriptifs «légères» et «douces», les fabricants canadiens acceptent de cesser d'utiliser ces termes sur leurs emballages de cigarettes.

69. En 2007, dans l'arrêt *Canada (Procureur général) c. JTI-Macdonald Corp.*, [2007] 2 R.C.S. 610, la Cour suprême du Canada conclut que les dispositions contestées de la *Loi sur le tabac* contreviennent à l'alinéa 2b) de la *Charte canadienne des droits et libertés*, mais que cette contravention se justifie en vertu de l'article premier.

70. Le 19 juin 2009, entre en vigueur la Loi qui autorise le présent recours.

D. ORIGINE DE LA PREUVE DOCUMENTAIRE

71. Parmi les nombreuses poursuites intentées aux États-Unis, celle du Procureur général du Minnesota a donné lieu à diverses ordonnances à l'encontre des fabricants de produits du tabac relativement à la production de documents:

➤ *Minnesota v. Philip Morris*, 10.4 TPLR 2.104 (Minnesota District Court, C1-94-8565, June 16, 1995, Protective Order of Kenneth J. Fitzpatrick), **pièce PG-36**;

➤ *Minnesota v. Philip Morris*, 10.5 TPLR 2.158 (Minnesota District Court, C1-94-8565, July 17, 1995, Order of Kenneth J. Fitzpatrick), **pièce PG-37**;

- *Minnesota v. Philip Morris*, 10.5 TPLR 2.161 (Minnesota District Court, C1-94-8565, August 18, 1995, Stipulated Order of Kenneth J. Fitzpatrick), **pièce PG-38**.
72. En exécution de ces ordonnances, deux dépôts ont été établis, un au Minnesota par les sociétés américaines, et un autre à Guildford, en banlieue de Londres, par B.A.T. Industries p.l.c., afin de permettre aux parties de consulter les documents pertinents au litige.
73. Le *Master Settlement Agreement*, pièce PG-34, prévoit, entre autres, que les fabricants doivent, pour une certaine période, rendre accessibles au public les documents contenus dans les dépôts, notamment par l'intermédiaire de sites Internet.
74. En août 2006, dans l'affaire de la poursuite en vertu de la *Racketeer Influenced and Corrupt Organizations Act*, la juge Gladys Kessler, dans son jugement final, oblige entre autres les fabricants à maintenir les dépôts et les sites Internet jusqu'en septembre 2016:
- ORDER #1015, Final Judgment and Remedial Order (*United States v. Philip Morris USA, Inc. et al.*, 449 F. Supp. 2d 1, 940-44), **pièce PG-39**.
75. Le 14 décembre 2011, à la demande des parties, la juge Kessler modifie son ordonnance, notamment pour permettre aux fabricants américains d'utiliser les services de l'Université de Californie à San Francisco pour des opérations de codage de documents, moyennant une contrepartie que l'Université peut utiliser pour améliorer les capacités de recherche du site Legacy Tobacco Documents Library («Legacy»), un site créé en 2002 pour diffuser notamment les documents produits lors des différentes poursuites intentées contre les fabricants des produits du tabac.

- ORDER #27 – Remand: Consent Order between the United States, the Public Health Intervenors, Philip Morris USA Inc., Altria Group, Inc., and R.J. Reynolds Tobacco Company Concerning Document Disclosure Obligations Under Order #1015, **pièce PG-40**.
76. Pour les fins du présent recours, la preuve documentaire que le demandeur entend produire à l'encontre des défenderesses provient principalement des sources créées dans la foulée des décisions américaines, soit:
- a) le site Internet de Philip Morris U.S.A. Inc.: <http://www.pmdocs.com>, **pièce PG-41**;
 - b) le site Internet de R.J. Reynolds Tobacco Company: <http://www.rjrtdocs.com>, incluant la collection des documents de Brown & Williamson Tobacco Corporation, **pièce PG-42**;
 - c) le dépôt de Guildford, **pièce PG-43**;
 - d) le site Internet de l'Université de Californie à San Francisco: <http://legacy.library.ucsf.edu>, **pièce PG-44**.
77. Les copies des documents comportant une mention imprimée par BAT sur chaque page des documents, par exemple: «Bat Industries document for Legal Services : Health Canada 28 February 2001» proviennent du dépôt de Guildford et ont été fournies aux gouvernements du Canada et de la Colombie-Britannique qui en ont fait la demande à BAT.
78. Chaque document provenant du site Legacy porte un identifiant unique (*tid number*), qui permet un repérage automatique d'un document technologique.
79. Les copies de certains autres documents proviennent des dossiers judiciaires de la Cour supérieure du district de Montréal dans les affaires *RJR-Macdonald Inc. c. Attorney General of Canada*, C.S.M. 500-05-

009755-883, et *J.T.I. Macdonald Corp. c. La Procureure générale du Canada et La Société canadienne du cancer*, C.S.M. 500-05-031299-975.

80. Les défenderesses sont sommées de produire les originaux des pièces alléguées au soutien de la présente requête et qui les concernent, à défaut de quoi preuve secondaire en sera faite.

II. LES DÉFENDERESSES ET LES GROUPES DONT ELLES SONT MEMBRES

81. Historiquement, l'industrie canadienne de la fabrication des produits du tabac est liée à quatre grands groupes mondiaux: le Groupe British American Tobacco (le «**Groupe BAT**»), le Groupe Rothmans, le Groupe Philip Morris (le «**Groupe PM**») et le Groupe R.J. Reynolds (le «**Groupe RJR**»).

A. LE GROUPE BAT

82. Les sociétés mères du Groupe BAT sont successivement:
- a) de 1902 à 1976: British American Tobacco Company Limited, connue depuis 1998 sous le nom de British American Tobacco (Investments) Limited («**BAT Co.**»);
 - b) de 1976 à 1998: B.A.T Industries p.l.c., aussi connue sous le nom de Tobacco Securities Trust Company Limited (1928-1976) et de B.A.T Industries Limited (1976-1981) («**BAT Industries**»);
 - c) depuis 1998: British American Tobacco p.l.c. («**BAT plc**»).
83. Le Groupe BAT exerce ses activités au Canada par l'entremise de la société canadienne aujourd'hui connue sous le nom d'Imperial Tobacco Canada Limitée («**Imperial**»).

84. Le Groupe BAT comprend plusieurs membres à travers le monde dont la société américaine Brown & Williamson Tobacco Corporation (1927-2004) («**Brown & Williamson**»).
85. Les défenderesses du Groupe BAT sont Imperial, BAT Co. et BAT Industries.

1. Imperial

86. La défenderesse Imperial est une personne morale constituée en vertu de la *Loi canadienne sur les sociétés par actions*, L.C. 1985, c. C-44 («**LCSA**»).
87. À la suite de fusions, Imperial succède entre autres aux sociétés suivantes:
- a) Imasco Limitée (1970-2000), aussi connue sous les noms d'Imperial Tobacco Co. of Canada (1908-1912), d'Imperial Tobacco Company of Canada, Limited (1912-1966) et d'Imperial Tobacco du Canada Limitée (1966-1970) («**Imasco**»);
 - b) Imperial Tobacco Limitée (1974-2000), aussi connue sous les noms d'Imperial Tobacco Sales Company of Canada Limited (1931-1966) et de Les Produits Imperial Tobacco Limitée (1966-1974) («**ITL**»).
88. Avant 1970, les actions d'Imperial Tobacco Co. of Canada puis d'Imperial Tobacco Company of Canada, Limited sont détenues en majorité par des sociétés du Groupe BAT.
89. De 1970 à 2000, les actions d'ITL sont détenues par Imasco, société membre du Groupe BAT.

90. Depuis 1908, Imperial et les sociétés auxquelles elle succède sont impliquées dans la fabrication, la mise en marché et la promotion des produits du tabac au Québec.
91. En tout temps pertinent au présent litige, Imperial fabrique et distribue au Québec, notamment, les marques *Player's*, *du Maurier*, *Matinée* et *Peter Jackson*.
92. Imperial est, en date des présentes, détenue indirectement en propriété exclusive par BAT plc.

2. BAT Co.

93. La défenderesse BAT Co. est une personne morale constituée en 1902, au Royaume-Uni.
94. Jusqu'en juillet 1976, elle est la société mère du Groupe BAT, qui possède indirectement la majorité des actions d'Imasco.
95. Comme Imperial, elle est, en date des présentes, détenue indirectement en propriété exclusive par BAT plc.

3. BAT Industries

96. La défenderesse BAT Industries est une personne morale constituée en 1928, au Royaume-Uni.
97. De 1976 à 1998, elle est la société mère du Groupe BAT, succédant à ce titre à BAT Co. et détient:
 - a) de 1976 à 1980, la majorité des actions d'Imasco;

- b) de 1980 à 1998 au moins 40% des actions d'Imasco.
98. Comme Imperial et BAT Co., elle est, en date des présentes, détenue indirectement en propriété exclusive par BAT plc.
99. Imperial, BAT Co. et BAT Industries sont des fabricants au sens de la Loi en ce que:
- a) elles sont liées entre elles;
 - b) elles tirent ou ont tiré, directement ou indirectement, au moins 10 % de l'ensemble de leurs revenus, calculés sur une base consolidée, de la fabrication, de la mise en marché ou de la promotion des produits du tabac;
 - c) elles se livrent ou se sont livrées à des recherches sur des produits du tabac, à la mise en marché de ces produits ou à leur promotion.
100. Les documents colligés dans le cartable «Groupe BAT», **pièce PG-45**, démontrent l'évolution des structures et des liens entre les membres de ce Groupe et la continuité de leurs activités.

B. LE GROUPE ROTHMANS

101. Les sociétés mères du Groupe Rothmans sont successivement:
- a) de 1903 à 1993: Rysekks p.l.c., aussi connue sous le nom de Carreras Limited (1903-1972), Rothmans International Limited. (1972-1981) et Rothmans International p.l.c. (1981-1993);
 - b) de 1993 à 1995: Ryservs (1995) Limited, aussi connue sous le nom de Rothmans International p.l.c. (1993-1995) et Rothmans UK Holdings Limited (1995-2006);

- c) de 1993 à 1995: Rothmans International N.V.;
 - d) de 1995 à 1999: Rothmans International B.V.
102. Le Groupe Rothmans exerce ses activités au Canada par l'entremise des sociétés ou sous les noms suivants:
- a) The Rock City Tobacco Company (depuis 1899), aujourd'hui une simple raison sociale;
 - b) Rothmans inc. (1985-2000), aussi connue sous le nom de Rothmans of Pall Mall Canada Limited (1956-1985);
 - c) Rothmans, Benson & Hedges inc. (1986-2000) («**RBH**»).
103. Certaines filiales du Groupe Rothmans orientent les autres sociétés du Groupe sur les enjeux de santé liés au tabagisme, à savoir:
- a) Rothmans of Pall Mall Limited, une société britannique;
 - b) Carreras Rothmans Limited («**Carreras Rothmans**»);
 - c) Rothmans International Services Limited, aussi connue sous le nom de Rothmans International Tobacco Limited. (1991-1993) («**Rothmans Services**»).
104. En 1999, un changement important survient dans l'industrie alors que la multinationale Rothmans International B.V., la société mère du Groupe Rothmans, est intégrée au Groupe BAT.
105. À la suite de cette transaction, le Groupe BAT se départit de ses intérêts dans Rothmans inc. et RBH, les filiales canadiennes de Rothmans International B.V.

106. Dès lors, RBH est associée exclusivement au Groupe PM, qui détenait déjà 40% des actions.
107. La défenderesse du Groupe Rothmans est Carreras Rothmans.
108. La défenderesse Carreras Rothmans est une personne morale constituée en 1905, au Royaume-Uni.
109. Elle oriente les sociétés du Groupe sur les questions de santé liées au tabagisme de 1978 jusqu'en 1986.
110. Comme les défenderesses du Groupe BAT, elle est, en date des présentes, détenue indirectement en propriété exclusive par BAT plc.
111. Carreras Rothmans est un fabricant au sens de la Loi en ce que:
 - a) elle est liée à Imperial et a été liée à Rothmans of Pall Mall Canada Limited de 1978 à 1985;
 - b) elle se livre ou s'est livrée à des recherches sur des produits du tabac, à la mise en marché de ces produits ou à leur promotion.
112. Les documents colligés dans le cartable «Groupe Rothmans», **pièce PG-46**, démontrent l'évolution des structures et des liens entre les membres de ce Groupe et la continuité de leurs activités.

C. LE GROUPE PM

113. Les sociétés mères du Groupe PM sont successivement:

- a) de 1919 à 1985: Philip Morris USA inc., aussi connue sous le nom de Philip Morris & Co. Limited. (1919-1955) et Philip Morris inc. (1955-2003) («**PM inc.**»);
 - b) depuis 1985: Altria Group, inc. («**Altria**»), aussi connue sous le nom de Philip Morris Companies inc. (1985-2002).
114. Le Groupe PM exerce ses activités au Canada par l'entremise des sociétés suivantes:
- a) Benson & Hedges (Canada) inc. (1958-1986), aussi connue sous le nom de Benson & Hedges (Canada) Limited, détenue à 100% par PM inc. («**Benson & Hedges**»);
 - b) RBH (1986 à 2008), détenue successivement à 50% (1987-1989), à 40% (1989-2008) et à 100% en 2008 par divers membres du Groupe;
 - c) Rothmans, Benson & Hedges inc., détenue à 100% par Philip Morris International inc. («**PMI**») depuis 2009.
115. Les défenderesses du Groupe PM sont Rothmans, Benson & Hedges inc., PM inc. et PMI.

1. Rothmans, Benson & Hedges inc.

116. La défenderesse Rothmans, Benson & Hedges inc. est une personne morale constituée en vertu de la LCSA.
117. Rothmans, Benson & Hedges inc. est la résultante d'au moins deux fusions importantes:

- a) l'une survenue en 1986 entre Rothmans of Pall Mall Limited et Benson & Hedges, dont la résultante, RBH, est détenue conjointement par le Groupe Rothmans et le Groupe PM;
 - b) l'autre survenue en 2009 entre RBH et Rothmans inc., dont la résultante, qui reprend le nom de Rothmans, Benson & Hedges inc., est détenue exclusivement par PMI.
118. À la suite de ces fusions et d'autres transactions, Rothmans, Benson & Hedges inc. succède notamment aux sociétés suivantes:
- a) Benson & Hedges (1934-1986);
 - b) Rothmans inc. (1956-2009), aussi connue sous le nom Rothmans of Pall Mall Canada Limited (1956-1985);
 - c) The Rock City Tobacco Company (depuis 1899), aujourd'hui une simple raison sociale;
 - d) RBH (1986-2009).
119. Depuis le début du vingtième siècle, Rothmans, Benson & Hedges inc. et les sociétés auxquelles elle succède sont impliquées dans la fabrication, la promotion et la mise en marché de produits du tabac au Québec.
120. En tout temps pertinent au présent litige, Rothmans, Benson & Hedges inc. fabrique et distribue au Québec, notamment, les marques *Rothmans*, *Craven "A"*, *Benson & Hedges*, *Mark Ten* et *Belvédère*.

2. PM inc.

121. La défenderesse PM inc. est une personne morale constituée en 1919 dans l'État de la Virginie, aux États-Unis.

122. Depuis le début du vingtième siècle, PM inc. est impliquée dans la fabrication, la mise en marché et la promotion des produits du tabac, dont les cigarettes de marque *Virginia Slims*, *Eve*, *Plus*, *Plus 120 MM*, *Lark*, *Merit*, *Parliament* et *Silk Cut*, qui ont été offertes en vente au Québec.
123. PM inc. détient toutes les actions de Benson & Hedges, de 1958 à 1986, date à laquelle cette dernière devient RBH.

3. PMI

124. De 1960 à 1986, PMI exerce ses activités en tant que division de PM inc.
125. De 1987 à 2007, elle est constituée en personne morale dans l'État du Delaware et elle est détenue en totalité par Altria.
126. En 2007, elle est de nouveau constituée en personne morale dans l'État de la Virginie, aux États-Unis.
127. PMI est actionnaire de RBH (1987 à 2009), puis de Rothmans, Benson & Hedges inc. depuis 2009.
128. Rothmans, Benson & Hedges inc., PM inc. et PMI sont des fabricants au sens de la Loi en ce que:
- a) elles sont ou ont été liées entre elles;
 - b) elles tirent ou ont tiré, directement ou indirectement, au moins 10 % de l'ensemble de leurs revenus, calculés sur une base consolidée, de la fabrication, de la mise en marché ou de la promotion des produits du tabac;

c) elles se livrent ou se sont livrées à des recherches sur des produits du tabac, à la mise en marché de ces produits ou à leur promotion.

129. Les documents colligés au cartable «Groupe PM», **pièce PG-47**, démontrent l'évolution des structures et des liens entre les membres de ce Groupe et la continuité de leurs activités.

D. LE GROUPE RJR

130. Les sociétés mères du Groupe RJR sont successivement:

- a) de 1906 à 1970: R.J. Reynolds Tobacco Company («**RJRT**»);
- b) de 1970 à 2004: R.J. Reynolds Holdings, inc., aussi connue sous le nom de R.J. Reynolds Industries, inc. (1970-1985) et de RJR-Nabisco, inc. (1985-1999) («**RJR Industries**»);
- c) depuis 2004: Reynolds American inc., dont BAT plc détient 42% des actions.

131. Les défenderesses du Groupe RJR sont JTI-Macdonald Corp., R.J. Reynolds Tobacco Company et R.J. Reynolds Tobacco International, inc. («**RJRTI**»).

1. JTI-Macdonald Corp.

132. La défenderesse JTI-Macdonald Corp. est une personne morale constituée en Nouvelle-Écosse en vertu de la *Companies Act*, R.S., c. 81.

133. À la suite de diverses transactions et fusions, JTI-Macdonald Corp. succède entre autres aux sociétés suivantes:

- a) RJR-Macdonald Corp. (1999), aussi connue sous le nom de RJR-Macdonald inc. (1978-1999); et
 - b) Macdonald Tobacco inc. (1858-1978), aussi connue sous le nom de W.C. Macdonald Incorporated (1930-1957);
- toutes deux ci-après désignées sous le nom de «**Macdonald**».

- 134. Depuis sa création en 1858 jusqu'en 1974, Macdonald est une société privée canadienne.
- 135. De 1974 à 1999, Macdonald est une société en propriété exclusive du Groupe RJR.
- 136. En 1999, les intérêts du Groupe RJR dans Macdonald sont vendus à Japan Tobacco inc.
- 137. Depuis 1858, JTI-Macdonald Corp. et les sociétés auxquelles elle succède sont impliquées dans la fabrication, la mise en marché et la promotion des produits du tabac au Québec.
- 138. En tout temps pertinent au présent litige, JTI-Macdonald Corp. fabrique et distribue au Québec, notamment, la marque *Export "A"*.

2. R.J. Reynolds Tobacco Company

- 139. La défenderesse R.J. Reynolds Tobacco Company est une personne morale constituée en 2004 dans l'État de la Caroline du Nord, aux États-Unis.
- 140. Elle résulte de la fusion, en 2004, entre RJRT et de Brown & Williamson, un membre du Groupe BAT.

141. En conséquence, elle succède et assume les obligations de RJRT et Brown & Williamson.
142. RJRT est une personne morale constituée en 1906 dans l'État du New Jersey, aux États-Unis.
143. Elle acquiert Macdonald en 1974.
144. Depuis le début du vingtième siècle, R.J. Reynolds Tobacco Company et les sociétés auxquelles elle succède sont impliquées dans la fabrication, la mise en marché et la promotion des produits du tabac, dont les cigarettes de marque *Camel*, *Winston*, *Salem*, *Moore* et *Kool* qui sont offertes en vente au Québec.
145. Depuis 2004, R.J. Reynolds Tobacco Company est détenue en propriété exclusive par Reynolds American inc.

3. RJRTI

146. La défenderesse RJRTI est une personne morale constituée en 1976 dans l'État du Delaware, aux États-Unis.
147. Comme RJRT, elle est détenue en propriété exclusive par Reynolds American inc.
148. Depuis 1976 et jusqu'en 1999, RJRTI et Macdonald sont toutes deux membres du Groupe RJR.

149. Macdonald, RJRT et RJRTI sont des fabricants au sens de la Loi en ce que:
- a) elles ont été liées entre elles;
 - b) elles tirent ou ont tiré, directement ou indirectement, au moins 10 % de l'ensemble de leurs revenus, calculés sur une base consolidée, de la fabrication, de la mise en marché ou de la promotion des produits du tabac;
 - c) elles se livrent ou se sont livrées à des recherches sur des produits du tabac, à la mise en marché de ces produits ou à leur promotion.
150. Les documents colligés au cartable «Groupe RJR», **pièce PG-48**, démontrent l'évolution des structures et des liens entre les membres de ce Groupe et la continuité de leurs activités.

E. LE CONSEIL CANADIEN DES FABRICANTS DES PRODUITS DU TABAC

151. Le Conseil canadien est une personne morale constituée en corporation à but non lucratif en 1982, en vertu de la *Loi sur les corporations canadiennes – Partie II*, S.R.C. (1970), ch. C-32.
152. Il est la continuité du Comité ad hoc de l'industrie canadienne (1963-1971) et de l'association qui a œuvré sous le nom de Conseil canadien des fabricants des produits du tabac (1971-1982).
153. Depuis sa création, le Conseil canadien représente les membres de l'industrie canadienne des produits du tabac sur des sujets d'intérêt commun, dont les questions liées au tabac et à la santé.
154. Il est donc une association commerciale au sens de la Loi.

155. Les documents colligés au cartable, **pièce PG-49**, démontrent l'évolution des structures et des liens entre le Conseil canadien et ses prédécesseurs et la continuité de leurs activités.

F. LES PARTS DE MARCHÉ

156. Les parts de marché des défenderesses canadiennes sont celles décrites aux pièces suivantes:
- *Notes for a Presentation by Norman A. Dann, Vice President, Public Relations Imasco Limited (Canada) to the Conference on Smoking and Health Issues, Chelwood, England, November 6, 1979, pièce PG-182;*
 - *The Canadian Tobacco Market at a Glance, ITL, 1992, pièce PG-49 A;*
 - *Parts du marché canadien détenues par les compagnies canadiennes de tabac, 1980-2001, Santé Canada, pièce PG-49 B.*

III. SOMMAIRE

157. Le demandeur entend démontrer que, pendant toute la période pertinente au litige, les défenderesses ont, en toute connaissance de cause et de manière concertée, fait de fausses représentations au sujet de la dangerosité et de l'effet addictif des produits du tabac, ont omis d'informer les consommateurs, y compris les enfants et les adolescents, sur les caractéristiques véritables de leurs produits et les ont induits en erreur à cet égard, commettant ainsi des fautes envers les personnes du Québec.
158. La preuve du demandeur s'étend sur près de 50 ans et comprend une volumineuse documentation qui émane essentiellement des défenderesses.
159. La présente section expose de manière sommaire ce qui sera plus amplement allégué dans les prochaines sections.

A. LA DANGEROUSITÉ DES PRODUITS DU TABAC

160. Dès le début des années 1950, les défenderesses perçoivent le danger que représentent pour l'industrie les études et rapports scientifiques récemment publiés qui associent le tabagisme à plusieurs maladies et en font la cause la plus probable du cancer du poumon.
161. Les défenderesses mettent alors sur pied de nombreux programmes de recherche afin d'étudier les composés de la fumée du tabac, d'identifier ceux qui sont tumorigènes et d'en diminuer la concentration pour rendre leurs produits moins nocifs.
162. Dès la fin des années 1950, toutes les défenderesses savent que la fumée du tabac contient plusieurs composés cancérigènes.
163. Seul le Groupe Rothmans admet, à la fin des années 1950, qu'il existe un lien entre le tabagisme et le cancer du poumon, mais il le fait dans le but de promouvoir ses nouveaux filtres.
164. Il fait volte-face rapidement et aligne sa position sur celle de l'industrie dès 1964, alors qu'il critique les conclusions du *Surgeon General*.
165. De 1965 à 1978, de nombreuses études et recherches du Groupe BAT concluent que la fumée de tabac cause des tumeurs bénignes et malignes, de l'irritation des voies respiratoires et des maladies pulmonaires.
166. Le Groupe BAT sait également que le monoxyde de carbone a un effet néfaste sur le système respiratoire et que la nicotine affecte le système vasculaire et augmente le risque d'infarctus et de maladies cardiaques.

167. En 1969, le Groupe BAT admet en privé qu'il n'existe aucun argument pour réfuter le fait que fumer augmente le risque de cancer du poumon.
168. Notamment en 1964, 1975 et 1986, le Groupe BAT reconnaît à l'interne que les problèmes de santé liés au tabagisme ne seront jamais résolus et qu'il est impossible de produire une cigarette sans risque pour la santé.
169. De son côté, dès 1963, le Groupe PM tente, par des recherches qu'il mène ou finance, de diminuer la concentration des composés cancérigènes, d'éliminer les composés irritants qui peuvent mener à la bronchite chronique ou à l'emphysème et de réduire la teneur en nicotine qu'il suspecte être un facteur de risque pour les maladies cardiaques.
170. En 1966, le Groupe PM sait qu'il existe un lien probable entre le tabagisme, des pathologies pulmonaires et des maladies cardiaques grâce aux tests d'inhalation qu'il conduit pour mesurer les effets cancérigènes de la fumée de cigarette.
171. En 1967, les expériences du Groupe PM confirment que les filtres ne réduisent pas la tumorigénicité de la fumée de cigarette.
172. Le Groupe PM encourage aussi les recherches pouvant démontrer que les maladies associées au tabagisme peuvent avoir d'autres causes, tout en s'opposant à la reconnaissance par l'industrie du lien causal entre le tabagisme et diverses maladies.
173. Le Groupe RJR, quant à lui, est bien au courant des dangers du tabagisme pour la santé dès le début des années 1960.

174. Le Groupe RJR s'intéresse aussi aux composés de la fumée de cigarette afin d'en isoler les éléments nocifs et d'éliminer ceux pouvant être cancérigènes.
175. À la fin des années 1960, le Groupe RJR teste des filtres afin de tenter de diminuer la quantité de particules nocives contenues dans la fumée de cigarette.
176. Dès 1979, le Groupe RJR est bien au courant des effets de la cigarette sur les maladies cardiovasculaires.
177. Le Groupe RJR n'hésite pas à discréditer ses propres recherches afin de se défendre contre d'éventuelles poursuites et empêcher la publication des rapports de recherche pouvant être compromettants.
178. Malgré la connaissance étendue qu'ils ont des dangers de leurs produits pour la santé des fumeurs, les Groupes BAT, PM, Rothmans et RJR nient publiquement que la cigarette soit nocive pour la santé.
179. Pour soutenir ce discours, ils mettent en place une stratégie et des politiques, dont les grandes lignes demeureront les mêmes jusqu'en 2000, et qui consistent à:
 - a) discréditer les études qui soulèvent des doutes sur l'innocuité des produits du tabac ou concluent à leur dangerosité;
 - b) ignorer et dissimuler les études qu'ils mènent sur les produits du tabac et qui concluent aux dangers potentiels ou avérés du tabagisme pour la santé des fumeurs;
 - c) mentir au public et rassurer les fumeurs en niant les effets délétères du tabagisme pour la santé;

- d) susciter le doute quant aux effets nocifs du tabagisme en faisant faussement valoir qu'une controverse médicale existe;
- e) tabler sur l'ignorance et la dépendance des fumeurs pour les convaincre de la justesse de ce discours.

180. Ces politiques se traduisent par des déclarations publiques trompeuses de la part de toutes les défenderesses.

B. L'EFFET ADDICTIF DES PRODUITS DU TABAC

181. Les défenderesses des Groupes BAT, PM, Rothmans et RJR savent aussi depuis au moins le début des années 1960 que les produits du tabac causent la dépendance.

182. Elles étudient la nicotine, un alcaloïde contenu dans le tabac qui agit sur le cerveau et l'organisme, et comprennent rapidement que la cigarette n'est qu'un dispositif de livraison de nicotine.

183. Dans leur documentation interne, les défenderesses reconnaissent avec constance que la nicotine est essentielle et que, sans elle, les gens cesseraient de fumer.

184. Pendant plusieurs années, les défenderesses effectuent de nombreuses recherches qui leur permettent de comprendre les effets et le fonctionnement de la nicotine.

185. Elles développent différents procédés pour diminuer la teneur en nicotine de leurs produits, tout en évitant d'en diminuer les effets.

186. Les défenderesses savent aussi que, bien que le niveau de dépendance varie d'un consommateur à un autre, beaucoup d'entre eux éprouvent une très grande difficulté à cesser leur consommation de produits du tabac.
187. Malgré le fait qu'elles connaissent ces méfaits de la nicotine, les défenderesses omettent d'en avertir le public.
188. Au contraire, pendant plusieurs années, elles organisent leur discours pour nier publiquement que la nicotine cause la dépendance et induisent le public en erreur.

C. LES CIGARETTES DITES DOUCES OU LÉGÈRES

189. À la suite des études qui lient le tabac avec des maladies graves, dans les années 1950 et au début des années 1960, les autorités publiques recommandent, à défaut d'abandonner le tabagisme, de choisir des cigarettes avec la plus basse teneur possible en goudron et en nicotine.
190. Dans le but de rassurer les consommateurs quant aux effets nocifs du tabac et de conserver leur clientèle, les fabricants développent et commercialisent au cours des années 1960 et 1970 les cigarettes à teneur réduite en goudron et en nicotine, puis les versions dites «légères» ou «douces» de leurs produits.
191. Les défenderesses savent cependant, à la lumière de leurs études, que la réduction des teneurs en goudron et en nicotine ne peut éliminer ou même réduire significativement les effets nocifs du tabac sur la santé.
192. En effet, les défenderesses identifient un phénomène de compensation qui fait en sorte que le fumeur d'une cigarette légère inhale autant de matières

nocives que s'il fumait une cigarette régulière ou, à tout le moins, une quantité supérieure à celle qui, mesurée mécaniquement, est indiquée sur les paquets ou autrement rendue publique.

193. Les défenderesses choisissent de cacher ces informations au public.
194. Les défenderesses induisent ainsi les consommateurs en erreur en laissant croire que les cigarettes légères sont plus sûres pour la santé et en soutenant que leur mise en marché ne fait que répondre à la demande pour des produits plus doux, alors que l'objectif est de calmer les inquiétudes des fumeurs.

D. LA PROMOTION AUPRÈS DES JEUNES

195. Les fausses représentations et les omissions des défenderesses sont d'autant plus graves qu'elles ont également été faites envers les enfants et les adolescents du Québec.
196. Les défenderesses soutiennent continuellement que leur publicité vise uniquement à augmenter leurs parts de marché respectives parmi les adultes fumeurs.
197. Elles soutiennent aussi qu'elles ne souhaitent pas que des enfants et des adolescents commencent à fumer et que leur publicité ne les vise pas.
198. Contrairement à ce qu'elles affirment, les défenderesses élaborent leur marketing de façon à attirer la clientèle des enfants et des adolescents dans le but d'augmenter ou de maintenir les niveaux de vente de cigarettes.

199. Les défenderesses compilent constamment des données sur la consommation de tabac chez les enfants et les adolescents et savent fort bien qu'ils représentent la source principale de renouvellement de leur clientèle.
200. Elles conduisent ou commandent des études pour mieux comprendre cette clientèle et élaborer des moyens de marketing plus efficaces afin de l'attirer.
201. Les défenderesses omettent d'informer les enfants et les adolescents au sujet de la nocivité du tabac, de la dépendance que la nicotine entraîne, de la nocivité tout aussi grande des cigarettes légères et de la signification réelle des teneurs en goudron et en nicotine affichées sur les paquets.
202. Les défenderesses agissent au contraire de façon à dissimuler ou à minimiser les caractéristiques négatives du tabagisme en présentant à la clientèle des enfants et des adolescents, particulièrement vulnérables à la publicité, une image attrayante et positive de la consommation de cigarettes.

E. LA CONSPIRATION

203. Les fausses représentations et omissions des défenderesses constituent par ailleurs des manquements communs au sens de la Loi car toutes les défenderesses y participent, et ce, de façon concertée.
204. En effet, les défenderesses américaines et britanniques participent, par l'intermédiaire d'organismes nationaux et internationaux voués à la défense de leurs intérêts, aux manquements commis par l'industrie canadienne envers les personnes du Québec.

205. Au cours des années 1950 et 1960, l'industrie américaine crée des organismes engagés dans des campagnes de relations publiques visant à nier ou à banaliser la dangerosité du tabac et à entretenir une fausse controverse scientifique.
206. Les effets de cette concertation ou conspiration s'étendent au Canada, de sorte que le même message est véhiculé au Québec par l'intermédiaire de l'industrie canadienne.
207. À compter de 1976 et jusque dans les années 1990, la conspiration s'organise au plan international, notamment par la création d'ICOSI et d'INFOTAB, deux organismes dont les principaux objectifs sont de maintenir et d'alimenter la supposée controverse scientifique au sujet du lien entre le tabagisme et diverses maladies, de résister à l'adoption de lois en matière d'avertissements de santé et de discréditer le travail des organisations anti-tabac.
208. Les défenderesses membres d'ICOSI et d'INFOTAB, les défenderesses canadiennes, y compris le Conseil canadien, endossent et véhiculent les politiques et positions développées collectivement au sein de ces organismes.
209. Le Conseil canadien joue un rôle important dans la mise en œuvre de la conspiration au Québec, notamment en propageant auprès de la population du Québec le message de l'industrie du tabac et en s'opposant à l'insertion d'avertissements de santé efficaces sur les paquets de cigarettes.
210. Les actes fautifs commis par l'intermédiaire du Conseil canadien doivent être imputés, notamment, aux trois défenderesses canadiennes qui en sont

membres, définissent sa mission et endossent ses déclarations publiques au sujet de l'absence de nocivité de leurs produits.

211. La conspiration internationale de l'industrie du tabac est également mise en œuvre au Québec par l'action concertée au sein des Groupes, ou encore par le contrôle des sociétés étrangères sur les fabricants canadiens.
212. BAT Co. et BAT Industries sont responsables envers la population du Québec pour les actes fautifs commis en concertation avec les sociétés auxquelles succède Imperial et pour ceux que ces sociétés ont commis sous leur contrôle.
213. Carreras Rothmans est responsable envers la population du Québec pour les actes fautifs commis en concertation avec les sociétés auxquelles succède Rothmans, Benson & Hedges inc.
214. PM inc. et PMI sont également responsables envers la population du Québec pour les actes fautifs commis en concertation avec les sociétés auxquelles succède Rothmans, Benson & Hedges inc. et pour ceux que ces sociétés ont commis sous leur contrôle.
215. R.J. Reynolds Tobacco Company est responsable envers la population du Québec pour les actes fautifs commis par les sociétés auxquelles elle succède en concertation avec les sociétés auxquelles succède JTI-Macdonald Corp. et pour ceux que ces dernières ont commis sous leur contrôle.
216. RJRTI est responsable envers la population du Québec pour les actes fautifs commis en concertation avec les sociétés auxquelles succède

JTI-Macdonald Corp. et pour ceux que ces sociétés ont commis sous son contrôle.

217. Vu ces manquements qui leur sont communs, les défenderesses sont solidairement responsables du coût des soins de santé réclamé par le gouvernement du Québec.

IV. LES FAUTES DES DÉFENDERESSES

A. LES DÉFENDERESSES ONT CACHÉ, NIÉ ET FAUSSEMENT REPRÉSENTÉ LA DANGÉROSITÉ DE LEURS PRODUITS

218. En tout temps pertinent au présent litige, les défenderesses développent, organisent et financent de vastes programmes de recherche.
219. Elles dotent leurs laboratoires d'équipement perfectionné et utilisent des technologies de pointe.
220. Elles développent des protocoles et utilisent des méthodes analytiques à la fine pointe de la technologie.
221. Elles financent de nombreux chercheurs externes travaillant au sein d'universités ou d'hôpitaux, directement ou par le biais du Conseil canadien, du CTR et du TRC (U.K.), des organismes qu'elles forment pour défendre leurs intérêts.
222. L'étendue des ressources mobilisées pour mener ces projets de recherche permet aux défenderesses de connaître, mieux que quiconque, leurs produits et ses effets délétères sur la santé.

1. Le Groupe BAT connaît la dangerosité de son produit

a) Les nombreuses recherches menées sur la dangerosité

223. Pour les fins de la présente section, l'acronyme BAT désigne indifféremment les sociétés britanniques membres du Groupe BAT.

224. Le nom Imperial désigne pour sa part indifféremment les sociétés Imperial Tobacco Company, Limited, ITL et Imasco.

225. De 1960 à 2000, BAT et Imperial mènent plusieurs programmes de recherche visant à développer une cigarette moins cancérogène ou tout au moins perçue comme telle par le consommateur, que ce soit par l'élimination spécifique de certains composés, par l'ajout d'additifs, par la réduction générale de tous les composés à l'aide de filtres, par l'ajout de substituts de tabac ou par la modification du design de la cigarette (papier, ventilation, longueur, diamètre):

➤ «*Ce Que Vous Devriez Savoir: Document de Référence sur Imperial Tobacco*», ITL, 14 août 2000, **pièce PG-50**.

226. Ainsi, en juin 1962, Sir Ellis, le conseiller scientifique de BAT, constate que la preuve épidémiologique associant la cigarette et le cancer du poumon est bien connue et qu'elle est cohérente, ajoutant que l'industrie doit étudier les différentes causes possibles du cancer du poumon et, comme facteur possible et très important, les effets de la fumée de cigarette:

➤ *Research Conference, Southampton, Smoking and Health – Policy on Research*, juin 1962, BAT Co., **pièce PG-51**.

227. Il annonce alors que BAT et les autres fabricants britanniques entreprennent un programme à long terme pour, d'une part, rechercher l'origine du cancer du poumon et les effets de la fumée de cigarette et, d'autre part, étudier les composés de la fumée de cigarette, incluant les possibilités de les modifier.
228. Ce vaste programme de recherche, à être mené au laboratoire Harrogate construit et opéré par le TRC (U.K.), comprend entre autres les expériences ou études suivantes:
- a) dosage biologique sur 6 000 souris afin d'étudier l'effet du condensat de tabac appliqué sur la peau (badigeonnage de peaux de souris);
 - b) deux tests d'irritation puisque celle-ci peut causer la bronchite chronique, la carcinogénèse ou agir comme un co-cancérogène:
 - i. test visant à détecter l'hyperplasie de l'épithélium des bronches;
 - ii. test sur les cellules à gobelet dont le nombre augmente lors d'une bronchite;
 - c) recherche des causes du cancer du poumon et du rôle joué par la fumée de cigarette;
 - d) étude de l'effet de la nicotine sur le système cardiovasculaire et sur le système nerveux:
- pièce PG-51.
229. Toujours en 1962, BAT débute le Projet Ariel dont l'objectif est de développer un dispositif pouvant remplacer la cigarette.
230. BAT réussit alors à produire un dispositif à fumer moins nocif pour la santé mais, comme il ne répond pas au goût des fumeurs, il n'est pas commercialisé:

- Note de S.J. Green à D.S.F. Hobson, BAT Co., 2 mars 1967, **pièce PG-52**;
 - pièce PG-50.
231. Puis, de 1965 à 1978, au Battelle Memorial Laboratory («**Battelle**»), en Allemagne, BAT mène le Projet Janus dont l'objectif est d'effectuer, à long terme, des tests de badigeonnage de peaux de souris avec un condensat de fumée afin de développer une cigarette de faible activité biologique, d'examiner les effets toxiques de certains composés de la fumée de cigarette et de mesurer l'activité biologique de modifications apportées au tabac ou à la cigarette.
232. En 1966, le Projet Conqueror s'intéresse au rôle de la fumée de cigarette sur l'irritation du système respiratoire et sur la bronchite chronique.
233. En 1981, avec la collaboration d'Imperial, BAT lance le Projet Rio visant à fabriquer une cigarette ayant une faible activité biologique au test Ames, un test permettant de déterminer le potentiel mutagénique du tabac et de la fumée de cigarette.
234. Dans le cadre de ce projet:
- a) l'activité biologique de plusieurs marques de cigarettes est comparée et l'impact de plusieurs modifications physiques ou chimiques sur cette activité est évalué afin de diminuer la cancérogénicité de la cigarette;
 - b) une contre-comparaison du test Ames est réalisée dans des laboratoires du Groupe BAT en Angleterre, en Allemagne et à Montréal:
- pièce PG-50.

235. En 1985 et 1986, Imperial réalise le Projet EMN (élimination, modification et neutralisation) visant à produire une cigarette plus sûre en identifiant puis en modifiant ou éliminant les composés de la fumée nocifs pour la santé:
- pièce PG-50;
 - E.D. Massey et C.C. Greig, *Project EMN, Presentation by C. Warren and P.J. Dunn*, BAT (U.K. & E) R&D, 22 avril 1986, **pièce PG-53**;
 - Note de R.E. Thornton à A.L. Heard, *Project EMN*, BAT Co., 20 juin 1986, **pièce PG-54**.
236. En 1987, BAT initie le Projet Day, dont le but est de concevoir une cigarette à teneur normale en nicotine et en goudron, mais dont certains composés toxiques auront été éliminés.
237. BAT espère ainsi rassurer les fumeurs, retarder le moment où ils cesseront de fumer et maintenir son marché:
- Note de A. L. Heard à E.A.A. Bruell, *Project Greendot/Project Day*, BAT Co., 16 décembre 1988, **pièce PG-55**.
238. Le Projet Greendot débute en 1988 et a pour objectif de mettre au point une cigarette à faible activité biologique et à teneur réduite en goudron mais à teneur normale en nicotine:
- pièce PG-55.
239. Toutes ces recherches permettent très tôt à BAT et à Imperial de confirmer et d'explorer la dangerosité de leurs produits pour la santé des fumeurs.
240. Cependant, l'objectif primordial de ces programmes de recherche est toujours d'assurer la continuité de l'industrie et la rentabilité du Groupe BAT:

«1) The improvement of current brands should be continued by removing from the smoke, any substances judged to be harmful or alleged to be harmful, provided consumer acceptance is not adversely affected.»

- Procès-verbal de la *R&D Conference - Montreal*, 24 au 27 octobre 1967, BAT Co., 6 novembre 1967, **pièce PG-56**.

i) Tabagisme et cancer

241. Dès 1956, Imperial Tobacco Co. Ltd. (U.K.) mesure les niveaux de benzo(a)pyrène présent dans la fumée de tabac et teste des substances pour tenter de réduire la teneur de ce puissant carcinogène («*a powerful carcinogen*») formé en quantité significative («*appreciable quantity*») lors de la combustion du tabac:

- H.R.B., *Control of Benzpyrene in Burning Cigarettes: Recent Work in the Research Department, Imperial Tobacco Co., Ltd*, 10 décembre 1956, **pièce PG-57**;
- E.R. Bentley, *Polynuclear Hydrocarbons in Tobacco and Tobacco Smoke, Part 1-A-, Method of Estimation of 3:4 Benzopyrene in Tobacco and Tobacco Smoke*, Imperial Tobacco Co., Ltd, 24 mars 1958, **pièce PG-58**;
- J.G. Burgan, *Polynuclear Hydrocarbons in Tobacco and Tobacco Smoke, Part 2 - The Origin of Benzopyrene found in Tobacco and Tobacco Smoke*, Imperial Tobacco Co., Ltd, 24 mars 1958, **pièce PG-59**;
- J.G. Burgan, *Polynuclear Hydrocarbons in Tobacco and Tobacco Smoke, Part 3 - The Inhibition of the Formation of 3:4-Benzopyrene in Cigarette*, Imperial Tobacco Co Ltd UK, 30 avril 1958, **pièce PG-60**.

242. Imperial Tobacco Co. Ltd. (U.K.) est alors actionnaire de BAT Co. et ces deux sociétés sont actionnaires d'Imperial, soit directement, soit par l'intermédiaire de Tobacco Securities Trust Company Ltd., maintenant BAT Industries.

243. En 1957, BAT s'interroge sur l'existence d'un lien causal entre la fumée de cigarette et le «zéphyr», un nom de code pour le cancer, et elle propose un programme de recherche pour étudier les hydrocarbures aromatiques polycycliques, une classe de composés cancérrogènes qu'elle tente d'éliminer de la fumée de cigarette et dont fait partie le benzo(a)pyrène:
- D.G. Felton, *Report No. RD.14-R Smoke Group, Programme for coming 12-16 week period*, BAT Co., 1^{er} mars 1957, **pièce PG-61**;
 - I.W. Hughes, *Report No RD-0-34, Platinum as an additive to tobacco*, BAT Co., 6 décembre 1957, **pièce PG-62**.
244. En 1958, tant BAT qu'Imperial croient que la fumée de cigarette contient plusieurs agents cancérrogènes et toutes deux savent comment en réduire la teneur en goudron:
- Lettre de C. Ellis, BAT Co., à L. C Laporte, Imperial Tobacco Co. of Canada, Ltd., 7 mars 1958, **pièce PG-63**;
 - Lettre de L. C. Laporte, Imperial Tobacco Co. of Canada, Ltd., à C. Ellis, BAT Co., 12 mars 1958, **pièce PG-64**.
245. D'ailleurs, le 11 juin 1958, dans le compte-rendu d'une visite faite aux États-Unis et au Canada, des représentants d'Imperial Tobacco Ltd. (U.K.), de BAT et de sa filiale australienne, W.D. & H.O. Wills, constatent que:
- a) la majorité des scientifiques rencontrés ne doutent pas qu'il existe une relation de cause à effet entre le tabagisme et le cancer du poumon;
 - b) il y a acceptation générale que la fumée de cigarette contient des cancérrogènes en quantité suffisante pour causer le cancer du poumon à long terme chez un individu sensible;
 - c) la majorité est d'opinion qu'il serait étonnant que la fumée de cigarette ne soit pas cancérrogène compte tenu de sa composition chimique;

- d) les scientifiques américains ne doutent pas sérieusement que la corrélation statistique reflète un lien de cause à effet:
- H.R. Bentley, D.G.I. Felton et al., *Report on Visit to U.S.A. and Canada, 17th April – 12th May 1958*, le Groupe BAT, 11 juin 1958, **pièce PG-65**.
246. À compter de 1959, BAT et Imperial tentent de réduire la teneur en benzo(a)pyrène de la fumée de cigarette laquelle, à leur connaissance, est quatre fois plus élevée dans la seconde moitié de la cigarette:
- D.G. Felton et I.W. Hughes, *3:4 Benzpyrene in Mainstream Cigarette Smoke, Report No. RD.85-R*, BAT Co., 23 avril 1959, **pièce PG-66**;
 - Lettre de L. C. Laporte, Imperial Tobacco Co. of Canada, Ltd, à H.D Anderson, BAT Co., 2 février 1960, **pièce PG-67**;
 - M. Scherbak et J. E. de Souza, *The whole Tar, Nicotine & 3-4-Benzpyrene Smoke Mainstream Content of Cigarettes Containing Different Levels of Glycerol*, Imperial Tobacco Co. of Canada, Ltd., 22 avril 1963, **pièce PG-68**;
 - C.I. Ayres, *Factors Controlling Benzo(a)pyrene Production: Effect of Changing the Porosity of the Cigarette Paper, Report No. RD.246-R*, BAT Co., 27 juin 1963, **pièce PG-69**;
 - R.E. Thornton, *The Filtration of Benzo(a)pyrene by Synthetic Filter Plugs, Report No. L.224-R*, BAT Co., 15 février 1967, **pièce PG-70**;
 - R.E Thornton, *A Rapid Method for the Determination of Benzo(a)pyrene in Smoke, Laboratory Report No. L.253-R*, BAT Co., 9 août 1967, **pièce PG-71**;
 - R.E. Thornton, *Further Studies on the Filtration of Benzo(a)pyrene, Report No. RD.513-R*, BAT Co., 8 novembre 1967, **pièce PG-72**.
247. En 1960, BAT sait que le goudron de la cigarette est co-cancérogène:
- J.P.W. Gilman, *Report on Co-carcinogenic Activity of Tar 199A & 278 B (Woodlyn Experiments)*, rapport rédigé pour Imperial, 14 juin 1960, **pièce PG-73**.

248. En 1962, BAT découvre qu'en plus du benzo(a)pyrène, la fumée de cigarette contient des nitrosamines, d'autres composés cancérigènes:

- G.F. Todd, *Nitrosamines*, TRC (U.K.), 16 décembre 1962, **pièce PG-74**.

249. Comme cette découverte est confirmée par des études subséquentes et qu'il n'existe pas de seuil sécuritaire pour les nitrosamines, BAT tente de les éliminer par différents procédés et d'identifier les facteurs qui en influencent la teneur:

- R. E. Thornton, *Nitrosamines, Report No RD.348-R*, BAT Co., 8 septembre 1965, **pièce PG-75**;
- J. E. Kennedy, *Trip Report*, Brown & Williamson, 26 septembre 1968, **pièce PG-76**;
- S.R. Massey, *Analysis of N'-Nitrosornicotine in Cigarette Smoke-Progress, Report No. RD.1265 Restricted – progress report*, BAT Co., 13 octobre 1975, **pièce PG-77**;
- S.R. Massey, *Filtration of N'-Nitrosornicotine from Cigarette Smoke, Laboratory Report No. L.541 Restricted*, BAT Co., 20 décembre 1976, **pièce PG-78**;
- S.R. Massey, *Analysis of N'-Nitrosornicotine in Tobacco and Other Smoking Materials, Report No. RD.1494 Restricted*, BAT Co, 23 mai 1977, et lettre de transmission de D.G. Felton à P. Sheehy, BAT Co., 30 mai 1977, **pièce PG-79**;
- Lettre de S.R. Evelyn à S.J. Green, *Nitrosamines*, BAT Co., 20 juillet 1978, **pièce PG-80**;
- J.D. Green, *N'-Nitrosornicotine in Tobacco, Report No. RD.1683 Restricted*, BAT Co., 22 mai 1979, **pièce PG-81**;
- D.G. Felton, *Visit to Canada & U.S.A., October, 1979, Summary Report*, BAT Co., octobre 1979, **pièce PG-82**.

250. Les nitrosamines sont d'ailleurs des composés si préoccupants que BAT en discute avec PMI, Carreras Rothmans, RJRT et RJR Industries:

- Procès-verbal du *Fourth Meeting of the Board of Governors, International Committee on Smoking Issues (ICOSI)*, 11 au 13 septembre 1978, **pièce PG-83**.

251. La liste des composés suspectés dès 1962 d'être dangereux pour la santé ne change pas jusqu'en 1977:

- S.J. Green, *Notes on Group Research and Development Conference, Rio de Janeiro 1977*, BAT Co., 18 avril 1977, **pièce PG-84**.

252. En 1964, dans un rapport transmis à sa société mère, la filiale australienne de BAT conclut qu'il est impossible de produire une cigarette sans risques pour la santé et qu'on ne peut qu'espérer développer une cigarette moins dangereuse:

- W.W. Reid, *Some Aspects of the Chemistry and Biology of Tobacco Smoke, Report on a colloquium given by W.W. Reid to members of staff of Central Laboratories, W.D. & H.O. Wills (Aust.) Limited, on Friday, 7th February, 1964*, **pièce PG-85**.

253. Le 20 juin 1967, le président du TRC (U.K.), dont BAT est membre, écrit à Brown & Williamson, la filiale américaine de BAT, que les scientifiques du TRC (U.K.) acceptent le lien de causalité entre le tabagisme et le cancer du poumon:

«The only real difficulties that we encountered arose out of the unavoidable paradox at the centre of our operations - namely that, on the one hand the manufacturers control TRC's operations and do not accept that smoking has been proved to cause lung cancer while, on the other hand, TRC's research programme is based on the working hypothesis that this has been sufficiently proved for research purposes. In addition, the Council's senior scientists accept the causation theory and work for the Council because they are interested in trying to solve what they consider to be an urgent human

health problem. We have not yet found the best way of handling this paradox.»

- Lettre de G.F. Todd, TRC(U.K.), à A. Yeaman, Brown & Williamson, *Private letter No. 15*, 20 juin 1967, **pièce PG-86**.

254. De 1965 à 1978, plusieurs études d'application cutanée (badigeonnage de peaux de souris avec du goudron) sont menées par BAT dans le cadre du Projet Janus.

255. Toutes ces études concluent que la fumée de tabac est tumorigène et cancérigène puisque des tumeurs bénignes et malignes apparaissent au site d'application ou à l'extérieur de la surface badigeonnée.

256. De plus, certaines de ces études démontrent que:

- a) toutes les sortes de tabac et tous les substituts de tabac sont cancérigènes;
 - b) il existe une relation dose-effet;
 - c) des tumeurs se forment dans d'autres organes (leucémie et tumeur du poumon par exemple);
 - d) certaines lésions cutanées vont jusqu'au carcinome épidermoïde avec métastases pulmonaires;
 - e) la mortalité est plus élevée chez les souris exposées que chez les souris témoins;
 - f) l'ajout de différents filtres ou de substituts de tabac augmente l'activité tumorigène du condensat de fumée de cigarette:
- C.I. Ayres, *Biological Testing; Short-Term Hyperplasia Test, Report No B-1*, BAT Co., 24 juin 1966, **pièce PG-87**;

- C.I. Ayres, *Long-Term Skin Painting Experiments – Progress Report: July 1967*, BAT Co., 2 août 1967, **pièce PG-88**;
- C.I. Ayres, *Hyperplasia Test: Part IV – Progress Report October 1968*, BAT Co., 7 novembre 1968, **pièce PG-89**;
- B. Chakraborty, *The Effect of Additives on the Concentration of Aromatic Polycyclic Hydrocarbons in Smoke: Part III, Laboratory Report No. L.355-R*, BAT Co., 23 novembre 1970, **pièce PG-90**;
- *The Promotion Activity of Tobacco Smoke Condensate to Mouse Skin: B 9-1 and B 9-6 Cigarettes*, Report for British-American Tobacco Company Ltd., Battelle, 15 septembre 1971, **pièce PG-91**;
- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B0*, Report for British-American Tobacco Company Ltd., Battelle, mai 1972, **pièce PG-92**;
- *The Promotion Activity of Tobacco Smoke Condensate to Mouse Skin: cigarettes B 9-2, B 9-3, B 9-4 and B 9-5*, Report for British-American Tobacco Company Ltd., Battelle, novembre 1972, **pièce PG-93**;
- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B1*, Report for British-American Tobacco Company Ltd., Battelle, mars 1973, **pièce PG-94**;
- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B2*, Report for British-American Tobacco Company Ltd., Battelle, septembre 1973, **pièce PG-95**;
- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B4*, Report for British-American Tobacco Company Ltd., Battelle, septembre 1974, **pièce PG-96**;
- Battelle, *Carcinogenicity of smoke condensate to mouse skin, Experiment B6 and B7*, janvier 1976, **pièce PG-97**;
- *The Promotion Activity of Tobacco Smoke Condensate to Mouse Skin: Cigarettes B11/1, B11/2 and B11/3*, Report for British-American Tobacco Company Ltd., Battelle, mars 1976, **pièce PG-98**;
- E.B. Wilkes, *A Statistical Analysis of the Incidence of Tumour-Bearing Animals in Janus Experiment B8, Report no RD.1352 Restricted*, BAT Co., 22 avril 1976, **pièce PG-99**;

- *Carcinogenicity of Smoke Condensate to Mouse Skin, Experiment B8*, Report for British-American Tobacco Company Ltd., Battelle, mars 1977, **pièce PG-100**.
257. En 1969, les fabricants américains, dont PMI, RJRT et Brown & Williamson, commandent une étude afin de vérifier si l'addition d'un produit nommé Chemosol réduit la teneur en benzo(a)pyrène et donc, l'effet cancérigène du tabac.
258. Les résultats des tests de badigeonnage de peaux de souris, transmis le 14 février 1973, sont accablants et confirment sans équivoque que la cigarette est cancérigène, ce que BAT sait déjà grâce au Projet Janus:
- *Cigarette Smoke Condensate Preparation and Dermal Application to Mice*, submitted to Brown & Williamson, Philip Morris, RJR and al., Hazelton Laboratories, [...] 28 mars 1973, **pièce PG-101**.
259. Entre 1974 et 1978, Battelle continue ses expériences avec des études d'inhalation menées sur des animaux: on fait fumer des rats dans des chambres à fumer puis on examine au microscope l'effet de cette exposition sur les organes du système respiratoire (larynx, trachée, bronches, poumons).
260. Ces études démontrent que la fumée de cigarette cause des lésions laryngées et des changements histologiques précancéreux de l'appareil respiratoire:
- *Experimental Tumorigenesis in the Hamster Larynx, The Promoting Activity of Inhaled Smoke from Cigarette B0*, Report for British-American Tobacco Company Ltd., Battelle, mars 1974, **pièce PG-102**;
 - *Experimental Tumorigenesis in the Hamster Larynx, The Activity of Inhaled Smoke from Cigarettes B12/1 and B12/2*, Report for British-American Tobacco Company Ltd., Battelle, juin 1976, **pièce PG-103**;

- *Experimental Tumorigenesis in the Hamster Larynx. The Effect of Inhaled Smoke from Cigarette B0 on Vitamin-A Deficient Animals*, Report for British-American Tobacco Company Ltd., Battelle, novembre 1976, **pièce PG-104**;
 - G. Smith, *Pilot Long-Term Inhalation Toxicity Study (interim report). Report No. RD.1633 Retricted*, BAT Co., 14 novembre 1978, **pièce PG-105**.
261. Des expériences menées aux États-Unis confirment ces résultats alors que 40% des hamsters exposés à de la fumée de cigarette développent des tumeurs du larynx:
- R. Binns, *Report on Visit to U.S.A. and Canada*, BAT Co., 4 avril 1974, **pièce PG-106**.
262. À compter de 1974, BAT s'inquiète de la tumorigénicité de la nicotine.
263. Les recherches qu'elle mène pour l'évaluer concluent que plus le tabac a une forte teneur en nicotine, plus il est tumorigène et co-cancérogène:
- *Biological Research Meeting, Minutes of the Meeting held in Southampton on 22nd May, 1974*, Groupe BAT, **PG-107**;
 - *Experiment B14 - Position at week 100*, BAT Co., 11 janvier 1979, **pièce PG-108**;
 - M.L. Reynolds, *Notes from Group R&D Conference, Part I, February 5-9, 1979*, Brown & Williamson, février 1979, **pièce PG-109**;
 - pièce PG-82;
 - T.G. Mitchell, *Prospects for Augmenting Nicotine Content of Tobacco Products*, BAT Co., et lettre de transmission du 2 mai 1980, **pièce PG-110**.
264. En 1975, Imperial est d'avis que les problèmes de santé liés au tabagisme ne seront jamais résolus:

« I do not know what the Guideline "Research into and development of new products is the key strategy to solving the smoking and health problem" is supposed to mean. I do not think it will ever be "solved" [...]. »

- Lettre de R.M. Gibb, ITL, à S.J. Green, BAT Co., 13 février 1975, **pièce PG-111**.

265. Vu l'effet co-cancérogène de la nicotine, l'un des scientifiques de BAT invite à la prudence:

«[...] However, its role as a co-carcinogen is of most current concern from results both of pure chemical studies (Bock, U.S.A.) and in cigarette smoke (JANUS B14). In tobacco nicotine is a precursor of the carcinogen N-nitrosornicotine and its role in the development of pancreatic carcinoma is being investigated. [...].

[...]

In view of the evidence of adverse biological activity, particularly co-carcinogenicity, associated with nicotine, caution is required in answering the demands for a higher nicotine content in low delivery products. »

- T.G. Mitchell, *Research Conference 1980, Sea Island, Ga., Position Paper*, BAT Co., août 1980, **pièce PG-112**.

266. BAT écarte du revers de la main les recommandations de son scientifique en prétendant que les expériences menées pourraient ne pas être valides et que l'activité biologique de la nicotine, si elle existe, doit être plus faible que celle du goudron:

- L.C.F. Blackman, *Research Conference 15th-18th September 1980, Sea Island, Ga.*, BAT Co., 2 octobre 1980, **pièce PG-113**.

267. Par ailleurs, de 1975 à 1986, BAT et Imperial examinent également la mutagénicité de la fumée de tabac lors d'études in vitro réalisées sur des bactéries.

268. Toutes ces études démontrent que la fumée de tabac est mutagène, deux démontrent que les cigarettes légères sont aussi mutagènes que les cigarettes régulières et une autre démontre que la fumée de cigarette est 10 000 fois plus mutagène que le benzo(a)pyrène, ce composé très cancérigène présent dans la fumée:

- M.H. Bilimoria, *The Detection of Mutagenic Activity of Chemicals and Tobacco Smoke in a Bacterial System Research Laboratory Report No. 150*, ITL, 23 décembre 1975, **pièce PG-114**;
- M.H. Bilimoria et R.S. Wade, *Summary of Ames Tests for Mutagenicity of Smoke Condensates Conducted by ITL, Montreal, Research Laboratory Report No. 164*, ITL, 2 juillet 1981, **pièce PG-115**;
- E.D. Massey, *Reduction of Tobacco Smoke Mutagenicity: the Influence of Nitrogenous Compounds*, BAT Co., 5 juillet 1982, **pièce PG-116**;
- E.D. Massey, *Mutagenic Safety Evaluation at GR&DC Using the Ames Salmonella/Mammalian-microsome Mutagenicity Test, Report No. RD.1874-C Restricted*, BAT Co., 16 août 1982, **pièce PG-117**;
- E.D. Massey, *Ames Mutagenic Activity of Mainstream Condensate of Six Commercial Cigarettes for Imperial Tobacco Ltd. (Canada) – Project Rio, Report No T.153-C Restricted*, BAT Co., 24 octobre 1984, **pièce PG-118**.

269. En 1976, S.J. Green, chef de la recherche chez BAT, déclare qu'il est irresponsable de tenter d'augmenter le tabagisme, compte tenu de la toxicité de la cigarette et de son association avec des maladies, et que l'explication la plus simple de cette association est celle d'un lien de cause à effet:

- Note de S.J. Green à P. Sheehy et P.L. Short, *The Effect of Restrictions on Current Marketing and Marketing in the Future*, BAT Co., 17 mai 1976, **pièce PG-119**.

270. En 1984, les études menées dans le cadre du Projet Rio révèlent que les cigarettes fabriquées par BAT sont même plus cancérigènes que celles des concurrents:

- *Biological Conference, Southampton, 9-11th April 1984, Groupe BAT, pièce PG-120.*

271. Le document intitulé *A Review of the biological activity of smoke, Report No RD.2177*, BAT (U.K. & Export) Ltd, **pièce PG-121**, présente un résumé de diverses études menées depuis 1960 sur l'activité biologique de la fumée.

272. En juillet 1986, le consultant scientifique de BAT Co. étudie le Projet EMN proposé par Imperial afin de développer une cigarette plus sûre pour la santé.

273. Il écrit alors qu'on ne pourra jamais concevoir une cigarette qui ne contienne ni cancérigènes, ni irritants:

« In the case of carcinogens, smoke contains not just one carcinogen but a galaxy of them. Furthermore it is, at present, inconceivable that carcinogens would not be produced during the pyrolysis of any organic material. Elimination of carcinogens does not therefore appear to be feasible. The same is seemingly true for the irritants (especially oxides of nitrogen) responsible for non-neoplastic lung-disease (emphysema and chronic bronchitis). [...] »

- F.J.C. Roe, *Confidential, Comments on Project EMN*, Groupe BAT, 21 juillet 1986, **pièce PG-122**.

274. Imperial se fait alors sévèrement rappeler à l'ordre par BAT qui lui souligne que:

- a) sa proposition de développer une cigarette sûre est inacceptable puisque cela implique que le produit actuel ne l'est pas;

- b) de plus, les chances de réussite sont trop faibles pour y consacrer les ressources requises;
 - c) il faut donc chercher des co-variables (predispositions génétiques ou psychologiques), prouver les effets bénéfiques du tabagisme et critiquer les études épidémiologiques afin de rendre le tabagisme acceptable auprès des gouvernements et du public:
 - Lettre de P. Sheehy, BAT Industries, à P. Crawford, Imasco, 29 décembre 1986, **pièce PG-123**.
275. En 1989, un scientifique de BAT recommande de créer des produits que les critiques de l'industrie perçoivent comme étant améliorés et il propose de:
- a) développer un produit alternatif à la cigarette traditionnelle, lequel n'aurait ni goudron, ni activité biologique, ce que la technologie permet maintenant de faire;
 - b) entre-temps, réduire la teneur en goudron, améliorer la qualité du goudron (i.e. réduire l'activité biologique) et réduire les autres composés nocifs, la fumée secondaire ainsi que le monoxyde de carbone:
 - A.L. Heard, *Strategies for Product Innovation (Paper for the Research Policy Group Meeting, Canada 1989)*, BAT Co., 12 septembre 1989, **pièce PG-124**;
 - *Research Policy Group Meeting, 18-22 September 1989, Pan Pacific Hotel, Vancouver, Canada*, Groupe BAT, 12 décembre 1989, **pièce PG-125**;
 - A.L. Heard, Procès-verbal du *Research Policy Group Meeting, 18-22 September 1989, Pan Pacific Hotel, Vancouver, Canada*, BAT Co., 28 septembre 1989, **pièce PG-126**.
276. Brown & Williamson s'oppose vivement à la stratégie proposée par BAT de développer un nouveau produit à plus faible activité biologique puisque:

- a) elle soutient qu'il n'est pas scientifiquement prouvé que le tabagisme soit la cause de maladies, de sorte qu'aucune cigarette ne peut être plus sécuritaire qu'une autre;
 - b) elle craint que le nouveau produit proposé, qui sera présenté ou perçu comme plus sûr, amène le public à conclure que les cigarettes traditionnelles sont dangereuses pour la santé;
 - c) si l'industrie réduit les teneurs en goudron et en nicotine, ce n'est pas en réponse à des inquiétudes liées à la santé, mais bien pour offrir un plus large choix aux consommateurs;
 - d) si un produit est présenté comme moins nocif pour la santé, il y a danger que l'industrie ne puisse plus se réfugier derrière les mises en garde imprimées sur les paquets de cigarettes afin d'éviter des poursuites pour fausses représentations:
- Note de J. K. Wells III à R.J. Pritchard, Brown & Williamson, *Re: Objections to Product Innovation Strategy*, 31 octobre 1989, **pièce PG-127**.
277. BAT cesse alors ses recherches pour développer un nouveau type de cigarette moins dangereux et s'investit plutôt dans le perfectionnement des produits existants afin de conserver sa part de marché:
- A.L. Heard, *Tobacco Strategy Review Team Meeting, 30th November, 1990, Proposed 1991 Fundamental Research Programme*, BAT Co., 21 novembre 1990, **pièce PG-128**;
 - Procès-verbal de la réunion du *Tobacco Strategy Review Team* du 30 novembre 1990, BAT Co., 12 décembre 1990, **pièce PG-129**.
278. En dépit de cette certitude qu'il est impossible de produire une cigarette inoffensive pour la santé, tant BAT qu'Imperial continuent à nier publiquement que le tabagisme cause des maladies et à tromper les fumeurs.

279. Finalement, en 1998, BAT admet que le tabagisme cause le cancer du poumon:

«[...] We believe it is reasonable to conclude, from an epidemiological perspective, that smoking is a major cause of lung cancer. [...]»

- Lettre de R.R. Baker, BAT Co., à R. Peto, Université d'Oxford, 4 septembre 1998, **pièce PG-130**.

ii) Tabagisme et maladies pulmonaires obstructives chroniques

280. Très tôt, les différentes études menées par BAT relativement à l'irritation et à la bronchite chronique (emphysème) lui permettent de savoir que la fumée de cigarette cause des maladies pulmonaires obstructives chroniques («**MPOC**»).

281. En 1962, le conseiller scientifique de BAT, Sir C. Ellis, reconnaît déjà que la fumée de cigarette est irritante, que la toux du fumeur est réelle et que cela ne peut pas être bon pour la santé:

- pièce PG-51.

282. BAT mène donc plusieurs projets de recherche visant à mesurer les effets de la fumée du tabac sur le système respiratoire.

283. BAT met notamment au point des tests permettant de mesurer les effets toxiques de la fumée du tabac et teste différents filtres afin d'éliminer les substances toxiques de la fumée de cigarette, ou tout au moins d'en réduire la concentration.

284. Ces études établissent que, dès 1965, BAT connaît les produits toxiques de la fumée du tabac qui causent de l'irritation chez les fumeurs et sait que la toxicité augmente avec la quantité inhalée:

- R.J. Smith et al., *Carbon Filters, The Effect of Vermiculite & Bonding Agents on the Chemical, Biological & Organoleptic Properties of Cigarette Smoke*, British Tobacco Co. (Aust) Ltd., juin 1965, **pièce PG-131**;
- M. Scherbak et J.E. de Souza, *Research Laboratory Report No. 90, Project No. C-1333, Determination of Acrolein in Cigarette Smoke*, Imperial Tobacco Company of Canada Ltd., 1^{er} août 1966, **pièce PG-132**;
- C.W. Ayers, *The Formaldehyde Content of Smoke from Various Different Types of Tobacco, Laboratory Report No. L.251-R*, BAT Co., 8 août 1967, **pièce PG-133**;
- C.I. Ayres, *Ciliastasis Tests: Part III - Progress Report July 1967, Report No. B-9*, BAT Co., 29 août 1967, **pièce PG-134**.

285. De 1965 à 1978, les tests de cellules calciformes (ou à gobelet), les tests d'activité ciliaire sur les paramécies et les tests d'inhalation de fumée par des animaux permettent en outre à BAT:

- a) de savoir que ses cigarettes causent l'irritation, laquelle favorise la bronchite (emphysème);
- b) d'observer que, chez les rats, souris, hamsters et lapins exposés à la fumée de cigarette, le nombre de cellules à gobelet augmente, phénomène relié à la production excessive de mucus caractéristique de la bronchite;
- c) de conclure à la toxicité de la fumée de cigarette en identifiant les substances qui causent la stase des cils de la trachée, liée à la bronchite (emphysème);

- d) d'étudier chez l'animal les mécanismes de destruction des alvéoles du poumon à la suite de l'inhalation de fumée (emphysème);
 - e) de constater que les changements systémiques (diminution du poids et de l'appétit, augmentation de la mortalité proportionnelle à la dose de fumée inhalée), ainsi que les changements causés à l'arbre respiratoire (métaplasie pavimenteuse, hyperplasie des cellules à gobelet, augmentation des macrophages alvéolaires) sont souvent réversibles après le retrait de l'exposition à la fumée;
 - f) d'observer que la matière particulaire de la fumée se dépose surtout dans les poumons, mais aussi dans tout le système respiratoire;
 - g) de prédire la toxicité pulmonaire chez les fumeurs et chez les fumeurs passifs:
- C.I. Ayres, *Project Conqueror: Goblet Cell Test, Report No. RD.396-R*, BAT Co., 18 avril 1966, **pièce PG-135**;
 - R. Comber, *A Method for Ciliastasis Using Paramecium, Laboratory Report No. L.157-R*, BAT Co., 17 août 1965, **pièce PG-136**;
 - D. Creighton, *The Effect of Cigarette Smoke on the pH of Mucus, Laboratory Report No. L.269-R*, BAT Co., 5 janvier 1968, **pièce PG-137**;
 - Lettre de A. Hofmann, Battelle, à C.I. Ayres, BAT Co., *Present State of the Art and Next Stages in the Development of the Goblet Cell Test*, 18 mars 1968 **pièce PG-138**;
 - A. Hofmann, *Project Janus: Goblet Cells, Further Results of Work Aimed at the Development of a Goblet Cell Test, Report for British-American Tobacco Company Ltd.*, Battelle, 6 janvier 1969, **pièce PG-139**;
 - T.I. Wilson, *Development of a Thiolated Filter Medium, Report No. T.31*, British Tobacco Company (Australia) Limited, décembre 1970, **pièce PG-140**;
 - R. Binns et al., *Development of Techniques in Inhalation Toxicology (First Report), Report No. RD.1114-R*, BAT Co., 28 mai 1974, **pièce PG-141**;

- R. Binns et al., *A Comparative Inhalation Toxicity Study on Smoke from Cigarettes Containing Flue-cured Tobacco and "Batflake" in Varying Proportions (First Report)*, BAT Co., 2 juillet 1975, **pièce PG-142**;
 - P.S. Stewart et P.F. Evans, *Studies on Alveolar Macrophages (First Report)*, Report No. RD.1376 Restricted, BAT Co., 20 mai 1976, **pièce PG-143**;
 - L. V. Wilton et al., *3-Month Inhalation Toxicity Study on Rats Exposed to Smoke from a Flue-cured Cigarette*, Report No. RD.1477 Restricted, BAT Co., 23 mars 1977, **pièce PG-144**;
 - G. Smith et al., *Changes in the Respiratory Tract of Rats Exposed to Smoke for 5 or 7 Days per Week for 6 Weeks*, Report No. RD.1519 Restricted, BAT Co., 31 août 1977, **pièce PG-145**;
 - G. Smith, *Response of the Rat Larynx and Trachea to Smoke During Smoke Acclimation Period*, Report No. RD.1553 Restricted, BAT Co., 28 décembre 1977, **pièce PG-146**;
 - G.A. Read, *Studies of Mucus Production (First Report)*, Report No. RD.1589 Restricted, BAT Co., 8 mai 1978, **pièce PG-147**.
286. En 1969, malgré ses connaissances des effets néfastes sur la santé des fumeurs, la position de BAT est de ne pas éliminer les composés irritants qui causent la bronchite si cela affecte négativement le goût de la cigarette :
- R. P. Dobson, *Smoking and Health*, BAT Co., 25 mars 1969, **pièce PG-148**;
 - D.E. Creighton, *Dr M.A.H. Russell's "Safer Cigarette" Study*, (Report No. RD.1652 Restricted, BAT Co., 1^{er} mars 1979, **pièce PG-149**.
287. Pourtant, à l'interne, BAT est d'opinion que l'industrie doit reconnaître la possibilité que le tabagisme cause le cancer du poumon, l'emphysème et la bronchite:
- Procès-verbal de la *R&D Conference Held at Kronberg, 2nd – 6th June 1969*, BAT Co., 23 juin 1969, **pièce PG-150**.

288. Puis, en 1972, BAT sait que la fumée du tabac contient du cadmium, un métal pneumotoxique qui cause l'emphysème pulmonaire et la bronchite chronique et qui s'accumule dans les poumons, les reins et le foie des fumeurs:

- C.W. Ayers, *The Cadmium Content of Tobacco and Smoke, Laboratory Report No: L.334-AR*, BAT Co., 10 octobre 1972, **pièce PG-151**.

289. Par la suite, les tests de badigeonnage de peaux de souris avec du condensat de fumée menés par Battelle de 1972 à 1976 démontrent que des souris meurent de congestion pulmonaire, que l'incidence de cette lésion comme cause de décès dépend de la dose administrée et que les maladies respiratoires sont assez fréquentes chez ces souris:

- pièce PG-93;
- pièce PG-95;
- pièce PG-96;
- pièce PG-97;
- pièce PG-94.

290. De plus, les études d'inhalation menées sur des animaux entre 1974 et 1978 par Battelle révèlent des changements ressemblant à ceux décrits chez les fumeurs humains atteints de MPOC:

- pièce PG-102;
- pièce PG-103;
- pièce PG-104;
- pièce PG-105;
- pièce PG-120.

291. En 1980, BAT constate que l'élimination des irritants de la fumée à l'aide de filtres améliorés permet au fumeur d'inhaler plus profondément, de sorte que plus de matières particulaires se déposent dans le système respiratoire:

- *A Comparative Inhalation Study on Smoke from Cigarettes with Different Filters*, (Report No. RD.1729-C), BAT Co., 21 mars 1980, **pièce PG-152**;
- Note de L.C.F. Blackman à Patrick Sheehy et C.H. Stewart Lockhart, *Report No. RD. 1729-C - A Comparative Inhalation Study on Smoke from Cigarettes with Different Filters*, BAT Co., 10 juin 1980, **pièce PG-153**;
- *Selective Vapour Phase Filtration – Second Comparative Inhalation Study*, (Report No. RD.1770-C Restricted), BAT Co., 3 décembre 1980, **pièce PG-154**;
- Note de C.I. Ayres à L.C.F. Blackman, *Report No. RD.1770-C Restricted, "Selective Vapour Phase Filtration – Second Comparative Inhalation Study"*, BAT Co., 26 novembre 1980, **pièce PG-155**;
- Lettre de C.I. Ayres à R.A. Sanford et al., *Report No. RD.1770-C Restricted, "Selective Vapour Phase Filtration – Second Comparative Inhalation Study"*, 16 décembre 1980, **PG-156**.

292. En 1984, BAT note qu'il y a clairement une relation entre le tabagisme et les MPOC:

- Pièce PG-120.

293. En 1986, BAT reconnaît qu'elle ne peut pas éliminer les irritants de la fumée qui causent la bronchite:

- pièce PG-122.

iii) Tabagisme et maladies cardiaques et vasculaires

294. Dès 1962, BAT s'inquiète des liens entre la nicotine et les maladies cardiovasculaires et décide d'y consacrer un programme de recherche:

- pièce PG-51.

295. En août 1980, un scientifique de BAT recommande la prudence à la lumière du rôle important joué par la nicotine dans l'augmentation du risque d'infarctus et de maladies cardiaques:

➤ pièce PG-112.

Voir également:

➤ pièce PG-110.

296. BAT écarte cependant les recommandations de son scientifique en prétendant qu'il existe une possibilité que la nicotine ait, sur le système circulatoire, des effets bénéfiques qui contrebalanceraient les effets néfastes:

➤ pièce PG-113.

297. En septembre 1980, en compagnie de représentants de Carreras Rothmans, de Rothmans of Pall Mall Canada Limited et de Benson & Hedges, Imperial rencontre un chercheur subventionné par le Conseil canadien.

298. Ce chercheur se dit alors convaincu que la nicotine augmente le taux d'agrégation plaquettaire, ce qui entraîne un risque de thrombose:

➤ T.A. Smith, *Meeting with Professor Serge Renaud (CTMC Grantee)*, ITL, le 12 septembre 1980, **pièce PG-157**.

299. À compter de 1970, BAT sait que le monoxyde de carbone contenu dans la fumée de cigarette a un effet néfaste sur le système circulatoire et, comme les filtres se révèlent inefficaces pour en réduire la teneur, elle teste différents autres procédés dont l'ajout d'additifs:

- pièce PG-150;
- H.F. Dymond, *Factors Affecting the Concentration of Carbon Monoxide in Cigarette Smoke – Progress Report Part II – The Effect of Additives*, Report No. RD.686-R, BAT Co., 15 janvier 1970, **pièce PG-158**;
- *Summary & Conclusions, B.A.T. Group Research Conference, November 9th - 13th 1970, St. Adèle, Quebec*, Groupe BAT, novembre 1970, **pièce PG-159**;
- Note de S.J. Green pour S. Lockart, BAT Co., 7 octobre 1975, **pièce PG-160**;
- *Minutes of the BAT Co. Chairman's Advisory Conference Held in Austria in May 1981*, Groupe BAT, mai 1981, **pièce PG-161**;
- L.C.F. Blackman, *Research Conference, Pichlarn, Austria, 24-28 August 1981*, BAT Co., 9 septembre 1981, **pièce PG-162**.

300. Ces expériences illustrent cependant:

- a) que certains additifs, s'ils réduisent substantiellement la teneur de monoxyde de carbone, augmentent la tumorigénicité de la fumée;
 - b) qu'à l'inverse, certaines méthodes développées pour réduire le benzo(a)pyrène, un cancérogène, augmentent la production de monoxyde de carbone:
- S.J. Green, *Notes on the Group Research & Development Conference at Duck Key, Florida, 12th -18th January, 1974*, BAT Co., janvier 1974, **pièce PG-163**;
 - pièce PG-160.

301. BAT sait également que la nicotine a un effet sur le système vasculaire périphérique et sur les maladies cérébro-vasculaires:

- pièce PG-120.

302. Finalement, en 1984, BAT accepte les conclusions d'un chercheur selon lesquelles le fréon 11 utilisé dans la préparation du tabac a des effets néfastes sur le système respiratoire et le cœur:

- S.R. Evelyn, *Review of Freon 11 in Tobacco Processing*, BAT Co., 15 mars 1984, **pièce PG-164**.

b) L'organisation et la mise en œuvre d'un discours public trompeur

303. Les études scientifiques publiées dans les années 1950, qui associent le tabagisme au cancer et à d'autres maladies, menacent l'industrie.

304. Dès 1953, alors qu'un certain Rand prétend avoir inventé un papier qui permet de prévenir le cancer du poumon, Brown & Williamson met Imperial en garde des dangers pour l'industrie d'accepter, même implicitement, cette affirmation et lui conseille « *to go slow on this* »:

- Lettre de E.C. Wood, Imperial Tobacco Company of Canada Limited, à T.V. Hartnett, Brown & Williamson, 27 janvier 1953, **pièce PG-165**;
- Lettre de T. V. Hartnett, Brown & Williamson, à E.C. Wood, Imperial Tobacco Company of Canada Limited, 2 février 1953, **pièce PG-166**.

305. De plus, les recherches menées par les fabricants américains et britanniques leur permettent très tôt de confirmer la présence de substances cancérigènes, tumorigènes, mutagènes, toxiques et irritantes dans la fumée de cigarette.

306. BAT réagit donc rapidement afin d'organiser pour son Groupe un discours public cohérent et unifié qui saura évoluer et s'adapter au fil des ans selon les changements politiques et sociaux.

307. Les objectifs de ce discours sont multiples:

- a) assurer la continuité et la rentabilité de l'industrie et gagner du temps;
- b) pour ce faire, nier le lien de causalité entre le tabagisme et les maladies;
- c) lorsque cette position n'est plus tenable et nuit à la crédibilité de l'industrie, prétendre qu'il existe une controverse scientifique et qu'une association statistique n'est pas un lien de cause à effet;
- d) éviter les poursuites en dommages, particulièrement aux États-Unis où la filiale Brown & Williamson est plus à risque, tellement d'ailleurs qu'elle finira par imposer à tout le Groupe le contenu du discours public;
- e) ne pas dire que les cigarettes à faible teneur en goudron et en nicotine sont meilleures pour la santé par crainte qu'on y voit une admission implicite que les cigarettes régulières sont nocives;
- f) se garder cependant de détromper les fumeurs qui croient que les cigarettes légères sont meilleures pour la santé puisque cela les rassure et leur permet de continuer à fumer;
- g) résister à toutes les tentatives des gouvernements de réglementer la vente, la promotion et la publicité des produits du tabac;
- h) s'opposer à toute obligation d'apposer des mises en garde relatives à la santé sur les paquets de cigarettes;
- i) s'opposer également à l'obligation d'indiquer les teneurs en goudron et en nicotine sur les paquets, ce qui pourrait impliquer qu'il existe des cigarettes moins nocives que d'autres, alors que le Groupe BAT et l'industrie prétendent qu'aucune cigarette n'est dangereuse pour la santé;

- j) lorsque les gouvernements sont prêts à légiférer, adopter des mesures volontaires afin d'éviter de se faire imposer des mesures plus contraignantes.

i) Le refus d'apposer des mises en garde relatives à la santé

308. La politique du Groupe BAT, et celle de l'industrie d'ailleurs, est de s'opposer aux mises en garde relatives à la santé et de retarder toute législation obligeant à en apposer sur les paquets de cigarettes.
309. Lorsque la législation paraît inévitable, la stratégie est de la court-circuiter en imprimant volontairement des mises en garde rédigées en termes vagues et généraux (par exemple: *Fumer peut être dangereux pour la santé*) qui sont attribuées aux autorités publiques et jamais à l'industrie, de peur que le public n'y voit une admission des dangers du tabac de la part des fabricants.
310. En 1969, devant le Comité Isabelle, Imperial et le Conseil canadien suivent cette politique et prétendent que les connaissances scientifiques ne justifient pas de telles mises en garde:
- pièce PG-22.
311. Le Groupe BAT sait aussi que ces mises en garde générales et constamment réitérées sont totalement inefficaces et ne réduisent pas la consommation de cigarettes:
- Lettre de D.G. Felton, BAT Co. à W.B. Fordyce, BAT Co. (Australia) Ltd, 15 janvier 1969, **pièce PG-167**;
 - G.C. Hargrove, *Smoking and Health*, BAT Co., 17 avril 1973, **pièce PG-168**;

- *T.D.P. Planning Meeting - 25th June, 1976, Supplementary Paper No. 1A Assumptions and Strategies for Marketing over the Next 10 Years, BAT Co., 3 juin 1976, pièce PG-169;*
 - *Kwechansky Marketing Research Inc., Report for: Imperial Tobacco Limited, Subject: "Project 16", 18 octobre 1977, pièce PG-170.*
312. En juin 1971, le gouvernement fédéral dépose le projet de loi C-248 visant à interdire la publicité des produits du tabac.
313. En septembre 1971, le Conseil canadien annonce qu'il amende son code volontaire de publicité pour apposer sur les paquets, à compter de janvier 1972, la mise en garde « *Avis : fumer à l'excès peut nuire à votre santé* »:
- pièce PG-27.
314. Le projet de loi C-248 n'est pas débattu.
315. Cette mise en garde sera modifiée en mai 1972 pour l'attribuer à Santé et Bien-être social Canada, pièce PG-28, ce qui est en tout point conforme à la politique du Groupe BAT.
316. En 1976, pour justifier le refus du Groupe BAT d'apposer des mises en garde claires et précises sur les paquets de cigarettes, des scientifiques de BAT et d'Imperial raisonnent comme suit:
- a) les études épidémiologiques étayent un lien de causalité pour une population entière mais ne peuvent pas être utiles pour prouver un lien de causalité à l'égard d'un individu précis;
 - b) partant, il est parfaitement cohérent de refuser de transmettre à un fumeur individuel le message que le tabagisme cause le cancer du poumon:

- S.J. Green, *Cigarette Smoking and Causal Relationships*, BAT Co., 27 octobre 1976, **pièce PG-171**;
 - R.M. Gibb, *Another Position on Smoking*, ITL, 29 novembre 1976, **pièce PG-172**;
 - Lettre de R.M. Gibb, ITL, à S.J. Green, BAT Co., 7 mars 1977, **pièce PG-173**.
317. Imperial se conforme et applique la politique du Groupe BAT, même si elle sait que les fumeurs sont globalement moins instruits et moins riches, ce qui les rend plus vulnérables au discours de l'industrie:
- R.M. Gibb, *Smoking Issues*, ITL, 15 novembre 1979, **pièce PG-174**.
318. Par l'entremise du Conseil canadien, Imperial et toutes les défenderesses canadiennes agissent ainsi de façon à empêcher, retarder ou minimiser la portée des mises en garde relatives à la santé:
- Lettre de A. B. Morrison, ministère fédéral de la Santé et Bien-être social, à P. Paré, Conseil canadien, 3 janvier 1973, **pièce PG-175**;
 - Lettre de A. B. Morrison, ministère fédéral de la Santé et Bien-être social, à P. Paré, Conseil canadien, 3 janvier 1973, et lettre de transmission du 6 janvier 1975, **pièce PG-176**;
 - Lettre de M. Lalonde, ministère fédéral de la Santé nationale et du Bien-être social, à P. Paré, Conseil canadien, 3 mars 1975, **pièce PG-177**;
 - *Code de publicité et de promotion du Conseil canadien des fabricants des produits du tabac relativement à la cigarette et au tabac à cigarette*, 1^{er} janvier 1976, **pièce PG-178**;
 - Lettre de M. Lalonde, ministère fédéral de la Santé nationale et du Bien-être social, à P. Paré, Conseil canadien, 16 mars 1976, **pièce PG-179**;
 - D.A. Crawford, *Notes of the Meeting Held on 8th September, 11th Floor, 1155 Sherbrooke Street W., of the Ad Hoc Committee on Smoking and Health*, 1^{er} octobre 1976, **pièce PG-180**;

- Lettre de P. Paré, Conseil canadien, à M. Lalonde, ministre fédéral de la Santé nationale et du Bien-être social, 1^{er} novembre 1976, **pièce PG-181**;
- *Notes for a Presentation by Norman A. Dann, Vice President, Public Relations Imasco Limited (Canada) to the Conference on Smoking and Health Issues, Chelwood, England, November 6, 1979, pièce PG-182*;
- Lettre de J. Epp, ministre fédéral de la Santé nationale et du Bien-être social, à N.J. McDonald, Conseil canadien, 9 octobre 1986, **pièce PG-183**;
- Telex de J. Epp, ministre fédéral de la Santé nationale et du Bien-être social, à N.J. McDonald, Conseil canadien, 2 novembre 1986, **pièce PG-184**;
- Communiqué de presse intitulé *Government to Ban Tobacco Advertising*, ministre fédéral de la Santé et du Bien-être social, 22 avril 1987, **pièce PG-185**;
- Communiqué de presse du Conseil canadien, 23 avril 1987, **pièce PG-186**.

ii) Négation des effets délétères du tabagisme

319. En 1962, BAT fait parvenir aux chefs des départements une note intitulée *Smoking and Health*, qui s'applique à fournir des arguments pour contrer les conclusions du *Royal College of Physicians* selon lesquelles le tabagisme cause des maladies:
- A.D. McCormick, *Smoking and Health*, BAT Co., 26 juillet 1962, **pièce PG-187**.
320. Il y est suggéré de faire valoir que:
- a) l'augmentation de la prévalence du cancer du poumon peut être due aux meilleurs diagnostics actuels, à une espérance de vie plus longue

- ou à une plus grande fragilité de ceux qui ont été guéris de la pneumonie et de la tuberculose;
- b) les pays où la consommation de tabac est plus élevée ne sont pas toujours ceux où il y a une plus grande prévalence du cancer du poumon;
 - c) à l'inverse, certains pays où la consommation de tabac est faible ont une forte prévalence du cancer du poumon;
 - d) la plupart des fumeurs ne meurent pas du cancer du poumon alors que des non-fumeurs en meurent;
 - e) d'autres facteurs peuvent être responsables, tels l'environnement, la pollution, la classe sociale (les pauvres sont plus atteints) et les virus;
 - f) l'association entre le tabagisme et le cancer du poumon est statistique, mais n'a pas été prouvée en laboratoire;
 - g) le badigeonnage de peaux de souris avec un condensat de fumée cause des tumeurs dans certains cas, mais ne prouve pas que le tabagisme cause le cancer du poumon;
 - h) la quantité de benzo(a)pyrène est insuffisante pour être nocive;
 - i) l'effet des filtres sur la santé du fumeur n'est pas connu;
 - j) dans l'état actuel des connaissances, il ne peut pas être nié, ni prouvé, que le tabagisme cause le cancer du poumon;
 - k) d'autres recherches sont nécessaires pour comprendre l'étiologie du cancer, et pas seulement celui du poumon.
321. Ce document reprend pour l'essentiel la position exprimée en 1954 par le *Tobacco Industry Research Committee* dans *A Scientific Perspective on the Cigarette Controversy*, **pièce PG-188**.

322. Il est l'ancêtre de la position publique de BAT sur le tabac et la santé et il sert de fondement à l'organisation et à l'unification du discours public de tout le Groupe BAT, y compris au Québec.
323. Ainsi, lors de la Conférence de 1963, la position publique de BAT exprimée dans la pièce PG-187 est reprise par le Conseil canadien:
- Conférence sur l'usage du tabac et la santé du ministère de la Santé nationale et du Bien-être social, Ottawa, 25 et 26 novembre 1963, *Quelques perspectives scientifiques pour l'examen des questions relatives au tabac et à la santé*, exposé du Comité ad hoc de l'industrie canadienne du tabac, **pièce PG-189**;
 - A.D. McCormick, *Smoking and Health*, BAT, 28 novembre 1963, **pièce PG-190**.
324. En 1969, BAT transmet à tous les dirigeants de ses filiales une version modifiée de sa position sur les questions de santé liées au tabac:
- pièce PG-148.
325. BAT reprend les arguments développés dans la version de 1962 et y ajoute les suivants:
- a) l'industrie n'admet pas la preuve d'un lien de cause à effet entre le tabagisme et le cancer du poumon;
 - b) il existe une minorité plus susceptible de développer un cancer du poumon (les bronchitiques et les cardiaques);
 - c) les composés de la fumée responsables de l'arrêt de l'activité ciliaire peuvent être éliminés grâce à des filtres, mais seulement au prix d'une diminution inacceptable du goût;
 - d) il est préférable d'inhaler moins de goudron;

- e) l'industrie a réduit les teneurs en goudron et en nicotine pour répondre aux demandes des consommateurs qui peuvent supposer que cela est moins dangereux pour la santé, mais, poussée trop loin, cette réduction ne plaît pas à la majorité des fumeurs;
 - f) la publication des teneurs en goudron et en nicotine pourrait être utile à l'industrie puisqu'elle donnerait aux fumeurs inquiets l'opportunité de continuer à fumer en adoptant des produits qu'ils croient moins dangereux pour la santé.
326. En 1970, comme une approche plus conciliante est indiquée afin d'éviter l'hostilité, BAT propose de soutenir que, en l'absence de preuves cliniques, la question du lien de causalité demeure irrésolue:
- G.C. Hargrove, *Smoking and Health*, BAT Co., 12 juin 1970, **pièce PG-191**.
327. Cette façon d'organiser le discours public est remise en question en 1972 par S.J. Green, le chef de la recherche chez BAT:
- « [...] it will not be possible indefinitely to maintain the rather hollow "we are not doctors" stance [...]
- [...]
- 1) The association of cigarette smoking and some diseases is factual.
[...]
- [...] Is it still right to say that we will not make or imply health claims? [...] can we completely abdicate from making judgments on our products in this context and confine ourselves to presenting choices to the consumer ? »
- S.J. Green, *The Association of Smoking and Disease*, BAT Co., 26 juillet 1972, **pièce PG-192**.

328. En 1973, ne voulant pas perdre sa crédibilité face aux médecins qu'elle tente de gagner à sa cause, BAT assouplit la position du Groupe et conseille de prétendre dorénavant qu'en l'absence de preuve clinique, l'existence de ce lien de causalité est controversée.
329. Cette position est toujours dictée par la crainte perpétuelle de poursuites, Brown & Williamson et Imperial craignant que tout assouplissement du discours public ne soit assimilé à une admission sur les effets délétères de la cigarette, ce qui serait dévastateur pour l'industrie:
- pièce PG-168.
330. Le discours public du Groupe BAT, axé sur la théorie des causes multiples et l'existence d'une controverse scientifique, est maintenu, pour l'essentiel, jusqu'en 2000:
- Lettre de David R. Hardy, Shook, Hardy & Bacon, à T.E. Davies, BAT Co., 10 juin 1975 et lettre de G.C. Hargrove, BAT, 20 juin 1975, **pièce PG-193**;
 - *BAT Board Strategies, Smoking and Health, Questions & Answers*, Groupe BAT, 25 novembre 1977, **pièce PG-194**;
 - L.C.F. Blackman, *Stance on Smoking and Health, Note for Information and Discussion*, BAT Co., 18 décembre 1980, **pièce PG-195**;
 - Note de R.L.O. Ely, *Appreciation*, BAT Co., 16 mai 1980, **pièce PG-196**;
 - Note de H.A. Morini pour R.L.O. Ely, *Appreciation*, BAT Co., le 23 mai 1980, **pièce PG-197**;
 - Note de J.K. Wells, *New Strategy on Smoking & Health*, Brown & Williamson, juin 1980, **pièce PG-198**;
 - M.J. Leach, *Change on Stance on Smoking and Health*, BAT Co., 20 juin 1979, **pièce PG-199**;

- P. Sheehy, *Smoking and Health Issues Conference*, Chelwood, November 5-8, 1979, BAT, **pièce PG-200**;
- L.C.F. Blackman, *Smoking and Health, A BAT Co. Booklet for Staff*, BAT Co., 25 février 1981, **pièce PG-201**;
- *Smoking Issues, A British-American Tobacco Company publication for staff*, 26 novembre 1981, **pièce PG-202**;
- Lettre de M. Descôteaux à R.M. Gibb, *Millbank Public Affairs Smoking and Health Handbook to employees*, ITL, 26 février 1981, **pièce PG-203**;
- Lettre de R.M. Gibb, ITL, à L.C.F. Blackman, BAT Co., 27 février 1981, **pièce PG-204**;
- *1982 B.A.T. Board Guidelines, Public Affairs*, Groupe BAT, mars 1982, **pièce PG-205**;
- L.C.F. Blackman, *Discussions between Dr L. C. F. Blackman and Mr Kendrick Wells, New-York - Tuesday 14 September 1982*, BAT Co., 21 septembre 1982, **pièce PG-206**;
- Lettre de K. Wells, Brown & Williamson, à L.C.F. Blackman, BAT Co., 4 février 1983, **pièce PG-207**;
- *B.A.T. Board Guidelines, Smoking Issues*, Groupe BAT, mars 1983, **pièce PG-208**;
- Lettre de P.J. Ricketts, *Legal Considerations in Smoking and Health Issues*, BAT Industries, 26 mars 1984, **pièce PG-209**;
- *Smoking, the Scientific Controversy*, Groupe BAT, circa 1990, **pièce PG-210**;
- Note de S. Boyse, *Smoking and Health - the Unresolved Debate*, BAT Co., 3 juillet 1989, **pièce PG-211**;
- *Smoking & Health, The Unresolved Debate*, BAT Co., 1989, **pièce PG-212**;
- Lettre de J. L. Metzger, Lovell White Durant, à P.L. Clarke, BAT Co., 17 janvier 1992, et analyse de J. L. Metzger, **pièce PG-213**;

- Note de D. Bacon aux directeurs généraux, *RE: Health Warnings*, BAT Co., 7 février 1992, **pièce PG-214**;
- *Smoking, The Scientific Controversy*, BAT Co., 26 juin 1992, **pièce PG-215**;
- *Smoking, Risks and Risk Priorities*, BAT Co., 1992, et lettre de transmission de S. Boyse à tous les directeurs généraux, 15 janvier 1993, **pièce PG-216**;
- *Smoking Issues Department, BAT Co., Materials from the Smoking Issues Department*, 1^{er} juillet 1994, **pièce PG-217**;
- *Smoking Issues Department, Information*, BAT Co., 1^{er} juillet 1994, **pièce PG-218**.

iii) Déclarations publiques mensongères

331. Tout au long de la période en litige, BAT et Imperial font de nombreuses déclarations publiques trompeuses puisqu'elles nient la dangerosité de leurs produits alors que toutes leurs études concluent que le tabagisme est nocif pour la santé des fumeurs.

332. Ainsi, en mars 1962, le président d'Imperial déclare ce qui suit:

« The major question raised by this report on smoking is this: Do the authors offer any new scientific findings to support their position? The answer is: They do not.

The report relies almost entirely on old statistical data containing a number of discrepancies that are still in dispute and under continuing study. The questions remain unsettled.

»

- «Cancer 'Cause', British Cigaret Report», *The Gazette*, 8 mars 1962, **pièce PG-219**.

333. Le 5 juin 1969, Paul Paré, président du Conseil canadien s'exprimant au nom de tous les fabricants canadiens, témoigne comme suit devant le Comité Isabelle, pièce PG-22:

« [...] existe-t-il des preuves scientifiques valables pour justifier les accusations que l'usage du tabac est une cause importante de maladie et de mort, [...] Notre réponse est: Non. [...]

[...]

[...]Nous estimons, pour notre part, qu'il n'y a jamais eu de preuve en ce sens, à savoir que l'usage de la cigarette ait entraîné des maladies. Cela tendrait donc à induire en erreur, des penser (sic) que si un produit est à plus basse teneur en goudron et en nicotine, que cela peut présentés (sic) moins de danger.

[...]

[...] Je ne crois pas qu'on sache, dans l'industrie, quels sont les substances ou les composés qui pourraient être considérés comme suspects. [...] »

334. Certains aspects de ces témoignages sont repris par les journaux :

- «Devant le comité parlementaire de la santé, L'industrie du tabac défend sa cause», *Le Devoir*, 6 juin 1969, **pièce PG-220**;
- «L'industrie du tabac soutient que la guerre qu'on lui livre s'appuie sur des préjugés», *La Presse*, 6 juin 1969, **pièce PG-221**;
- «Le plaidoyer de l'industrie du tabac devant le comité parlementaire», *Le Devoir*, 7 juin 1969, **pièce PG-222**.

335. En 1971, le président du Conseil canadien et d'Imperial déclare:

« [...] we are confronted with an indictment which is based essentially on statistics and accepted as fact by virtue of many years of repetition. The issue continues to be a subject of controversy among scientific experts. [...] tobacco industry will continue to pursue scientific research, which is the only way the controversy can be logically resolved. »

- Déclaration de Paul Paré, Conseil Canadien et ITL, juin 1971, **pièce PG-223**;
- Déclaration du Conseil canadien, *Cigarette Advertising Code of Canadian Tobacco Manufacturers*, 16 septembre 1971, **pièce PG-224**.

336. En novembre 1987, devant le Comité législatif de la Chambre des communes chargé d'étudier les projets de loi C-204 et C-51, le président d'Imperial, également président du Conseil canadien, affirme encore ce qui suit:

«L'industrie n'impute aucune maladie au tabagisme. Notre position, c'est que les études épidémiologiques sont essentiellement des comparaisons statistiques. Tout ce qu'elles permettent de démontrer, c'est une association. Elles ne peuvent pas démontrer une relation de cause à effet.

[...]

[...] Ce que nous pensons, dans le contexte des connaissances scientifiques actuelles, c'est que ces maladies sont vraisemblablement produites par l'action conjuguée de plusieurs facteurs. Le rôle qui revient au tabac ou au tabagisme dans la naissance et l'évolution de ces maladies demeure très incertain. La question n'a pas encore été résolue.

[...]

Mme McDonald: [...] croyez-vous que certains Canadiens meurent de maladies liées au tabac ?

M. Mercier: Non. [...]

- pièce PG-30.

337. En 1990, BAT affirme dans sa publication destinée à un vaste public et intitulée *Smoking: the Scientific Controversy*, pièce PG-210:

« Although a number of epidemiological studies have claimed that smoking is statistically associated with a number of diseases [...]

We cannot be sure whether or not it means that smoking causes those diseases. [...]

[...]

Many of the diseases that have been claimed to be associated with smoking are related to working conditions, and that smoking has been used to divert attention away from these hazards. »

338. Le 7 juillet 1994, R. R. Parker, le président du Conseil canadien, déclare dans le cadre du reportage *Tobacco and Youth*, diffusé à CBC, que le lien de causalité n'a pas été établi:

« Do cigarettes cause cancer ?

"It is an impossible question for me to answer, I am not a scientist. I can certainly tell you that the industry's view is that there is a statistical link between tobacco consumption and a long list of health-ill effects cause cancer. That is a scientific question that I am not qualified to answer it, but I don't believe there is an established causal link, the risk is clear." »

- Transcription d'un reportage du Canadian Broadcasting Company, "*Tobacco and Youth*", 7 juillet 1994, **pièce PG-225**.

339. Dans l'édition novembre-décembre 1994 de *Le Feuillet*, une publication destinée aux employés d'Imperial, **pièce PG-226**, on reprend la position de BAT exprimée le 12 mai 1994 dans *Revised Smoking Issues: Claims & Responses*, **pièce PG-227**, tel qu'il appert de l'extrait suivant de la publication d'Imperial:

«Le fait est que personne ne sait encore ce qui déclenche les maladies comme le cancer et les affections cardiaques, ni quels facteurs affectent leur évolution. Nous ignorons si la consommation de tabac pourrait causer ces maladies parce que nous ne comprenons pas le processus de la maladie.»

[...]

[...] En fait, plus de deux cents facteurs ont été associés aux affections cardiaques, notamment le régime alimentaire, un

taux élevé de cholestérol, le sel, l'hypertension artérielle, l'alcool, l'obésité et le stress.

[...] Bien que l'usage du tabac ait été statistiquement associé au cancer du poumon et aux affections cardiaques, ce n'est donc qu'un des nombreux facteurs de risque.»

340. Dans *Le Feuillet*, édition de novembre-décembre 1995, **pièce PG-228**, Imperial reprend ce que BAT écrivait dans *Smoking: Risks and Risk Priorities*, publié en 1992, pièce PG-216, tel qu'il appert de l'extrait suivant de la publication *Le Feuillet*:

« [...] ces études ne démontrent qu'une association statistique; elles ne peuvent prouver – de façon scientifique – que le fait de fumer cause le cancer.

[...]

Toute espèce vivante – plantes, poissons, animaux et humains – possède une durée de vie biologique. Chez l'humain, la limite supérieure d'espérance de vie peut être aussi élevée que 116 ans, bien que la durée moyenne – ou l'espérance de vie biologique la plus fréquente – se situe probablement aux alentours de 85 ans. Il est possible que certains d'entre nous soyons «programmés» pour mourir avant notre soixante-dixième anniversaire, tandis que le code génétique d'un petit nombre d'humains prévoit qu'ils deviendront centenaires. En effet, ce programme est inscrit dans notre code génétique; il est inaltérable ... enfin pour l'instant. [...] »

341. Imperial a d'ailleurs repris à son compte l'essentiel de la position de BAT, exprimée entre 1992 et 1994, dans d'autres parutions du *Feuillet*:

- «L'usage du tabac - une mise au point par B.A.T.», *Le Feuillet*, volume 30, no. 5, septembre-octobre 1994, ITL, **pièce PG-229**;
- «L'usage du tabac - une mise au point par B.A.T.», *Le Feuillet*, volume 31, no. 2, mars-avril 1995, ITL, **pièce PG-230**;
- «L'usage du tabac - une mise au point par B.A.T.», *Le Feuillet*, volume 31, no. 4, juillet –août 1995, ITL, **pièce PG-231**.

342. Le 30 octobre 1996, le président de BAT fait la déclaration suivante par communiqué de presse:

« [...] We have no internal research which proves that smoking causes lung cancer or other diseases or, indeed, that smoking is addictive.

Thirdly, there is still a lack of understanding of the mechanisms of diseases attributed to smoking. »

- Communiqué de presse intitulé *B.A.T. Industries Chief Executive, Martin Broughton's opening remarks to analysts, investigators and journalists at the nine months results briefing held at Windsor House on Wednesday, 30th October 1996*, **pièce PG-232**.

343. Le Groupe BAT a donc menti au public durant toute la période de 1962 à 2000, tel que le démontrent également les déclarations suivantes:

- «Affirmation du Collège Royal des médecins de GDE-Bretagne, Selon Impérial Tobacco, Aucune preuve nouvelle pour appuyer cette affirmation !», *Le Devoir*, 8 mars 1962, **pièce PG-233**;
- «U.K. Tobacco Shares Drop Following Medical Report», *Montreal Gazette*, 24 mars 1962, **pièce PG-234**;
- E. C. Wood, *Revue de l'industrie canadienne du tabac en 1962*, Imperial Tobacco Co. of Canada, Ltd., **pièce PG-235**;
- « Cancer Epidemic », *The Gazette, Canadian Weekly*, 11-17 mai 1963, **pièce PG-236**;
- H. Lampert, «CMA Considers Lung Cancer – Tobacco Question at Toronto Council Session», *Montreal Gazette*, 12 juin 1963, **pièce PG-237**;
- pièce PG-189;
- Communiqué de presse du Comité ad hoc de l'industrie canadienne, le 25 novembre 1963, **pièce PG-238**;
- «Conférence fédérale-provinciale sur le tabac, Ottawa et huit provinces sont d'avis que la cigarette cause le cancer, Mais l'industrie du tabac

trouve les accusations non scientifiques», *La Presse*, 26 novembre 1963, **pièce PG-239**;

- R. Rice, « Conference Majority Hits Smoking », *The Gazette*, 26 novembre 1963, **pièce PG-240**;
- «Déclaration du président de l'Imperial Tobacco», *Le Soleil*, 10 avril 1964, **pièce PG-241**;
- Communiqué de presse de Leo C Laporte, vice-président Recherche et développement, Imperial Tobacco Company of Canada Ltd, le 7 juin 1968, **pièce PG-242**;
- «A new, filtered generation won't smoke anything else», *The Gazette*, 12 juin 1968, **pièce PG-243**;
- Présentation de P. Paré devant la National Association of Tobacco and Confectionery Distributors Convention, *The Future of Tobacco in the Face of Smoking and Health Controversy*, Conseil canadien, 8 octobre 1969, **pièce PG-244**;
- Déclaration de P. Paré, Conseil canadien, 18 décembre 1969, **pièce PG-245**;
- «Report on smoking, Tobacco industry blasts Ottawa», *Montreal Star*, 19 décembre 1969, **pièce PG-246**;
- D. Giroux, «La lutte contre la cigarette, Les efforts déployés par Ottawa affectent peu Imperial Tobacco», *Le Devoir*, 23 novembre 1970, **pièce PG-247**;
- pièce PG-223;
- J.-P. Bonhomme, «Toute publicité sera interdite, Mesures radicales contre la cigarette», *Le Devoir*, 11 juin 1971, **pièce PG-248**;
- «L'industrie du tabac renonce à la publicité sur les ondes», *La Presse*, 22 septembre 1971, **pièce PG-249**;
- J. Kalbfleisch, «New president: 'We follow market', Cigarettes still No.1 for Imperial», *Montreal Gazette*, 8 mars 1972, **pièce PG-250**;
- «Paul Paré fait le point sur l'industrie », *La Revue du Tabac*, septembre 1978, **pièce PG-251**;

- «Ça manque de sérieux», *La Revue du Tabac*, mars 1979, **pièce PG-252**;
- «Le dernier rapport du directeur américain de la Santé est contesté», *La Revue du Tabac*, juillet 1979, **pièce PG-253**;
- «Les fumeurs savent être courtois sans loi (les fabricants de tabac)», *Le Devoir*, 6 octobre 1979, **pièce PG-254**;
- «Les compagnies de tabac n'aiment pas que la loi remplace la courtoisie», *La Presse*, 6 octobre 1979; **pièce PG-255**;
- «Imasco officials refuse to cough up warning about cigaret hazards », *Globe and Mail*, 26 juin 1987, **pièce PG-256**;
- pièce PG-31;
- Canada, Chambre des communes, Procès-verbaux et témoignages, Comité permanent de la Santé, 1^{ère} sess., 35^e légis., fascicule no 10, 12 mai 1994, «Étude sur la banalisation des produits du tabac», **pièce PG-257**;
- A. Pratte, «Aucun doute possible, la cigarette tue», *La Presse*, 7 mars 1997, **pièce PG-258**;
- Délibérations du comité permanent des Affaires sociales, 1^{ère} sess., 36^e légis., fascicule no 11, 12 mai 1998, «Projet de loi S-13, Loi constituant la Fondation canadienne de responsabilité sociale de l'industrie du tabac et instituant un prélèvement sur cette industrie», **pièce PG-259**;
- Canada, Chambre des communes, Témoignages, Comité permanent de la Santé, 1^{ère} sess., 36^e légis., fascicule no 052, 29 octobre 1998, «Projet de loi C-42, Loi modifiant la Loi sur la tabac», **pièce PG-260**;
- ITL, *Notre position, Position d'Imperial Tobacco sur le dossier du tabac*, novembre 1998, **pièce PG-261**;
- Allocution de Jean-Paul Blais, prononcée devant la Chambre de commerce et d'industrie Thérèse-De-Blainville (sic), *Le tabac, bilan et perspectives d'une entreprise située dans son contexte*, ITL, 26 janvier 2000, **pièce PG-262**;

- Délibérations du comité permanent de l'Énergie, de l'environnement et des ressources naturelles, 2^e sess., 36^e légis., fascicule no 14, 8 juin 2000, «Projet de loi S-20, Loi visant à donner à l'industrie canadienne du tabac le moyen de réaliser son objectif de prévention de la consommation des produits du tabac chez les jeunes au Canada», **pièce PG-263**;
- «À la défense des «légères» et des «douces» », *Le Devoir*, 1^{er} juin 2001, **pièce PG-264**.

344. Les défenderesses du Groupe BAT ont volontairement omis d'informer la population du Québec de la nocivité de leurs produits.
345. Dans l'intention de tromper, elles ont délibérément caché, minimisé ou banalisé la dangerosité de leurs produits afin d'inciter les personnes à commencer ou à continuer de fumer.
346. Ce faisant, elles ont manqué au devoir de respecter les règles de conduite qui s'imposaient à elles envers les personnes du Québec qui ont été ou auraient pu être exposées aux produits du tabac.

2. Le Groupe PM connaît la dangerosité de son produit

a) Les nombreuses recherches menées sur la dangerosité

347. À la fin des années 1950, le Groupe PM sait déjà que la cigarette contribue au cancer du poumon.
348. Ainsi, dès juillet 1958, le Groupe PM fait certains constats:

« Inasmuch as the evidence (See bulletin of Cancer progress March-April 1958, Vol.8. No.2) is building up that heavy cigarette smoking contributes to lung cancer either alone or in association with physical and physiological factors such as air pollution, pre-disposition, nervous tension, rate of living

etc., I believe we should increase the departmental effort, both in terms of short range and long range objectives, towards the development of a low delivery cigarette having good flavor. »

- Note de C.V. Mace au Dr. R.N. Dupuis, PM inc., 24 juillet 1958, **pièce PG-265**.

349. Malgré ce lien connu entre le cancer du poumon et le tabagisme, le Groupe PM est confiant quant à l'avenir de l'industrie:

« The complexity of the problem is such that even if further evidence for a relation between cigarette smoking and lung cancer is uncovered, the answer will be neither conclusive nor simple. Add to this possibility the normal reluctance of the average human to change his habits. The conclusion is then quite apparent that the cigarette business will continue for a long, long time. »

- Note du Dr. H. Wakeham à R. Roper, *An Opinion on Cigarette Smoking and Cancer*, PM inc., 22 septembre 1959, **pièce PG-266**.

350. Il tente alors de développer un filtre permettant de réduire les substances toxiques contenues dans ses cigarettes.

351. À cette époque, le Groupe PM connaît déjà plusieurs composés de la fumée de cigarette, leurs quantités et leur effet cancérigène:

« EVIDENCE LINKING CANCER AND TOBACCO

Based on two main points

1. Statistical evidence that certain diseases are more prevalent among smokers than non-smokers

- Lung cancer
- Bladder cancer
- Cardiovascular diseases

These associations suggest that smoking may be a causative factor. »

- Dr. H. Wakeham, *Tobacco and Health – R&D Approach*, PM inc., 15 novembre 1961, **pièce PG-267**.
352. L'auteur du rapport, pièce PG-267, incite le Groupe PM à orienter sa recherche afin de tenter de diminuer la cancérogénicité des composés de la fumée de cigarette même s'il constate qu'une solution complète du problème est impossible.
353. Pour parer à d'éventuelles critiques, le Groupe PM tente de diminuer la concentration des composés cancérogènes, d'éliminer les composés irritants qui peuvent mener à la bronchite chronique ou à l'emphysème et de réduire la teneur en nicotine puisqu'elle est suspectée être un facteur de risque pour les maladies cardiaques:
- Note du Dr. H. Wakeham à H. Cullman, *Technical Forecast*, PM inc., 24 octobre 1963, **pièce PG-268**.
354. En 1964, le vice-président Recherche et développement de PM inc. reconnaît que les conclusions du rapport du *Surgeon General* sont solides, valides et qu'elles ne peuvent être contredites:
- Dr. H. Wakeham, *Smoking and Health Significance of the Report of the Surgeon General's Committee to Philip Morris Incorporated*, 18 février 1964, **pièce PG-269**.
355. Le Groupe PM connaît également l'effet co-cancérogène des composés du tabac:
- Note de W.R. Johnson au Dr. A. Bavley, *Visit to Tennessee Eastman*, PM inc., 8 octobre 1964, **pièce PG-270**.
356. En 1966, dans le cadre du programme Project 6900, le Groupe PM conduit des tests d'inhalation pour mesurer les effets cancérogènes de la fumée de cigarette.

357. Le 25 octobre 1966, le responsable du projet reconnaît la probabilité du lien causal entre le tabagisme et des pathologies aux poumons, ainsi que des maladies cardiaques:

« Inasmuch as the probability exists that these diseases will gain increasing public recognition and since cigarettes will most likely be implicated as one of the causative agents in these diseases, it is felt that emphasis should be put on research in this area. »

➤ P.C. Luchsinger, *Project 6900 Physiological Studies Semi Annual Report*, PM inc., 25 octobre 1966, **pièce PG-271**.

358. En mai 1967, des expériences menées dans le cadre du Project 6900, confirment que les filtres ne réduisent pas la tumorigénicité de la fumée de cigarette:

➤ R.D. Carpenter, *Project 6900 Physiological Studies (Semi Annual)*, PM inc., 9 mai 1967, **pièce PG-272**.

359. La circulation des rapports, pièces PG-271 et PG-272, est restreinte et ces documents ne peuvent être sortis de la pièce où ils sont conservés.

360. En marge de ses propres recherches, le Groupe PM entre en contact avec des scientifiques pouvant l'aider à promouvoir la controverse scientifique.

361. Notamment, il encourage toute recherche pouvant démontrer que les maladies associées au tabagisme peuvent avoir d'autres causes.

362. Le Groupe PM s'intéresse ainsi aux recherches effectuées par le Dr. Selye, de l'Université de Montréal, sur le stress comme facteur de risque de certaines maladies, même s'il constate que ce chercheur fait un lien entre le tabagisme et la bronchite:

- Note de W. Shinn à D. Hardy, *Ad Hoc (Dr. Hans Selye)*, Shook, Hardy & Bacon, 29 décembre 1966, **pièce PG-273**.
363. En septembre 1969, le vice-président Recherche et développement de PM inc. fait une revue de la littérature scientifique confirmant l'existence d'une relation dose-effet entre le badigeonnage d'un condensat de fumée de cigarette sur la peau de souris et l'apparition de tumeurs et suggère de commencer à tester les produits:
- Note du Dr. H. Wakeham à C.H. Goldsmith, PM inc., 9 septembre 1969, **pièce PG-274**.
364. Le Groupe PM est par ailleurs tenu informé des résultats des recherches menées par ses concurrents.
365. Le 15 décembre 1969, il reçoit ainsi les résultats de recherches effectuées par le Groupe RJR confirmant que des souris exposées à la fumée de cigarette développent de l'emphysème:
- Note de L. Weissbecker à R.D. Carpenter, *R.J. Reynolds Biological Research Program*, PM inc., 15 décembre 1969, **pièce PG-275**.
366. Un débat fait alors rage au sein de l'industrie à savoir s'il faut admettre un lien causal entre certaines maladies et le tabagisme.
367. Le 12 août 1977, un représentant de la filiale européenne du Groupe PM, à la suite d'une rencontre avec des chercheurs des Groupes BAT et RJR, résume ainsi la situation:
- « At the beginning of the meeting we almost came to a deadlock. In discussing causality, a complete division of opinion occurred: Drs. Bentley, Field and Felton on the one side and Dr. Colby and myself on the other with Dr. Meloch and Mr. Matchett remaining indifferent. The reason was that

the three representatives of the British companies accepted that smoking was the direct cause of a number of diseases. They shared the opinion held by the British medical establishment that a consistent statistical association between one risk factor and a disease was sufficient to be able to assume causality. »

- Lettre de H. Gaisch aux Drs. H. Wakeham et R. Fagan, Philip Morris Europe, Middle East, Africa, 12 août 1977, **pièce PG-276**.

368. Le Groupe PM est à ce moment opposé à toute reconnaissance du lien causal entre le tabagisme et les maladies et envisage même de mettre un terme à son association avec le CTR car certains de ses employés acceptent ce lien:

- Note de T.S. Osdene au Dr. R.B. Seligman, *Some Comments about the CTR Program*, PM inc., 29 novembre 1977, **pièce PG-277**.

369. Le Groupe PM préfère orienter les recherches scientifiques vers des moyens d'entretenir la controverse au sujet du lien entre le tabagisme et certaines maladies:

- Note de J.L. Charles au Dr. T.S. Osdene, *Comments on "Future Strategies for the Changing Cigarette" National Conference on Smoking and Health*, PM inc., 23 février 1982, **pièce PG-278**.

370. Il tente d'influencer la recherche scientifique interne et se soucie des admissions pouvant être faites lors des recherches qu'il finance:

«3. An admission by the industry that excessive cigarette smoking is bad for you is tantamount to an admission of guilt with regard to the lung cancer problem. »

- Note de T.S. Osdene au Dr. R.B. Seligman, *Roper Study Proposal to Tobacco Institute*, PM inc., 16 février 1978, **pièce PG-279**.

371. Cependant, à l'interne, le Groupe PM est bien conscient que sa position est intenable:

« This company is in trouble. The cigarette industry is in trouble. If we are to survive as a viable commercial enterprise we must act now to develop responses to smoking and health allegations from both the private and the government sectors.

[...]

Let's face the facts: 1. Cigarette smoke is biologically active. A. Nicotine is a potent pharmacological agent. Every toxicologist, physiologist, medical doctor and most chemists know that. It is not a secret. B. Cigarette smoke condensate applied to the backs of mice causes tumours. »

➤ pièce PG-278.

372. Dans un plan quinquennal de 1984, PM inc. reconnaît qu'afin d'entretenir la controverse, une importance déterminante doit être accordée non seulement à la science, mais aussi aux relations publiques et aux positions défendues dans les litiges:

➤ *Philip Morris Incorporated Five Year Plan 1984-1988*, mars 1984, **pièce PG-280**.

373. La stratégie globale pour contrer internationalement la lutte anti-tabac et changer la perception publique du produit fait partie des discussions des hauts dirigeants de PMI:

➤ *The perspective of PM International on Smoking and Health (Text of the Discussion Document Used at the Meeting of Top Management)*, 29 mars 1985, **pièce PG-281**.

374. La stratégie de défense face à divers litiges est également sujette à changement.

375. En effet, il devient plus difficile pour le Groupe PM de se défendre contre des poursuites simplement en prétextant l'absence de lien causal entre les

maladies et le tabagisme, compte tenu de l'évolution des connaissances sur ce lien qui affaiblit l'argument.

376. Le Groupe PM n'a donc plus le choix que d'opposer la théorie de l'acceptation des risques à ses poursuivants:

« The great virtue of putting all the eggs into the assumption of risk basket (with the three compartments, risk/utility, objective and subjective) is that our defense is congruent with the accepted view on causation. It is very hard (sic) to argue that she assumed the risk of injury at the same time we insist that the general causation of cancer by cigarettes is still an issue of scientific dispute.

In sum my view of the case runs as follows: we use the medical evidence is used (sic) to show that probability, not certainty, is in issue. That in turn helps make the risk utility analysis more coherent. »

- Lettre de R.A. Epstein, University of Chicago, à M. Spaeth, Arnold & Porter, 12 juin 1985, **pièce PG-282**.

377. Le 25 août 1969, le vice-président de la Recherche et développement de PM inc. insiste sur le besoin pour la société de connaître mieux que quiconque ses produits afin de ne pas être surprise par ce qui peut être publié par ses concurrents ou les opposants au tabac:

- Note du Dr. H. Wakeham à C.H. Goldsmith, *Proposal for Biological Research Program/Updated from July 1, 1969*, PM inc., 25 août 1969, **pièce PG-283**.

378. Il suggère également de mener à l'interne certaines recherches sur les effets biologiques des cigarettes.

379. Le 24 février 1970, le Groupe PM étudie l'opportunité de mener des recherches à l'extérieur des États-Unis, notamment au laboratoire INBIFO:

« The possibility of getting answers to certain problems on a contractual basis in Europe appeals to me and I feel presents an opportunity that is relatively lacking in risk and unattractive repercussions in this country. »

- Note de J.F. Cullman 3rd à H. Wakeham, PM inc., 24 février 1970, **pièce PG-284.**

380. INBIFO est un laboratoire sis à Cologne, en Allemagne, qui effectue de la recherche biologique et fait affaire avec le Groupe PM.

381. La possibilité d'acquérir un laboratoire étranger est attrayante pour le Groupe PM:

« Since we have a major program at INBIFO, and since this is a locale where we might do some of the things which we are reluctant to do in this country, I recommend that we acquire INBIFO. »

- Note du Dr. H. Wakeham à C.H. Goldsmith, *Acquisition of INBIFO*, PM inc., 15 avril 1970, **pièce PG-285.**

382. Cependant, afin de s'assurer que les recherches d'INBIFO ne puissent être imputées au Groupe PM, ce laboratoire est officiellement propriété d'une entreprise suisse du nom de Fabriques de Tabac Réunies dont le contrôle est détenu par le Groupe PM.

383. Par exemple, les services d'INBIFO sont utilisés afin de garder confidentielles certaines recherches dont PM inc. craint les résultats:

- Note de R.B. Seligman au Dr. T.S. Osdene, *Enriched Flavor*, PM inc., 22 avril 1976, **pièce PG-286.**

384. Ce désir de garder loin du Groupe PM les recherches effectuées par INBIFO s'est perpétué à travers les années:

- Note de Bob Pages au Dr. W. Reininghaus, *Tentative Agenda for Visit of Ragnar*, 1.sep.89, PM inc., 29 août 1989, **pièce PG-287**.

385. Cependant, les recherches secrètes effectuées par INBIFO représentent rapidement un autre problème potentiel puisqu'il est possible que les documents liés à ces recherches soient accessibles aux personnes poursuivant le Groupe PM:

- Note de W.J. Crampton de Shook, Hardy & Bacon, à A. Holtzman, PM inc., *Discovery of Research Documents in Foreign Laboratories by American Litigants*, 27 octobre 1990, **pièce PG-288**.

386. D'ailleurs, tous les rapports de recherche réalisés à INBIFO ont été détruits.

b) L'organisation et la mise en œuvre d'un discours public trompeur

387. Depuis le *Frank Statement to Cigarette Smokers* de 1954, pièce PG-16, le Groupe PM tient un discours qui se veut rassurant auprès des fumeurs.

388. Ce discours public est en contradiction avec ses connaissances internes sur la dangerosité de ses produits.

389. Lors d'une allocution prononcée le 30 mars 1954, le vice-président de Philip Morris & Co Ltd., aujourd'hui PM inc., affirme que son entreprise arrêterait de vendre ses produits si elle savait qu'ils sont dangereux:

- G. Weissman, *Public Relations and Cigarette Marketing*, Philip Morris & Co. Ltd., 30 mars 1954, **pièce PG-289**.

390. Le président de Benson & Hedges, la filiale canadienne de PM Inc., est cité en ces termes dans un article publié le 3 juin 1961 dans le *Montreal Gazette*:

« There's no laboratory proof whatsoever that cigaret smoking causes cancer. It's just a matter of statistical guessing. »

- *Montreal Gazette*, «Cigar Firm's Boss Likes Canada Already, Not Cigars», 3 juin 1961, **pièce PG-290**.

391. Cette affirmation est fausse, compte tenu des connaissances internes du Groupe PM.

392. En 1964, même si le Groupe PM reconnaît la solidité des conclusions du rapport du *Surgeon General* et la difficulté de les contredire, il ne modifie pas son discours public et continue à nier que le tabac cause des maladies.

393. Ainsi, dans son rapport annuel pour l'exercice financier 1963, PM inc. commente le rapport du *Surgeon General* comme suit:

« In January of 1964, the report of the Surgeon General's Advisory Committee on smoking and health was released. Although the committee concluded that cigarettes constitute a significant health hazard, many other responsible scientists have seriously questioned whether the available scientific evidence supports many of the committee's conclusions. The Advisory Committee recognized that more research was clearly called for and acknowledged that there are benefits to be derived from smoking. »

- *Philip Morris Incorporated Annual Report 1963*, 4 mars 1964, **pièce PG-291**.

394. Le Groupe PM encourage également d'autres personnes à alimenter la controverse et écrit entre autres à un député de la Chambre des communes pour le féliciter de poser des questions favorables à la thèse de l'industrie devant des comités parlementaires:

- Lettre de H. Cullman à l'Honorable H. Stafford, PM inc., 24 octobre 1969, **pièce PG-292**.

395. De même, PM Inc. et PMI sont directement impliquées dans la publication, au Canada, d'un article dans lequel un de leurs employés déclare faussement que les scientifiques du Groupe PM n'ont trouvé aucun composé dangereux dans la fumée de cigarette:

- Note de H. Wakeham à H. Cullman, PM inc., 13 mai 1968, **pièce PG-293**;
- Canadian Research Development, «Chemistry of extra puffs», décembre 1968, **pièce PG-294**.

396. Lors d'un discours prononcé le 21 avril 1970, le président de PMI continue de nier le lien entre le cancer du poumon, l'emphysème, les maladies cardiaques et le tabagisme:

- *Remarks of Hugh Cullman President, Philip Morris International before the Naval Academy Association of New York, Inc.*, 21 avril 1970, **pièce PG-295**.

397. Il nie également que le CTR influence les études scientifiques.

398. Cependant, dans une note du 8 décembre 1970, le vice-président recherche et développement de PM inc. affirme au sujet du CTR:

«What is truth to one is false to another. CTR and the Industry have publicly and frequently denied what others find as "truth". Let's face it. We are interested in evidence which we believe denies the allegation that cigaret smoking causes disease.»

- Note de H. Wakeham à J.F. Cullman, "*Best Program for C.T.R.*", PM inc., 8 décembre 1970, **pièce PG-296**.

Voir également:

- Note de H. Wakeham à R.R. Millhiser, *Comments on the Letter from Irving Zeldman, M.D., to Mr. David R. Hardy*, PM inc., 14 octobre 1969, **pièce PG-297**.

399. Dans son rapport annuel de 1974, PM inc. maintient la controverse en ces termes:

«There continues to be debate in scientific circles about the interpretation of the statistical evidence which has been the principal basis for the assertion that cigarette smoking is a major cause of cancer and other human diseases.»

➤ *Philip Morris Incorporated Annual Report 1974*, pièce **PG-298**.

400. En 1977, dans un manuel conçu afin de contrer la lutte au tabagisme, le Groupe PM continue de soutenir qu'il ne sait pas si le tabagisme cause ou non certaines maladies:

➤ *Tobacco Action Program Manual*, PM inc., circa 1977, pièce **PG-299**.

401. Dans un discours prononcé le 26 juin 1978, le président de PMI et président du conseil d'administration de Benson & Hedges nie le lien causal entre le tabagisme et certaines maladies:

➤ *Speech for Mr. Hugh Cullman, Halifax Director's Dinner*, 26 juin 1978, pièce **PG-300**.

402. Benson & Hedges propage le discours du Groupe PM et nie [...] l'existence de preuves scientifiques liant le tabagisme à des problèmes de santé [...] :

➤ *The Facts About Tobacco, the Industry, Smoking and You*, Benson & Hedges, 1979, pièce **PG-301**.

403. Au tournant des années 1980, le Groupe PM s'efforce d'alimenter la controverse en insistant sur les diverses causes possibles des maladies normalement liées au tabagisme.

404. Ainsi, PM inc. mentionne dans son rapport annuel de 1981:

«Although the smoking and health controversy continued unabated in 1981, scientific evidence continues to indicate that many factors - such as occupational environments, emotional health, diet, exercise and heredity - play major roles in development of chronic diseases often attributed to tobacco. This has not lessened attacks on tobacco, but it has at least brought some perspective to the controversy.»

- *Philip Morris Incorporated Annual Report 1981, pièce PG-302.*

Voir également:

- *Philip Morris Incorporated Annual Report 1982, pièce PG-303;*
- *Philip Morris Incorporated Annual Report 1984, pièce PG-304;*
- *Philip Morris Incorporated Annual Report 1985, pièce PG-305.*

405. Au Canada, le président de RBH reprend ce discours négateur le 24 novembre 1987 devant le Comité législatif de la Chambre des communes chargé d'étudier le projet de loi C-204:

- Extrait du fascicule 13, *Chambre des communes, Comité législatif, 2^e session, 33^e législature, 1986-1987, pièce PG-306.*

406. En 1991, le Groupe PM reconnaît devant les autres membres de l'industrie que la cigarette est un facteur de risque pour le cancer du poumon:

«A fair statement of the current state of scientific knowledge is that cigarette smoking is a risk factor for some kinds of human lung cancer.»

- Lettre et document de Charles R. Wall à P. Casingena et al., *Risk Factor*, Philip Morris Companies Inc., 4 juin 1991, **pièce PG-307.**

407. Cependant, dans un discours prononcé le 21 novembre 1994, le président de RBH, la filiale canadienne du Groupe PM, affirme que la validité scientifique des recherches est douteuse et frauduleuse:

- *39th Annual N.A.T.C.D. Convention Adress by Joe Heffernan, President and C.E.O. Rothmans, Benson & Hedges Inc.*, 21 novembre 1994, **pièce PG-308**;

408. Le 8 juin 2000, devant le Comité sénatorial permanent de l'énergie, de l'environnement et des ressources naturelles, le PDG de RBH admet les risques associés au tabagisme, mais refuse toujours de reconnaître le lien de causalité entre celui-ci et certaines maladies:

«M. Poirier: Nous croyons que quiconque décide de fumer augmente les dangers d'avoir des problèmes de santé et d'avoir diverses maladies. Oui.

Le sénateur Banks: Vous parlez de risque plutôt que de cause.

M. Poirier: Je ne suis pas un scientifique. Je constate simplement qu'il y a plusieurs choses qui, réunies, peuvent causer le cancer. Le tabagisme fait partie de ces risques et, on le sait, les accentue.»

- pièce PG-263.

409. Les défenderesses du Groupe PM ont volontairement omis d'informer la population du Québec de la nocivité de leurs produits.

410. Dans l'intention de tromper, elles ont délibérément caché, minimisé ou banalisé la dangerosité de leurs produits afin d'inciter les personnes à commencer ou à continuer de fumer.

411. Ce faisant, elles ont manqué au devoir de respecter les règles de conduite qui s'imposaient à elles envers les personnes du Québec qui ont été ou pourraient être exposées aux produits du tabac.

3. Le Groupe Rothmans connaît la dangerosité de son produit et met en oeuvre un discours public trompeur

412. Le Groupe Rothmans minimise les dangers pour la santé des fumeurs québécois et nie que le tabagisme cause des maladies.

413. En 1958, pour faire la promotion de ses nouveaux filtres de cigarettes, le Groupe Rothmans fait des publiereportages par le truchement de son département de recherche:

- *La Presse*, «Une Importante communication L'Association Médicale Canadienne et l'usage de la cigarette», 27 juin 1958, **pièce PG-309**.

414. Dans une deuxième publicité du 15 juillet 1958, il affirme:

«Le filtre Rothmans offre donc aujourd'hui le meilleur équilibre reconnu scientifiquement entre la filtration et la satisfaction de fumer.

[...]

À la différence des anciennes méthodes fondées sur le hasard, les recherches Rothmans vous garantissent pureté et qualité constante.»

- *La Presse*, «L'usage de la cigarette et la santé», 15 juillet 1958, **pièce PG-310**.

415. Le Groupe Rothmans vise ainsi à donner une aura de science à sa publicité afin de rassurer les fumeurs sur les effets nocifs de ses produits et de les inciter à continuer de fumer.

416. Cette approche est critiquée par le Groupe BAT qui critique vertement P. O'Neil-Dunne, le directeur du Service technique de Rothmans of Pall Mall (U.K.):

«I agree that the photocopy of the Rothmans' advertisement from a Canadian paper, which you sent me in your letter of 30th June, is quite shocking, but I must say that its appearance does not come as a complete surprise to me. It is, as you say incomprehensible how O'Neil-Dunne can think that he is not going to hit hard the interests of all tobacco manufacturers, but I would like to suggest to you that this is just the type of thing which an egocentric moron, such as I believe O'Neil-Dunne to be, would see as a correct line of action.»

➤ Lettre de Hoel à F.S. Geldart, BAT Co., 9 juillet 1958, **pièce PG-311**.

417. Or, au courant du même mois, *La Presse* publie un article dans lequel ce même directeur est cité:

«Les preuves statistiques abondantes de la liaison entre le cancer du poumon et la forte consommation de la cigarette ne peuvent plus être réfutées.»

➤ *La Presse*, «Un expert anglais admet le danger de la cigarette pour le cancer du poumon», 31 juillet 1958, **pièce PG-312**.

418. Dans une moindre mesure, un publireportage du Service international de recherche du Groupe Rothmans, paru dans *La Presse* du 30 août 1958, reconnaît un lien statistique entre le cancer du poumon et une consommation excessive du tabac:

➤ *La Presse*, Publireportage «Le Congrès International sur le cancer et l'usage de la cigarette», 30 août 1958, **pièce PG-313**.

419. Cependant, à la suite de la publication du rapport du *Surgeon General* de 1964, le discours public du Groupe Rothmans s'aligne sur celui de l'industrie internationale.

420. À l'instar du Groupe BAT, du Groupe PM et du Groupe RJR, le Groupe Rothmans nie dorénavant tout lien entre le tabagisme et le cancer du poumon, les maladies cardiaques et les MPOC.

421. En 1964, Rothmans of Pall Mall Canada Limited discrédite le rapport du *Surgeon General* publié en janvier:

«Selon M. Wilmat Tennyson, vice-président du service de la mise sur le marché pour la compagnie Rothmans of Pall Mall du Canada, on ne trouve que "vagues assertions", "insinuations" et "conclusions hâtives" dans le récent rapport du gouvernement américain sur le tabac et dans quelques déclarations du ministre canadien de la Santé, Mlle Judith LaMarsh.»

- *La Presse*, «Selon un dirigeant de Rothmans – l'offensive contre la cigarette: insinuations et conclusions hâtives», 16 mars 1964, **pièce PG-314**.

422. Elle fait de même dans son rapport annuel:

«This report has created a further storm of controversy, since many eminent doctors, scientists and statisticians have questioned the conclusions reached in this report on the basis of the available scientific evidence.»

- *Rothmans of Pall Mall Canada Limited Annual Report 1964*, **pièce PG-315**.

423. Ce discours est maintenu par les dirigeants du Groupe Rothmans tout au long de la période en litige:

- *NATCD Convention Special*, «Tennyson of Rothmans lashes out at smoking critics», 21 mai 1964, **pièce PG-316**;
- *Montreal Star*, «Extra-longs Pinch Tobacco Profits», 13 juin 1967, **pièce PG-317**;
- *The Globe and Mail*, «Why do (cough, cough) people smoke?», 29 juillet 1977, **pièce PG-318**;
- *Toronto Star*, «Rothmans shuns buyer 'fever', rewards shareholders Smoking activists see payout of different kind – in court», 16 juillet 1987, **pièce PG-319**.

424. Rothmans of Pall Mall Canada Limited est membre du Conseil canadien, qui parle au nom de l'industrie.
425. Il se fie à l'expertise de Carreras Rothmans pour les questions concernant le tabagisme et la santé:
- Lettre de N. Cohen, Rothmans of Pall Mall Canada Limited à C. Seymour, Conseil canadien, 26 juillet 1982, **pièce PG-320**.
426. Au mois d'avril 1993, Rothmans International Tobacco Limited, aujourd'hui Rothmans Services, prépare un document destiné à ses employés dans lequel elle réitère sa position publique sur l'absence de preuve de la dangerosité de ses produits:
- «Most of the people who suffer from a disease statistically associated with smoking will have been exposed to many of the other risk factors with which the disease is associated.
[...]
Despite more than 40 years of intensive research, no-one has yet been able to demonstrate a basic causal mechanism for lung cancer or for heart disease.»
- *Tobacco Issues the Company's View*, Rothmans Services, avril 1993, **pièce PG-321**.
427. La même année elle appuie activement RBH dans une initiative visant à contrer l'adoption au Canada d'une réglementation ayant pour objet l'augmentation de la taille des avertissements de santé:
- Télécopie de J.F. Clutterbuck à Niemeyer, Rothmans International Tobacco Limited, 8 avril 1993, **pièce PG-322**;
 - Lettre de J.F. Clutterbuck à B. Stuckey-Clarke, Rothmans International Tobacco Limited, 27 juillet 1993, **pièce PG-323**.
428. Le Groupe Rothmans a volontairement omis d'informer la population du Québec de la nocivité de ses produits.

429. Dans l'intention de tromper, il a délibérément caché, minimisé ou banalisé la dangerosité de ses produits afin d'inciter les personnes à commencer ou à continuer de fumer.
430. Ce faisant, il a manqué au devoir de respecter les règles de conduite qui s'imposaient à lui envers les personnes du Québec qui ont été ou pourraient être exposées aux produits du tabac.

4. Le Groupe RJR connaît la dangerosité de son produit

a) Les nombreuses recherches menées sur la dangerosité

431. Dans un rapport du 2 février 1953, un chercheur de RJRT fait une revue des connaissances scientifiques de l'époque sur le lien entre le cancer du poumon et le tabagisme:

➤ C.E. Teague Jr., *Survey of Cancer Research with emphasis upon Possible Carcinogens from Tobacco*, RJRT, 2 février 1953, **pièce PG-324**.

432. Dans cette revue, pièce PG-324, le Groupe RJR reconnaît que la fumée de cigarette est une cause de maladie chez les souris et conclut:

«The closely parallel increase in cigarette smoking has led to the suspicion that tobacco smoking is an important etiologic factor in the induction of primary cancer of the lung. Studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and incidence of cancer of the lung.»

433. La recherche scientifique est alors encouragée vu le lien probable entre le cancer du poumon et le tabagisme.

434. Le Groupe RJR s'intéresse aux composés de la fumée de cigarette afin d'en isoler les éléments nocifs et d'éliminer ceux pouvant être cancérogènes:

- A. Rodgman, *The Analysis of Cigarette Smoke Condensate I. The Isolation and/or Identification of Polycyclic Aromatic Hydrocarbons in Camel Cigarette Smoke Condensate*, RJRT, 28 septembre 1956, **pièce PG-325**.

Voir également:

- A. Rodgman, *Monthly Research Report #30 – The Analysis of Cigarette Smoke Condensate*, RJRT, 14 décembre 1956, **pièce PG-326**.

435. Un rapport d'un chercheur principal de RJRT fait état de cette orientation de recherche:

«Having confirmed and extended the early published findings on polycyclic hydrocarbons in cigarette smoke, we initiated a lengthy research program to develop methods to lessen the amounts of these potentially dangerous compounds in cigarette smoke.»

- A. Rodgman, *The Optimum Composition of Tobacco and its Smoke*, RJRT, 2 novembre 1959, **pièce PG-327**.

436. Les recherches se poursuivent, et en 1962, la vérité s'impose:

«Obviously the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming. The evidence challenging such an indictment is scant.»

- A. Rodgman, *The Smoking and Health Problem – A Critical and Objective Appraisal*, RJRT, 1962, **pièce PG-328**.

437. Vu les études qui confirment la présence de composés nocifs pour la santé dans la fumée de cigarette, le rapport recommande d'investir dans des programmes de recherche afin de mieux comprendre les effets des composés du tabac, de tenter de rendre la cigarette moins nocive et ainsi de contrer les liens entre le tabagisme et les problèmes de santé.

438. Au début des années 1960, le Groupe RJR est donc bien au fait des dangers du tabagisme pour la santé.

439. En février 1964, un rapport de recherche fait la revue des études statistiques et énonce:

«The statistical data consist of the following: The results of some 29 retrospective statistical studies based on clinical findings have indicated that the risk of developing lung cancer, especially epidermoid or squamous cell carcinoma, increases with the amount of tobacco smoked as cigarettes.

[...]

Although the results from these thirty-odd retrospective and prospective statistical studies cannot prove a cause-and-effect relationship between cigarette smoking and specific diseases and although these results are not considered to be extrapolatable to the smoking population as a whole, the statistical evidence itself, without contradictory data is irrefutable. At least four of these studies have shown that inhalation of the cigarette smoke increased the risk of developing lung cancer.»

- A. Rodgman, *The Analysis of Cigarette Smoke Condensate, XXXV, A Summary of an Eight-Year Study*, RJRT, 12 février 1964, **pièce PG-329**.

440. En août 1964, le Groupe RJR est informé que la fumée de cigarette peut contenir de la nitrosamine, un composé cancérigène:

- Note d'A. Rodgman à C.B. Wade Jr., *Nitrosamine in Cigarette Smoke*, RJRT, 31 août 1964, **pièce PG-330**.

Voir également:

- pièce PG-76.

441. À la fin des années 1960, le Groupe RJR teste des filtres afin de tenter de diminuer le taux des particules nocives contenues dans la fumée de cigarette:

- C.C. Whisnant et Sue L. Stevenson, *Smoke Inhalation Studies IV: The Deposition of Particulate Matter in Human Smokers – A Comparison of the Winston and Multijet Filters*, RJRT, 24 juin 1969, **pièce PG-331**;
- Note de J.D. Woods à Dr. Murray Senkus, *Comparison of Human Smoking to Machine Smoking of Cigarettes with Air Dilution Filters, a Fiber Filter, and Multijet Filters*, RJRT, 17 novembre 1969, **pièce PG-332**;
- Note au dossier de R.H. Cundiff, *Multijet Filter Cigarette*, RJRT, 5 avril 1971, **pièce PG-333**.

442. Dans un rapport confidentiel du 10 août 1967, le Groupe RJR reconnaît que le public fait un lien entre le tabagisme et le cancer du poumon, et développe en conséquence une stratégie mettant l'accent sur les relations publiques visant à combattre cette perception:

«Despite the fact that the industry has very little, if any, positive evidence upon which to base the aggressive campaign necessary at this late date to materially change public opinion, public attitudes can be changed.

[...]

But unless there is some dramatic scientific breakthrough, any significant change in public opinion will require even more public relations efforts for many years to come.»

- Note de J.S. Dowdell à C.B. Wade Jr., *Public Opinion – Smoking and Health*, RJRT, 10 août 1967, **pièce PG-334**.

443. Devant la crainte de poursuites en responsabilité, le Groupe RJR n'hésite pas à discréditer ses propres recherches compromettantes.

444. Ainsi, en décembre 1969, le directeur de la recherche de RJRT suggère que certaines recherches nuisibles pourront être invalidées et détruites au besoin, en prétextant que les données ont été mal interprétées, ce qui permettra de maintenir le discours public sur la supposée existence d'une controverse scientifique:

- Note de M. Senkus à M. Crohn, *Invalidation of Some Reports in the Research Department*, RJRT, 18 décembre 1969, **pièce PG-335**.

445. Le 1^{er} juin 1978, le directeur de l'information scientifique de RJRT affirme vouloir convaincre les scientifiques de l'industrie de l'existence d'une controverse réelle quant aux dangers du tabagisme sur la santé :

«In my judgement it would be very unfortunate to dissolve the MBRG because it is important to maintain contacts on a scientist to scientist level, to know what is going on in the various ICOSI member countries. I also see in the MBRG a vehicle to attempt to change the views of the tobacco industry scientists and trying to convince them that there is indeed a smoking and health controversy.»

- Note du Dr. Colby, *Telephone Conversation between Dr. Bentley and Dr. Colby, June 1, 1978*, RJRT, **pièce PG-336**.

446. Le *Medical and Behavioural Research Group* (MBRG) est un groupe de travail d'ICOSI, composé de scientifiques de divers fabricants:

- *ICOSI Working Party on Medical Research*, ICOSI, juin 1978, **pièce PG-337**.

447. RJRT contrôle la publication des rapports de recherche menée à l'interne pour bloquer ceux pouvant être compromettants, comme le démontre une note du 14 novembre 1974:

- Note d'A. Rodgman au Dr. A.H. Laurene, *Publication – Pros and Cons*, RJRT, 14 novembre 1974, **pièce PG-338**.

448. Par ailleurs, dès 1979, le Groupe RJR est bien au courant des effets de la cigarette sur les maladies cardiovasculaires:

« Although we will not be able to share with you until mid-January our final results, it appears at this time that nicotine, but not carbon-monoxide, in tobacco smoke may affect adversely rates of atherogenesis. Studies in man, on the other hand, suggest that there are components other than nicotine in tobacco smoke, or responses to the act of smoking itself, that have a cardiac inotropic or chronotropic effect. »

➤ Lettre du Dr. G. Huber, Harvard Medical School, à K. Wold, RJR Industries, 21 décembre 1979, **pièce PG-339**.

449. Il n'informe toutefois pas le public de ces effets néfastes sur la santé et soutient plutôt publiquement qu'il existe toujours une controverse à ce sujet.

450. Ainsi, dans une note du 10 juillet 1980, l'accent est mis sur des stratégies à adopter par le Groupe RJR afin de contrer les informations qui circulent au sujet des effets nocifs du tabac:

«2. Improve understanding of the smoking and health controversy among key publics (employees, growers, suppliers, tradesmen and consumers). Most of the information on smoking issues is generated by the media, which presents only one side of the smoking and health controversy. We need to provide our key publics with facts that they have not received in the past so that they can make their own informed decisions regarding the controversy.»

➤ Note de R.J. Marcotullio à E.G. Vimond Jr. et al., *Smoking Issues Action Plan*, RJRTI, 10 juillet 1980, **pièce PG-340**.

451. Le Groupe RJR refuse par ailleurs de dire qu'il fait des recherches sur des cigarettes moins toxiques et moins mutagènes puisque cela pourrait constituer une admission implicite des effets nocifs de ses produits existants.

452. Ainsi, en décembre 1982, un employé de RJR met son directeur en garde contre un scientifique de la société qui veut faire des recherches pour développer un produit moins nocif:

«I explained our legal concerns about the admission, implicit in the words "less mutagenic" or "safer", that our existing products are "mutagenic" or "unsafe". He seemed to understand our concern but refused to accept it as a rationale for not doing what he felt we had an obligation to do (as a responsible manufacturer).»

- Note de W. Juchartz à S.B. Witt III, RJRT, 13 décembre 1982, **pièce PG-341**.

453. Dans une note du 14 avril 1983, ce même employé relate une discussion avec un chercheur et son inquiétude quant au témoignage éventuel de celui-ci:

«I told him that I had recently become involved in discussions concerning his beliefs, that outside counsel had expressed serious concerns as to the litigation (sic) consequences in the event that our head of R & D did, in fact, believe that smoking caused cancer and was cross-examined in a smoking and health case.»

- Note de W. Juchartz à S.B. Witt III, RJRT, 14 avril 1983, **pièce PG-342**.

Voir également:

- Note de S.B. Witt III, RJRT, 19 avril 1983, **pièce PG-343**.

454. En août 1985, le Groupe RJR se fait proposer de nouvelles stratégies pour faire face à d'éventuelles poursuites:

«Instead of presenting a full dress medical defense to prove the "open question" proposition – an option that is becoming less available to the industry due to the lack of witness willing to express this position – it may be preferable to set a more modest goal: showing the jury the unexplained and admitted anomalies in the causation thesis, and using this as the primary basis for the "open question" stance.»

- Note de Jones, Day, Reavis & Pogue, *Smoking and Health Litigation Tactical Proposal*, 10 août 1985, **pièce PG-344**.

455. Il devient en effet de plus en plus difficile de soutenir que les études épidémiologiques ne prouvent pas un lien de causalité entre le tabagisme et les maladies:

«If we continue to focus exclusively on our attempt to undermine global epidemiology data, we will continue to be accused of ignoring a large body of data which run contrary to our view and also of debating about marginal issues. This is not a totally workable strategy within the contemporary 1986 climate.»

- Lettre de A.V. Colucci à J.E. Young, Jones, Day, Reavis & Pogue, RJRT, 30 juillet 1986, **pièce PG-345**.

456. De plus, la mise en marché de nouveaux produits crée des problèmes au Groupe RJR qui veut à tout prix éviter l'allusion implicite ou explicite au fait que les cigarettes sont dommageables pour la santé:

«Mr. Hutt stated that RJR had no intention at this time to promote or label its new "smokeless" cigarette as safer than conventional cigarettes. He commented that such a claim would be an indictment of the tobacco industry and its long standing position that conventional cigarettes are not unsafe. Mr. Hutt stated that RJR had no intention of placing itself in a position of defending claims that the "smokeless" cigarette is safer, nor did RJR have any intention of jeopardizing the industry's long standing position. He asserted that the new product would merely be marketed as "an alternative cigarette" in the way that reduced tar cigarettes and filtered cigarettes have been marketed.»

- Note de K.M. Budich, *Department of Health and Human Services*, 23 octobre 1987, **pièce PG-346**.

457. Le Groupe RJR fait également de nombreuses recherches en utilisant le test d'Ames afin d'analyser la mutagénicité des composés du condensé de fumée de tabac:

- Chin K. Lee et Elizabeth A. Reed, *Ames Test on Smoke Condensates – a summary*, RJRT, 9 mai 1983, **pièce PG-347**;
 - G.D. Byrd, K.W. Fowler, R.D. Hicks et M.E. Lovette, *Determination of Acrylonitrile, Benzene, Toluene and Styrene in Mainstream Vapor Phase Smoke of Alpha and Reference Cigarettes*, RJRT, 23 août 1988, **pièce PG-348**;
 - G.D. Byrd et J.E. Bodnar, *Determination of Benzene in Sidestream Smoke from Alpha Cigarettes and Reference Cigarettes*, RJRT, 29 août 1988, **pièce PG-349**;
 - Note de E.L. White à B.T. Hodge, *GC/MS Analysis of 4-aminobiphenyl adducts at RJRT-R&D*, RJRT, 29 juin 1992, **pièce PG-350**;
 - Mary S. Uhrig, *Quantitation of 2-Aminonaphthalene and 4-Aminobiphenyl in Mainstream Cigarette Smoke for GTC 7-026*, RJRT, 25 mai 1997, **pièce PG-351**.
458. Depuis son acquisition par le Groupe RJR en 1974, Macdonald est tenue informée des recherches internes effectuées par sa société mère et s'implique dans la stratégie internationale du Groupe RJR concernant la santé et le tabagisme:
- Note et pièce jointe de J.T. Wilson à H.J.M. Haerri et al., *Smoking and Health Coordination*, RJRTI, 7 juillet 1977, **pièce PG-352**.
459. Dans cette note, (...) pièce PG-352, G.-P. Massicotte de Macdonald est désigné comme responsable pour tenir le Groupe RJR au courant de l'évolution du contexte politique, social et économique de l'industrie du tabac au Canada et de tout développement dans les négociations de l'industrie avec le gouvernement canadien.
460. Le Groupe RJR contrôle également ce que Macdonald doit dire au sujet de la dangerosité de ses produits.

461. C'est pourquoi, lorsque BAT Co. veut se plaindre de la publicité donnée par Macdonald à sa nouvelle cigarette *Vantage* en 1975, elle le fait en s'adressant directement à la société mère RJR Industries:

- Lettre de R. Dobson, BAT Co., à W.S. Smith, RJR Industries, 9 octobre 1975, **pièce PG-353**, et réponse de W.S. Smith à R. Dobson, 10 octobre 1975, **pièce PG-354**.

462. Ainsi, dans une note du 6 juillet 1977, Macdonald fait le rapport d'une rencontre entre des fabricants canadiens et des responsables du ministère de la Santé et du Bien-être social fédéral:

«One had to leave this meeting with a sense of frustration – so much time spent and so little achieved. On the other hand it leaves one with a degree of optimism for the future as far as the industry is concerned. They are in a state of chaos and are uncertain where to turn next from a scientific point of view. They want to be seen to be doing the right thing, and to keep their Dept. in the forefront of the Smoking and Health issue. However it appears they simply do not have the funds to tackle the problem in a proper scientific manner. Our continuing dialogue can continue for a long time, as they feel meetings such as these are beneficial. [...]

I am far more optimistic in answering the Morrison technical questions in the way we have, as a result of this meeting. They have not presented any scientific evidence which need cause us concern [...].»

- Note de D.A. Crawford à R.C. Shropshire, *Meeting at Guelph Towards less hazardous cigarettes*, Macdonald, 6 juillet 1977, **pièce PG-355**.

463. Non seulement Macdonald se garde-t-elle de communiquer ses connaissances sur la dangerosité de ses produits, mais elle se réjouit du manque de preuve et de moyens du gouvernement.

464. De plus, Macdonald adopte la position de résister à toute demande de publication du taux de monoxyde de carbone contenu dans la fumée de cigarette:

- Note de F.A. Leclerc à L.W. Pullen, *Dr. Morrison's Letter on CO*, Macdonald, 5 février 1981, **pièce PG-356**.

465. De ce qui précède, il appert donc que le Groupe RJR connaît mieux que quiconque la dangerosité de son produit.

b) L'organisation et la mise en oeuvre du discours public trompeur

466. Le Groupe RJR tient un discours public en pleine contradiction avec les connaissances scientifiques développées par ses chercheurs.

467. Plutôt que d'en informer le public, le Groupe RJR choisit de dissimuler les résultats de ses recherches, de mentir aux fumeurs quant aux dangers du tabagisme et de manipuler l'opinion publique en soutenant faussement une controverse.

468. Avant même de faire partie du Groupe RJR, Macdonald nie la dangerosité du tabagisme:

- *La Presse*, «La cigarette et le cancer», 13 juin 1963, **pièce PG-357**.

469. Le 25 juin 1964, peu après la publication du rapport du *Surgeon General*, le président du conseil d'administration de RJRT nie les effets nocifs du tabac et s'oppose à toute forme de réglementation, surtout à l'apposition de mises en garde relatives à la santé sur les paquets de cigarettes:

- *Statement of Bowman Gray before House Committee in Interstate and Foreign Commerce*, RJRT, **pièce PG-358**.

470. Il s'oppose à toute forme de réglementation puisque, selon RJRT, les avertissements proposés ne représentent pas l'état des connaissances scientifiques.
471. En effet, le Groupe RJR nie alors que la science est capable d'établir un lien causal entre certaines maladies et le tabagisme.
472. Dans les années 1970, le Groupe RJR continue ainsi à entretenir une fausse controverse scientifique au sujet du lien entre le tabagisme et certaines maladies.
473. La promotion de la controverse fait partie de la stratégie de relations publiques du Groupe RJR, comme le démontre une lettre du 7 avril 1972, répondant aux soucis exprimés par un directeur d'école:
- «Despite all the research going on, medical science has not found any conclusive evidence that an element in tobacco or tobacco smoke causes any human disease. The answers to the many unanswered smoking and health questions—and the true causes of human diseases – can, we believe, be determined by scientific research. Our company intends, therefore, to continue to support such research until the truth is known.»
- Lettre de T.K. Cahill, RJRT, à K. Bersinger, 7 avril 1972, **pièce PG-359**.
474. Le Groupe RJR fait aussi la promotion de la controverse sur les questions de santé auprès de ses représentants de vente:
- Publication, *Merchandiser, Facts Tobacco Men Should Know*, RJRT, janvier 1978, **pièce PG-360**.
475. Le Groupe RJR soutient également la controverse dans ses discours publics.

476. En 1976 et 1977, s'adressant au personnel du marketing et de la recherche, le directeur de la recherche de RJRT déclare ce qui suit au sujet des maladies cardiovasculaires:

«However, the consensus among reputable scientists is that levels of carbon monoxide, nitric oxide and other gases encountered in all smoking situations are well within completely safe levels.»

- Allocution de M. Senkus, *Some Effects of Smoking*, RJRT, 1976, **pièce PG-361**.

477. Or, le Groupe RJR connaît pourtant le lien entre les maladies cardiovasculaires et le tabagisme.

478. Au cours des années 1980, le Groupe RJR poursuit sa stratégie de nier tout lien entre le tabagisme et des problèmes de santé dans ses déclarations publiques.

479. En 1984, RJRT fait paraître deux publicités qui s'adressent au public pour énoncer sa position selon laquelle il n'existe pas de lien entre le tabagisme et les maladies:

- Publicité, «*Can we have an open debate about smoking?*», Groupe RJR, 1984, **pièce PG-362**;
- Publicité, «*Smoking and health: Some facts you've never heard about.*», Groupe RJR, **pièce PG-363**.

480. Le Groupe RJR s'en prend également aux campagnes anti-tabac:

- *Le Devoir*, «Reynolds riposte aux campagnes des non-fumeurs», 4 février 1984, **pièce PG-364**.

481. Le 28 novembre 1987, dans une lettre au *Department of Health and Human Services* des États-Unis, le Groupe RJR continue à nier que le tabagisme cause des problèmes de santé:

- Lettre de P.B. Hutt, Covington & Burling, à R.M. Davis, Department of Health and Human Services, 28 novembre 1987, **pièce PG-365**.

482. Le ou vers le 24 novembre 1987, à l'instar des représentations faites aux États-Unis, le président de Macdonald fait de même devant le Comité législatif de la Chambre des communes chargé d'étudier le projet de loi C-204:

«En aucun cas les recherches cliniques n'ont permis de démontrer que la fumée et le tabac étaient la cause de maladies.»

- pièce PG-306.

483. Le Groupe RJR continue d'ailleurs de nier publiquement les effets nocifs de la cigarette sur la santé jusqu'à la fin des années 1990:

«Despite all the research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking.»

- Lettre de J.F. Spach, RJRT, à A. Christina, 18 août 1988, **pièce PG-366**.

Voir également:

- Lettre de J.F. Spach, RJRT, au directeur de l'école Willow Ridge, 11 janvier 1990, **pièce PG-367**.

484. Ce n'est qu'en 2000 que Macdonald nuance sa position alors que, devant le Comité sénatorial permanent de l'énergie, de l'environnement et des ressources naturelles, son PDG affirme:

«La compagnie n'a pas une position sur la question. La position est de se fier aux autorités médicales compétentes, et dans le cas qui nous occupe, il s'agit de Santé Canada qui analyse et collecte les données.»

➤ pièce PG-263.

485. Les défenderesses du Groupe RJR ont volontairement omis d'informer la population du Québec de la nocivité de leurs produits.
486. Dans l'intention de tromper, elles ont délibérément caché, minimisé ou banalisé la dangerosité de leurs produits afin d'inciter les personnes à commencer ou à continuer de fumer.
487. Ce faisant, elles ont manqué au devoir de respecter les règles de conduite qui s'imposaient à elles envers les personnes du Québec qui ont été ou pourraient être exposées aux produits du tabac.

B. LES DÉFENDERESSES ONT OMIS D'INFORMER LES PERSONNES DU QUÉBEC DU CARACTÈRE ADDICTIF DE LEURS PRODUITS

488. Aux fins de la présente requête, les termes «dépendance» et «addiction» sont utilisés comme synonymes.
489. La nicotine est un alcaloïde contenu dans le tabac, qui agit sur le cerveau et sur l'organisme.
490. Par ses actions physiologiques, la nicotine cause la dépendance.
491. Les produits du tabac constituent le dispositif de livraison de nicotine le plus courant et le plus direct.

492. Les consommateurs dépendants aux produits du tabac n'ont plus le libre choix de cesser ou de continuer la consommation de ces produits.

1. Le Groupe BAT, ses connaissances et son discours trompeur

a) Les nombreuses recherches sur la nicotine

493. Dès 1959, le Groupe BAT mène ou finance plusieurs projets de recherches sur la nicotine, dont certaines sur des rats de laboratoire:

a) en 1959, le projet Mad Hatter I effectue une revue de la littérature et un premier examen des facteurs qui influencent les habitudes qui créent un besoin («*demanding habits*»):

➤ C. Ellis, *The Effects of Smoking, Proposal for Further Research Contracts with Battelle*, BAT Co., 13 février 1962, **pièce PG-368**;

b) en 1959 et 1960, le projet Mad Hatter II enquête sur l'équilibre de la nicotine chez les fumeurs modérés et les fumeurs pathologiques et étudie les facteurs sociaux et physiologiques du tabagisme:

➤ pièce PG-368;

c) de 1960 à 1962, le projet Mad Hatter III s'intéresse au sort de la nicotine dans l'organisme («*the fate of nicotine in the body*»):

➤ pièce PG-368;

➤ Lettre de C. Ellis, BAT Co., à W.S. Cutchins, Brown & Williamson, *The Fate of Nicotine in the Body*, et accusé de réception de E.P. Finch, Brown & Williamson, 31 juillet 1963, **pièce PG-369**;

➤ H. Geissbuhler et C. Haselbach, *The Fate of Nicotine in the Body, for the British American Tobacco Co. Ltd.*, Battelle Memorial Institute, **pièce PG-370**;

d) de 1960 à 1962, les projets Hippo I et Hippo II visent à identifier et étudier différents effets physiologiques de la nicotine sur l'organisme, tels que son effet antidiurétique, son interférence potentielle avec le mécanisme du stress, son effet inhibant sur la régulation du poids corporel ainsi que son influence sur la glande thyroïde et sur les glandes sexuelles:

- pièce PG-368;
- J. Hersch et al., *Final Report on Project HIPPO I, for the British American Tobacco Co. Ltd.*, Battelle Memorial Institute, janvier 1962, **pièce PG-371**;
- C.H. Haselbach et O. Libert, *Final Report on Project HIPPO II, for the British American Tobacco Co. Ltd.*, Battelle Memorial Institute, mars 1963, **pièce PG-372**.

494. Ainsi, le Groupe BAT, comprenant à l'époque Imasco, ITL, BAT Co., BAT Industries et Brown & Williamson, connaît son produit et s'intéresse de près tant au rôle de la nicotine qu'au comportement des fumeurs.

495. En raison de ces recherches, il possède même une connaissance des effets de la nicotine beaucoup plus étendue que celle qui existe dans la littérature scientifique publique, tel qu'il appert du passage suivant de la pièce PG-368:

«As a result of these various researches we now possess a knowledge of the effects of nicotine far more extensive than exists in published scientific literature.»

496. Le Groupe BAT organise aussi régulièrement des conférences sur ces sujets, qui mettent en présence chercheurs et dirigeants, dont ceux d'Imperial Tobacco Company of Canada, Limited.

497. Dès 1962 et en 1963, selon un conseiller scientifique de BAT Co.:

a) la nicotine cause la dépendance, en agissant tant d'un point de vue physiologique que psychologique;

➤ pièce PG-368;

b) l'habitude de fumer est «*a habit of addiction that is pleasurable*», et la nicotine est «*a very remarkable beneficent drug [... and] a very fine drug*»:

➤ pièce PG-51.

Voir également:

➤ Lettre de C. Ellis, BAT Co., à W.S. Cutchins, Brown & Williamson, 4 juin 1963, **pièce PG-373**;

➤ Lettre de C. Ellis, BAT Co., à G.F. Todd, TRC (U.K.), 29 mai 1963, **pièce PG-374**.

498. Ces connaissances sont partagées par tous les membres du Groupe BAT qui s'entendent sur le fait que la nicotine est l'ingrédient le plus important dans le tabac, la raison même de fumer:

« Moreover, nicotine is addictive.

We are, then, in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms. [...] »

➤ Note de A. Yeaman, *Implications of Battelle Hippo I & II and the Griffith Filter*, Brown & Williamson, 17 juillet 1963, **pièce PG-375**.

Voir également:

➤ Lettre de R.B. Griffith, Brown & Williamson, à J. Kirwan, BAT Co., 18 septembre 1963, **pièce PG-376**;

➤ Note de C. Ellis, *The Health Problem and Objectives in Research on Cigarette Design*, BAT Co., 28 mai 1962, **pièce PG-377**;

- Procès-verbal de la *Research Conference Held at Hilton Head Island, S.C. 24th – 30th Septembre*, BAT Co., 1968, **pièce PG-378**;
 - *Secondary Source Digest*, Brown & Williamson, circa 1970, **pièce PG-379**;
 - J.E. Kennedy, *Trip Report, Conference on Human Smoking Habits Imperial Tobacco Company, Montreal, Quebec, Canada/007*, Brown & Williamson, 27 novembre 1972, **pièce PG-380**;
 - *Conference on Smoking Behaviour, Group Research & Development Centre Southampton, 11th and 12th October 1976*, Groupe BAT, **pièce PG-381**;
 - D.E. Creighton, *Compensation for Changed Delivery*, BAT Co., 27 juin 1978 **pièce PG-382**;
 - L.C.F. Blackman, *Research Conference, Montebello, Canada, 30th August – 3rd September 1982*, BAT Co., 10 septembre 1982, **pièce PG-383**;
 - W.W. Templeton, *Receptors for Nicotine in the Central Nervous System: I Radioligand Binding Studies, Report No. RD.1960 Restricted*, BAT Co., 22 mars 1984, **pièce PG-384**;
 - Programme du *Chemosensory Meeting, BATUKE R&D Centre, Southampton, 9th-13th June, 1986*, B.A.T. (U.K. and Export) Limited, 6 juin 1986, **pièce PG-385**;
 - R. Baker, *Summary of Presentation by Gio Gori: "The Scientific Implications for the Future of Cigarette Demand"*, B.A.T. (U.K. and Export) Limited, 13 juin 1986, **pièce PG-386**;
 - Note de P. Sheehy, BAT Co., pour P. Crawford, Imasco, 18 décembre 1986, **pièce PG-387**.
499. Au cours des années 1960 et 1970, le Groupe BAT développe et met en marché des produits à plus faible teneur en goudron et en nicotine pour rassurer les consommateurs inquiets pour leur santé.

500. Ainsi, dès 1960, le Groupe BAT travaille sur le transfert de la nicotine vers la fumée de tabac et souhaite développer une cigarette à faible teneur de goudron, tout en conservant les effets entiers de la nicotine:

- Lettre à L.C. Laporte, Groupe BAT, 6 octobre 1960, **pièce PG-388**;
- Lettre de I.W. Hughes, BAT Co., à R.S. Wade, Imperial Tobacco Company of Canada Ltd., 11 décembre 1961, **pièce PG-389**;
- pièce PG-376;
- pièce PG-56;
- R.L. Rice, *Laboratory Report No. 104L, Considerations Related to the Feasibility of Modifying the Tar and Nicotine Yields from PCL, Project Code T-6535*, ITL, 20 janvier 1972, **pièce PG-390**;
- T.A. Smith, *Research Department, Research Programme*, ITL, 20 juillet 1971, **pièce PG-391**;
- T.A. Smith, *Progress Report, Research Department, July – December 1971*, ITL, 24 avril 1972, **pièce PG-392**;
- *Notes on Group Research and Development Conference*, BAT Co., 18 avril 1977, et lettre de transmission de S.J. Green, 19 avril 1977, **pièce PG-393**.

501. Dès 1967, le Groupe BAT sait que le niveau de nicotine livrée par les produits du tabac doit respecter un seuil minimal pour éviter que les fumeurs cessent de fumer:

- pièce PG-56;
- Projet de procès-verbal de *B.A.T.: R. & D. Conference – Montreal*, BAT Co., 1967, **pièce PG-394**;
- PG-159;
- Compte-rendu de R.M. Gibb, *Meeting of Technical Representatives, May 17, 1971*, Conseil Canadien, **pièce PG-395**;

- pièce PG-377;
- *Structured Creativity Conference, Delegate Presentations, Montagu Arms Hotel, Beaulieu, Hampshire, UK., 25th – 28th June, 1984*, Groupe BAT, 1984, **pièce PG-396**.

502. Le Groupe BAT est tellement conscient de l'importance de la nicotine qu'il craint de perdre son marché s'il en diminue trop la teneur dans ses produits:

- C.I. Ayres, *The Product in the Early 1980s*, BAT Co., mars 1976, et lettre de transmission de F. Haslam à S.J. Green, 26 mars 1976, **pièce PG-397**;
- Procès-verbal de la réunion de la Tobacco Strategy Review Team de BAT Co., 14 novembre 1989, **pièce PG-398**;
- *Note for Tobacco Strategy Review Team, 2nd December 1991, De-nicotined Brands and the implications for Group R&D*, BAT Co., 11 novembre 1991, **pièce PG-399**;
- Note de M. Norsworthy à A.L. Heard, *Tobacco Strategy Review Team*, BAT Co., 4 novembre 1991, **pièce PG-400**;
- Note de M. Norsworthy à I.A. Ross, *Tobacco Strategy Review Team*, BAT, 5 novembre 1991, **pièce PG-401**;
- Note de R. Salter à P. Sheehy et al., *Tobacco Strategy Review Team*, BAT Co., 8 novembre 1991, **pièce PG-402**.

503. Le Groupe BAT connaît également le phénomène de compensation qui fait en sorte qu'un fumeur modifie sa manière de fumer pour obtenir la quantité de nicotine dont il a besoin, par exemple en augmentant le nombre de bouffées ou en aspirant plus profondément:

- E.R. Freiesleben et P.J. Dunn, *The Use of the Freiri Slave Smoker to Investigate Changes in Smoking Behaviour Part I, Project: T-8077*, ITL, 3 mars 1975, **pièce PG-403**;
- D.E. Creighton, *Compensation for Changed Delivery*, BAT Co., 17 juin 1975, **pièce PG-404**;

- pièce PG-382;
- pièce PG-384.

504. Par conséquent, il développe différents procédés qui permettraient d'augmenter l'impact et la rapidité d'action de la nicotine, de sorte que le fumeur obtienne son seuil minimal de nicotine même avec un produit à teneur réduite:

a) dès 1959, le Groupe BAT sait que la nicotine est présente sous deux formes, soit la nicotine liée et la nicotine libre, cette dernière se rendant plus rapidement au cerveau et produisant ainsi un effet plus important:

- Lettre de L.C. Laporte, Imperial Tobacco Company of Canada Limited, à H.D. Anderson, BAT Co., 30 décembre 1959, **pièce PG-405**;
- Note de H.D. Anderson à R.P. Dobson, *Potassium Carbonate*, BAT Co., 7 août 1964, **pièce PG-406**;
- S.R. Evelyn, *The Release During Smoking of Nicotine Added as Various "Salts" to Extracted Tobacco Cigarettes*, Report No. RD. 286-R, BAT Co., 1^{er} mai 1964, **pièce PG-407**;
- D.E. Creighton, *Product Development Review*, BAT Co., juin 1988, **pièce PG-408**;

b) le Groupe BAT sait également que la quantité de nicotine sous forme libre peut être augmentée en faisant varier le pH du tabac:

- pièce PG-407;
- *Quartely Report July – September 1964*, BAT Co., 14 octobre 1964, **pièce PG-409**;
- S.R. Evelyn, *The Effect of Additives on Smoke Chemistry: Action of Gaseous Ammonia on Flue-Cured Tobacco*, Report No. RD. 334-R, BAT Co., 1^{er} juin 1965, **pièce PG-410**;

- J.D. Backhurst, *Further Work on "Extractable" Nicotine, Report No. RD.437-R*, BAT Co., 30 septembre 1966, **pièce PG-411**;
 - I.W. Hughes et S.R. Evelyn, *Addition of Nicotine to Synthetic Smoking Materials*, BAT Co., 9 juin 1967, **pièce PG-412**;
 - pièce PG-391;
 - pièce PG-408;
 - pièce PG-398;
 - T.G. Mitchell, *Research Conference 1980, Sea Island, Ga., Position Paper*, BAT Co., août 1980, **pièce PG-413**;
- c) il fait des recherches pour développer des variétés de tabac et aussi des feuilles de tabac reconstituées, toujours afin d'augmenter les effets de la nicotine:
- pièce PG-412;
 - pièce PG-56;
 - pièce PG-159;
 - pièce PG-392;
 - pièce PG-413;
 - T.G. Mitchell, *Prospects for Augmenting Nicotine Content of Tobacco Products*, BAT Co., et lettre de transmission de W.B. Fordyce à C.H. Stewart Lockhart et al., 2 mai 1980, **pièce PG-414**;
 - pièce PG-398;
- d) le Groupe BAT sait aussi qu'en perforant le papier ou le filtre des cigarettes, ou en manipulant la composition des filtres, il peut augmenter l'impact de ses produits:

- R.B. Griffith, *Report No. 63-9-R, The Control of Smoke Composition*, Brown & Williamson, 20 septembre 1963, **pièce PG-415**;
- pièce PG-391;
- pièce PG-408;
- pièce PG-405.

505. Au cours des années 1970, le Groupe BAT raffine ses connaissances sur la nicotine et comprend très bien ses effets sur le cerveau du fumeur:

- pièce PG-381;
- *Topics in Smoking and Health Bible*, BAT Co., circa 1978-1981, **pièce PG-416**;
- pièce PG-384.

506. En 1979, alors que les recherches indépendantes démontrent de plus en plus clairement que la nicotine crée la dépendance, le Groupe BAT constate que certaines défenderesses américaines hésitent à continuer les leurs, par crainte de confirmer le caractère addictif de la nicotine:

- D.G. Felton, *Visit to Canada & USA, October 1979, Detailed Reports of Visits*, BAT Co., **pièce PG-417**.

507. En juin 1984, ITL déclare que, heureusement pour l'industrie du tabac, très peu de gens réussissent à arrêter de fumer:

- Pièce PG-396.

508. De plus, le Groupe BAT comprend si bien les effets stimulants de la nicotine sur le cerveau du fumeur qu'il ne craint pas la mise en marché des timbres transdermiques de nicotine, qui ne fournissent pas d'effet pharmacologique aussi puissant que celui de la cigarette:

- E. Kausch, *Transdermal Nicotine*, B.A.T. Cigarettenfabriken GmbH, et lettre de transmission de R. Salter, BAT Co., à B.D. Bramley et al., Groupe BAT, 3 avril 1992, **pièce PG-418**.

509. D'ailleurs, il compare même la nicotine avec certaines drogues plus dures, comme la marijuana, le LSD et les amphétamines:

« A cigarette as a "drug" administration system for public use has very very significant advantages:

i) Speed

Within 10 seconds of starting to smoke, nicotine is available in the brain. Before this, impact is available giving an instantaneous catch or hit, signifying to the user that the cigarette is "active". Flavour, also, is immediately perceivable to add to the sensation.

Other "drugs" such as marijuanha, amphetamines, and alcohol are slower and may be mood dependant. »

- pièce PG-396.

510. Le Groupe BAT sait donc depuis longtemps que la nicotine contenue dans ses produits cause la dépendance.

b) L'organisation et la mise en œuvre d'un discours trompeur

511. Plutôt que d'informer le public que les produits du tabac causent la dépendance, comme le démontrent ses propres recherches, le Groupe BAT organise son discours de manière à induire le public en erreur à ce sujet.

512. Ainsi, le 26 juillet 1962, à la suite de la parution du rapport du *Royal College of Physicians*, BAT Co. fait parvenir à toutes les sociétés de son Groupe un guide qui fournit les réponses aux questions posées par la population ou les médias au sujet du tabagisme et de la santé:

- pièce PG-187.
513. BAT Co. y cite le rapport du *Royal College of Physicians* qui associe le tabagisme à une habitude, mais ne mentionne pas qu'il cause la dépendance, ce que révèlent ses propres recherches.
514. En 1963, le conseiller scientifique de BAT Co. doit être autorisé par le conseil d'administration avant de transmettre au TRC (U.K.) des rapports de recherche qui établissent que la nicotine est une drogue qui crée la dépendance, et il incite ses destinataires à les garder confidentiels:
- pièce PG-374.
515. À la même époque, le *Surgeon General* demande au *Tobacco Institute* de lui fournir des données résultant d'études internes menées par les fabricants des produits du tabac:
- Lettre de J.M. Hundley, Surgeon General, à G.V. Allen, *Tobacco Institute*, 12 mars 1963, **pièce PG-420**.
516. Dans sa réponse au *Surgeon General*, Brown & Williamson omet volontairement de faire mention des recherches menées à Battelle:
- Lettre de J. Johnston, White & Case, à D. Bryant, Brown & Williamson, 6 mai 1963, **pièce PG-421**;
 - Lettre de W.S. Cutchins, Brown & Williamson, à J.M. Hundley, Surgeon General, 14 mai 1963, **pièce PG-422**.
517. Brown & Williamson ne transmettra jamais au *Surgeon General* les trois rapports de recherche de Battelle, reçus quelques semaines plus tard, qui établissent que la nicotine cause la dépendance:
- pièce PG-373;

- *Note for Mr. Cutchins*, 19 juin 1963, **pièce PG-423**;
 - Rapport d'une conversation téléphonique intitulé *T.I.R.C., New York, Telephone Conversation with Mr. Hoyt, 26th June 1963, Battelle Reports on Project "Hippo"*, 28 juin 1963, **pièce PG-424**;
 - Lettre au nom de W.S. Cutchins, Brown & Williamson, à A.D. McCormick, BAT Co., 28 juin 1963, **pièce PG-425**;
 - Téléx de A. Yeaman, Brown & Williamson, à A.D. McCormick, BAT Co., 3 juillet 1963, **pièce PG-426**.
518. En janvier 1964, sur la base d'informations incomplètes, le *Surgeon General* conclut dans son rapport que le tabagisme est une habitude et non une dépendance:
- pièce PG-18.
519. Le Groupe BAT et les autres Groupes citent largement ce rapport afin d'appuyer leur position publique selon laquelle le tabagisme ne crée pas de dépendance, mais bien une habitude.
520. La position du Groupe BAT sur la nicotine énoncée en 1962, pièce PG-187, reste essentiellement la même jusqu'au milieu des années 1970, à savoir que le tabagisme est une habitude, sans mentionner la dépendance, et prétend que le tabac produit des effets bénéfiques:
- *Smoking and Health*, BAT Co., 28 novembre 1963, et lettre de transmission de A.D. McCormick, **pièce PG-427**;
 - pièce PG-148;
 - pièce PG-191;
 - *Smoking and Health*, BAT Co., et lettre de transmission de G.C. Hargrove, 17 avril 1973, **pièce PG-428**;

- *Smoking and Health, Assumptions, Policies, Guidelines*, BAT Co., *Smoking and Health – Questions and Answers*, BAT Co., et lettre de transmission de G.C. Hargrove, 26 juin 1974, **pièce PG-429**;
 - *B.A.T. Board Plan, Smoking and Health, Strategies and Constraints*, Groupe BAT, décembre 1976, **pièce PG-430**;
 - pièce PG-150.
521. Ces positions du Groupe BAT sont traduites dans des politiques qui sont revues en collaboration avec ITL et transmises «*to all nos. 1 overseas*»:
- pièce PG-148;
 - pièce PG-191;
 - Lettre de G.C. Hargrove, BAT Co., à J. Edens, Brown & Williamson, *Montreal Smoking and Health Conference*, 22 février 1973, et ordre du jour de cette conférence, **pièce PG-431**;
 - pièce PG-428;
 - pièce PG-429;
 - Lettre et document joint de R.M. Gibb, ITL, à S.J. Green, BAT Co., 13 février 1975, **pièce PG-432**.
522. En 1977, le Groupe BAT prévoit que les autorités gouvernementales reconnaîtront la dépendance causée par la nicotine et que les fabricants seront encouragés à en baisser la teneur:
- *B.A.T. Board Strategies, Smoking & Health, Basic Assumptions*, Groupe BAT, 25 novembre 1977, **pièce PG-433**;
 - *B.A.T. Board Strategies, Smoking & Health, Strategies and Constraints*, Groupe BAT, 25 novembre 1977, **pièce PG-434**;
 - *B.A.T. Board Strategies, Smoking and Health, Questions & Answers*, Groupe BAT, 25 novembre 1977, **pièce PG-435**;

- Procès-verbal de la réunion du *Tobacco Division Board of Management, Wednesday 29th June 1977*, Groupe BAT, ordre du jour de cette réunion et note du 20 juillet 1977, **pièce PG-436**.

523. À l'interne, le Groupe BAT sait que peu de gens connaissent les effets de la nicotine, à savoir qu'elle cause la dépendance et qu'il s'agit d'un poison:

- Note de H.D. Steele à M.J. McCue, Brown & Williamson, 24 août 1978, **pièce PG-437**.

524. Il revoit donc sa position, qu'il maintiendra jusque dans les années 1990, pour convaincre le public que la nicotine ne cause pas de «dépendance», entre autres en soutenant que le tabagisme ne correspond pas à la définition de ce terme :

- pièce PG-433;
- pièce PG-434;
- pièce PG-435;
- pièce PG-436;
- pièce PG-416;
- *1981 B.A.T. Board Strategies, Smoking Issues*, Groupe BAT, mars 1981, **pièce PG-438**;
- pièce PG-205;
- pièce PG-208;
- *Developing Country Issues QS and AS*, BAT Co., 3 décembre 1990, **pièce PG-439**;
- *Smoking Issues*, Groupe BAT, circa 1990, **pièce PG-440**;
- *British American Tobacco Bulletin Board, Company Notice*, BAT Co., 4 janvier 1997, **pièce PG-441**;

- *Smoking Issues, A British-American Tobacco Company Publication for staff*, circa 1980, **pièce PG-442**;
- *Smoking: habit or addiction*, Groupe BAT, février 1990, **pièce PG-443**;
- Note de S. Boyse pour le *Tobacco Strategy Review Team*, BAT Co., 24 janvier 1990, **pièce PG-444**;
- Procès-verbal de la réunion du *Tobacco Strategy Review Team* de BAT Co., 21 février 1990, **pièce PG-445**;
- *Consumer Helplines, How to handle questions on smoking and health and product issues*, BAT Co., circa 1994 et lettre de transmission du 18 mars 1994, **pièce PG-446**.

Voir également:

- pièce PG-386;
- pièce PG-387;
- pièce PG-398.

525. Les membres du Groupe BAT se conforment en tous points à ce discours public:

«[...] When asked what BAT's current position on nicotine was, he replied that "cigarette smoking" was habit-forming but not addictive, and on cancer, that although there were risks, there was no causal link.»

- Lettre de C. Proctor aux directeurs généraux et aux gestionnaires des affaires corporatives de BAT Co., 20 juin 1994, et articles de journaux qui y sont joints, **pièce PG-447**.

Voir également:

- «Imperial Tobacco n'aura pas à payer les timbres à la nicotine d'une ex-fumeuse», *La Presse*, 25 mars 1998, **pièce PG-448**.

526. À compter de 1999, le Groupe BAT reconnaît finalement qu'il peut être difficile pour certaines personnes d'arrêter de fumer, mais il continue de minimiser la dépendance causée par la nicotine:

a) en 1999, le porte-parole d'ITL refuse d'admettre que les produits du tabac causent la dépendance, se contentant de reconnaître que des gens peuvent trouver difficile de cesser de fumer:

➤ *Le 23 novembre 1999 – CKAC MA 730 Montréal Réseau Radiomédia Bonjour Montréal – 08h05 – 9 min – 66423-4*, transcription d'une émission de radio, Transcriptions VERBATIM inc., 23 novembre 1999, **pièce PG-449**;

b) en 2000, ITL continue d'affirmer que, dans un sens large, il existe une dépendance au tabac, mais que, au Canada, la majorité des fumeurs ont déjà cessé de fumer, et ce, sans aide pour la majorité d'entre eux:

➤ pièce PG-262;

➤ pièce PG-50;

c) en 2000, ITL affirme aussi que, comparativement à d'autres substances pouvant mener à la dépendance, le tabac n'est pas intoxicant et que les symptômes de sevrage chez certains fumeurs sont mineurs et que beaucoup d'entre eux n'en ressentent pas:

➤ pièce PG-50.

527. Par ailleurs, en plus de prétendre faussement que fumer ne cause pas la dépendance, le Groupe BAT nie également publiquement avoir conduit des recherches sur ce sujet:

➤ pièce PG-232.

528. Ainsi, le Groupe BAT a menti aux personnes du Québec et les a induites en erreur, puisqu'il savait depuis au moins les années 1960 que les produits du tabac causent la dépendance.

2. Le Groupe PM, ses connaissances et son discours trompeur

a) Les nombreuses recherches sur la nicotine

529. Dès 1959, le directeur de Recherche et développement de PM inc. sait que la nicotine contenue dans le tabac a des effets physiologiques et qu'elle est la raison même de fumer:

- Lettre de H. Wakeham à R.P. Roper, *An Opinion on Cigarette Smoking and Cancer*, PM inc., 22 septembre 1959, **pièce PG-450**.

530. Depuis 1960, le Groupe PM sait que la nicotine cause la dépendance, connaît très bien son fonctionnement et son mode d'action:

- F.E. Resnik, *Project Review – Project 0100, Chemistry of Burning Tobacco*, April 5, 1960, PM inc., **pièce PG-451**;
- pièce PG-267;
- W.L. Dunn, *Task Group Surrogate*, PM inc., 5 mars 1964, **pièce PG-452**;
- Présentation H. Wakeham, *"Smoker Psychology Research"*, PM inc., 26 novembre 1969, **pièce PG-453**;
- Lettre de W.L. Dunn à H. Wakeham, *Jet's Money Offer*, PM inc., 19 février 1969, **pièce PG-454**;
- *Some Methods Notes on the Past Research on Cigarette Smoker Motivation*, Groupe PM, 16 février 1970, **pièce PG-455**;
- Lettre de T.S. Osdene à H. Wakeham et al., PM inc., 7 décembre 1971, et documents qui y sont joints, **pièce PG-456**;

- W.L. Dunn, *Motives and Incentives in Cigarette Smoking*, PM inc., 1972, **pièce PG-457**;
- *Dosage Controls*, Groupe PM, 5 août 1974, **pièce PG-458**;
- C. Jeanneret, *Smoke Impact, Part I: Cigarette Smoking and Heart-Rate (Preliminary Experiments)*, PME, octobre 1975, **pièce PG-459**;
- Rapport mensuel, *Charge Number: 1600, Project Title: Smoker Psychology, Period Covered: October 1-31, 1977, Project Leader: W. L. Dunn, Date of Report: Novembre 11, 1977*, PM inc., **pièce PG-460**;
- Note de J.L. Charles et R.B. Seligman, PM inc., 18 mars 1980, **pièce PG-461**;
- Note de W.L.Dunn à R.B. Seligman, PM inc., 21 mars 1980, **pièce PG-462**;
- Note de W.L. Dunn et T.S. Osdene, PM inc., 5 novembre 1981, **pièce PG-463**;
- Rapport du *Behavioral Pharmacology Staff*, PM inc., 1981, **pièce PG-464**;
- V.J. DeNoble et P.C. Mele, *Behavioral Pharmacology Annual Report – 1983*, PM inc., 1^{er} juin 1983, **pièce PG-465**;
- *The Nicotine Program*, et lettre de transmission de T.S. Osdene à R.B. Seligman, PM inc., 1^{er} décembre 1978, **pièce PG-466**;
- Note de F.P. Gullotta et al. à R.A. Carchman, PM inc., 22 mai 1990, **pièce PG-467**;
- Note de F.P. Gullotta et al. à C.K. Ellis, PM inc., 8 novembre 1990, **pièce PG-468**.

531. Le Groupe PM sait donc alors que la nicotine cause la dépendance, que les consommateurs fument pour en obtenir dans leur organisme et qu'elle est très importante pour leur marché.

532. Au cours des années 1960 et 1970, conscient de l'importance de la nicotine pour l'industrie du tabac, le Groupe PM conclut que la mise en marché d'une cigarette sans nicotine serait un échec:

- M.E. Johnston, *Special Report No. 248, Market Potential of a Health Cigarette*, PM inc., juin 1966, et lettre de transmission de H. Wakeham, 30 juin 1966, **pièce PG-469**;
- Lettre de W.L. Dunn à J. Hind et G. Gellatly, *Nicotine and Inhalation Impact*, PM inc., 1^{er} février 1973, **pièce PG-470**;
- pièce PG-457;
- Note de W.L. Dunn à R.B. Seligman, PM inc., 14 mai 1975, **pièce PG-471**;
- Note de T.S. Osdene, PM inc., 10 janvier 1978, **pièce PG-472**;
- Note de T.S. Osdene à R.B. Seligman et aux directeurs, PM inc., 12 août 1980, **pièce PG-473**.

533. Le Groupe PM est par ailleurs bien au fait, tout comme le Groupe BAT, du phénomène de la compensation:

- Lettre de W. Dunn à G. Berman, *TPN Intake by Smokers*, PM inc., 7 mai 1968, **pièce PG-474**;
- T.R. Schori, *Tar, Nicotine, and Smoking Behavior*, PM inc., novembre 1971, **pièce PG-475**;
- T.R. Schori et W.L. Dunn, *Tar, Cigarette, and Cigarette Consumption*, PM inc., circa 1972, **pièce PG-476**;
- W. Dunn et al., *Smoking Behavior: Real World Observations*, PM inc., mars 1973, **pièce PG-477**;
- pièce PG-458;
- Lettre de W.L. Dunn, PM inc., à S. Schachter, Columbia University, 8 septembre 1975, **pièce PG-478**;
- pièce PG-459.

534. Il mène donc plusieurs recherches et utilise différents procédés afin de développer une cigarette à faible teneur en goudron et en nicotine, mais sans diminuer pour autant les effets de la nicotine, la raison d'être de leur industrie:

- pièce PG-451;
- pièce PG-454;
- pièce PG-475;
- Note de W. Dunn et al. à P.A. Eichorn, PM inc., 8 septembre 1971, **pièce PG-479**;
- Note de A. Udow à C. Bolton, PM inc., 24 mai 1972, **pièce PG-480**;
- *Research and Development Five Year Plan 1974-1978*, PM inc., mai 1973, **pièce PG-481**;
- B. Jones et al., *Low Delivery Cigarettes and Increased Nicotine/Tar Ratios, a Replication (R2-3537)*, PM inc., octobre 1975, **pièce PG-482**;
- *R & D Strategy Outline*, Groupe PM, 1973, **pièce PG-483**;
- Brevet des États-Unis numéro 4,607,646, *Process for Modifying the Smoke Flavor Characteristics of Tobacco*, 26 août 1986, **pièce PG-484**;
- Note de A.S. Roberts à T.A. Newman, PM inc., 25 août 1978, **pièce PG-485**;
- Note de F.P. Gullotta et al. à R.D. Kinser, PM inc., 14 décembre 1990, **pièce PG-486**.

535. D'ailleurs, en 1972, PM inc. reconnaît à l'interne que : «*The cigarette should be conceived not as a product but as a package. The product is nicotine.* [...]»:

- pièce PG-457.

536. L'importance de la nicotine est telle que le Groupe PM s'inquiète du fait que les autorités puissent vouloir réglementer les produits du tabac:

«It is my impression that at some time in the future, nicotine will be listed as a dependency drug (or smoking will be listed as a dependence process). [...]»

- Note de R.B. Seligman à A. Holtzman, PM inc., 27 juin 1978, et rapport de W.L. Dunn, 22 juin 1978, **pièce PG-487**.

Voir également:

- pièce PG-454;
- pièce PG-452;
- pièce PG-462.

537. Cela ne l'empêche pas publiquement de comparer le tabagisme à la consommation de café, même s'il constate que les effets de la caféine sont davantage comparables à ceux d'un placebo qu'à ceux de la nicotine:

- T.R. Schori et B. Jones, *Smoking and Caffeine: A Comparison of Physiological Arousal Effects*, PM inc., mai 1972, et lettre de transmission du 17 mai 1972, **pièce PG-488**.

538. En 1969, le Groupe PM s'intéresse aux conséquences liées à l'arrêt du tabagisme, telles qu'un gain de poids, des problèmes de constipation, des cloques dans la bouche et des difficultés à stabiliser ses émotions:

- Lettre de W.L. Dunn à H. Wakeham, PM inc., 29 juillet 1969, **pièce PG-489**.

539. En 1971, un de ses scientifiques constate que les gens éprouvent de la difficulté à cesser de fumer et que cela leur cause plusieurs problèmes:

«This is not the happy picture painted by the Cancer Society's anti-smoking commercial which shows an exuberant couple leaping in the air and kicking their heels

with joy because they've kicked the habit. A more appropriate commercial would show a restless, nervous, constipated husband bickering viciously with his bitchy wife, who is nagging him about his slothful behavior and growing waistline.»

- F.J. Ryan, *Bird-I A Study of the Quit-Smoking Campaign in Greenfield, Iowa, in Conjunction with the Movie, Cold Turkey*, PM inc., mars 1971, **pièce PG-490**.

540. Le Groupe PM ne désire cependant pas mener des recherches qui établiraient la dépendance créée par le tabagisme, comme le démontre l'approche d'un de ses scientifiques:

«I have given Carolyn approval to proceed with this study. If she is able to demonstrate, as she anticipates, no withdrawal effects of nicotine, we will want to pursue this avenue with some vigor. If, however, the results with nicotine are similar to those gotten with morphine and caffen, we will want to bury it. Accordingly, there are only two copies of this memo, the one attached and the original which I have.»

- Note de W.L. Dunn à T.S. Osdene, PM inc., 3 novembre 1977, **pièce PG-491**.

541. C'est pourquoi, il s'inquiète des propos tenus par un employé du CTR, qui se dit d'avis que la nicotine et les opiacés peuvent agir de la même façon et que la nicotine cause la dépendance:

- pièce PG-277.

542. Fort de ces connaissances, en 1978, le Groupe PM se demande s'il est souhaitable de commercialiser des cigarettes à faible teneur en nicotine, qui pourraient faciliter l'abandon du tabagisme:

- F.J. Ryan, *Exit-Brand Cigarettes: A Study of Ex-Smokers*, PM inc., mars 1978, **pièce PG-493**.

543. Toutes ces connaissances circulent au sein du Groupe PM:

- H. Wakeham, «Flip Charts for B&H (Canada) Board Presentation», *Recent Developments on the Smoking and Health Front*, 10 septembre 1976, **pièce PG-494**;
- Lettre de J.G. Pritchard, Benson & Hedges, à F.E. Resnick, PM inc., 23 janvier 1969, **pièce PG-495**;
- Lettre de R.S. Wade, Imperial Tobacco Company of Canada Limited, à J.G. Pritchard, Benson & Hedges, 21 janvier 1969, **pièce PG-496**;
- *Procedure for the Measurement of Particular Matter, Nicotine and Water in Cigarette Smoke*, 1969, **pièce PG-497**.

544. En 1992, le Groupe PM constate que la nicotine est un composé chimique organique similaire à la cocaïne et à la morphine, qui atteint le cerveau en quelques secondes et qui devient un neurotransmetteur et un stimulant:

- B. Reuter, *Competitive Analysis*, PM inc., circa 1992, **pièce PG-498**;
- Note de C. Levy à W.I. Campbell, PM inc., 10 février 1992, **pièce PG-499**.

545. Il est donc indéniable que le Groupe PM sait depuis longtemps que la nicotine contenue dans ses produits cause la dépendance.

b) L'organisation et la mise en oeuvre d'un discours public trompeur

546. Le Groupe PM se garde de transmettre au public ses connaissances sur la dépendance créée par les produits du tabac.

547. Il organise plutôt son discours de manière à induire le public en erreur à ce sujet.