



COURT FILE NUMBER 1201-07314

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF HER MAJESTY IN RIGHT OF ALBERTA

DEFENDANTS 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 DEFENCE

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Statement of facts relied on:

I. INTRODUCTION

1. The Defendant B.A.T Industries, p.l.c. (“**Industries**”) denies, or where applicable does not admit, all allegations contained in the Statement of Claim (the “**Claim**”), except where expressly admitted herein, and puts the Plaintiff to the strict proof thereof.
2. In general answer to the whole of the Claim, Industries denies that:
 - (a) it took part in any conspiracy or concert of action with a common design as alleged or at all; or
 - (b) it has owed or breached any common law, equitable or statutory duty or obligation to persons in Alberta as alleged or at all; or
 - (c) any such alleged breach of duty or obligation caused any population of insured persons to smoke tobacco products, to continue to smoke tobacco products, or to be exposed to tobacco smoke; or
 - (d) it acted in a manner that wrongfully caused any person in Alberta to smoke or to continue smoking; or
 - (e) it acted in a manner that wrongfully caused the Plaintiff to incur the cost of health services resulting from tobacco-related disease or the risk thereof.
3. Industries adopts headings used in the Claim but does not thereby admit any facts or allegations contained within such headings. Except where indicated otherwise, Industries adopts on the same basis the defined terms used in the Claim.
4. Except where expressly admitted below, Industries denies the allegations contained in paragraphs 3 to 9, 11, 27, 44 to 46, 50 to 83, 84(b), 85 to 98, 101 to 105, 107 to 109, 112 to 117, 131, 132, 134, and 137 to 143 of the Claim. With respect to paragraph 3 and allegations throughout the Claim, Industries denies that it has any predecessors, parents, affiliates or related companies for which it is legally responsible.
5. Industries has no knowledge of the facts alleged in paragraphs 10, 12 to 23, 25, 26, 28 to 43, 47-49, 84(a)(c)-(k), 99, 100, 106, 110, 111, 118 to 130, 133, 135 and 136 of the Claim, and puts the Plaintiff to the strict proof thereof.

6. Industries denies that the Plaintiff is entitled to the relief sought in paragraphs 1 and 144 of the Claim.

7. With respect to paragraph 2 of the Claim, Industries repeats paragraph 3 above.

II. THE DEFENDANTS

8. With respect to paragraph 11 of the Claim, Industries admits that it has a registered office at Globe House, 4 Temple Place, London, England but states that it is a public limited company incorporated pursuant to the laws of England and Wales.

9. With respect to paragraph 27 of the Claim, Industries states that:

(a) it was incorporated on September 3, 1928 as Tobacco Securities Trust Company Limited;

(b) its name was changed by resolution on July 23, 1976 to B.A.T Industries Limited; and

(c) it was re-registered as a public limited company on July 8, 1981 as B.A.T Industries p.l.c..

10. Throughout its history, Industries has functioned as a holding company. Its office has always been located in London, England. As an investment holding company, Industries has never been involved in the research, development, design, manufacture, advertisement, marketing, distribution or promotion of tobacco products sold in Alberta, Canada or anywhere else.

11. Industries is unable to determine what, if any, legal or other significance the Plaintiff ascribes to the term “Lead Companies” as defined in paragraphs 44 and 84 of the Claim. Without prejudice to the foregoing, Industries denies that it was in such relation to any of the companies identified at paragraph 45 of the Claim and at paragraph 41 of the Plaintiff’s Response to Requests for Particulars (the “**Particulars Response**”). Industries denies that it “took the lead in the Conspiracy”, as alleged in paragraph 84(b) of the Claim or at all.

12. Industries denies that the “B.A.T. Group” is a designation with any legal significance whatsoever and makes no admissions as to the membership of the “B.A.T. Group”. From

July 1976 to September 1998 Industries was the ultimate parent company of the collection of companies sometimes referred to (although without legal significance) as the BAT group of companies. Prior to July 1976 Industries was an investment trust company.

13. During the time that Industries was the ultimate parent company of the BAT group of companies, Industries owned under 50% of the shares of Imasco Limited (“**Imasco**”), which made Imasco an associated company of Industries. The Defendant Imperial Tobacco Canada Limited is a corporate successor to Imasco, and also to Imperial Tobacco Limited, all of which are collectively referred to hereinafter as “**ITCAN**”. At all material times Industries observed all formalities of corporate separateness with ITCAN and neither functionally nor legally exerted control or undue influence over or dominated ITCAN. In the normal course of business Industries and ITCAN legitimately and appropriately exchanged information relevant to ITCAN’s operations in Canada. However, Industries had no involvement in the day-to-day management of ITCAN’s operations or programmes, and Industries did not dominate or exert functional or legal control or undue influence over ITCAN, with respect to smoking and health issues or at all.
14. Industries specifically denies paragraphs 77, 83 and 113 to 117 of the Claim. To the extent that Industries had any involvement in the committees, conferences, meetings and communications referred to, they were not used as vehicles to determine, direct or coordinate policies or systems of ITCAN, or any positions ITCAN took on smoking and health whether in committees of Canadian cigarette manufacturers or at meetings of the Tobacco Institute (“**TI**”) or the Canadian Tobacco Manufacturers’ Council (“**CTMC**”) or anywhere else. Industries did not determine for ITCAN, or direct ITCAN to adopt, policies or positions on smoking and health or addiction in Canada, through the meetings and structures identified in the Claim or at all. Ultimately, it was up to ITCAN to assess its own legal and commercial needs, to form its own scientific and business judgments, and to develop policies and day-to-day execution of those policies that best promoted the company-specific needs and judgments.

15. ITCAN acted independently in adopting its own policies and undertaking its own actions relating to smoking and health and research and development issues. ITCAN always retained the ultimate operational decision-making authority with respect to, among other subjects, the public statements it made and the positions it took relating to smoking and health issues.
16. Further, Industries denies that any alleged tobacco-related wrongs in Canada (which are not admitted but denied) are a proximate or direct result of the committees, conferences, meetings and communications identified in the Claim.
17. With respect to paragraphs 76, 131 and 132 of the Claim, Industries denies that it jointly breached any of the alleged duties or that it is jointly and severally liable for any of the alleged cost of health services.
18. Industries denies that it acted either as principal or as agent for any other Defendant, and specifically denies that ITCAN, or any of its predecessors, or any of the other members of the “B.A.T. Group” that are listed at paragraph 45 of the Claim and at paragraph 41 of the Particulars Response, or any of their predecessors, ever acted as agent for Industries, as alleged in paragraph 46 of the Claim or at all.
19. Industries denies the existence of any conspiracy or that it was a member of any such alleged conspiracy and denies that it conspired or acted in concert with a common design with any other Defendant.
20. In answer to the whole of the Claim, Industries states that it has never carried on business in Alberta and, as a holding company, has never researched, developed, designed, formulated, added substances to, manufactured, advertised, marketed, distributed, promoted or sold cigarettes or other tobacco products in Alberta or anywhere else.
21. Any activity including but not limited to the design, manufacture or promotion of cigarettes or other tobacco products in Alberta by another Defendant or company cannot and does not constitute such activity by Industries. Any plea otherwise is deficient by reason of the absence of the pleading of material facts in support. Industries denies paragraphs 9 and 50 of the Claim and further denies that it is a “manufacturer” pursuant

to Part 2 of the *Crown's Right of Recovery Act*, SA 2009, c C-35 (the "*Act*"), or that the *Act* has any permissible application to it.

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

22. Industries admits that nicotine occurs naturally in the tobacco plant and is a constituent of tobacco smoke. Nicotine has pharmacological properties; it has both a mild stimulant effect and a mild relaxant effect. While the pharmacological effects of nicotine are an important aspect of smoking behaviour, consumers enjoy many sensorial aspects of smoking, including smoke taste, aroma and the sensation resulting from stimulation of nerve endings in the mouth, nose and upper airway (throat "impact"). Many of those sensorial aspects of smoking are caused by non-nicotine components in smoke. Smoking is, for many people, difficult to quit and can be termed an "addiction" or dependency. However, millions of smokers have quit without any medical help, and millions have modified where and when they smoke in the light of differing social norms, and nothing about smoking precludes smokers from either quitting or understanding the serious health risks of smoking. It has been known during all material times, including by persons in Alberta, that smoking is difficult to quit and that smoking poses serious health risks.
23. The number of discrete compounds identified in tobacco smoke has increased rapidly over time and now totals over 4,000, most occurring in minute quantities. Those constituents include the constituents of tar, gases and the emissions listed on packages, such as nicotine. Water vapour is also produced by the combustion, because the burning of any organic material breaks down the chemical components and produces water.
24. Smoking is a cause, in some smokers, of serious diseases. The health risks of smoking are derived from epidemiology, the study of the incidence and distribution of diseases in human populations, and the factors which affect such distribution. Science to date has not been able to identify biological mechanisms which can explain with certainty the statistical findings linking smoking or exposure to smoke with certain diseases, nor has science been able to clarify the role of particular smoke constituents in those disease processes.

25. Industries states that, at all material times, persons in Alberta have been aware of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking. Further, at all material times, the federal government of Canada and the Plaintiff have been aware of the potential health risks of smoking and of the fact that it may be difficult to stop smoking. The actions of, and information provided by, the federal government, the Plaintiff and the public health community have reinforced the awareness of persons in Alberta with respect to smoking and its potential risks. At all material times, Industries had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to stop smoking, than did persons in Alberta, the federal government, the Plaintiff and/or the public health community.

IV. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Breaches of Duty not to Misrepresent or Deceive

26. Industries repeats paragraphs 20 and 21 above and denies that it owed a duty of care to persons in Alberta as alleged in paragraph 52 of the Claim or at all.
27. Industries has not made oral or written representations of any kind as to the risks of smoking or exposure to smoke or as to addiction and/or any other risk or benefit allegedly associated with smoking or with tobacco smoke, either in Alberta or directed at persons in Alberta. Further, any statements or representations by Industries on these issues made outside of Alberta were based on Industries' reasonably and genuinely held beliefs given the scientific state of the art.
28. Further, Industries says that at no time did it make any representations that were false or with wilful blindness, recklessness or negligence as to their truth or falsity.
29. Further, Industries says that at no time did it hide facts, suppress research or discourage the expression of views on the issues set out in paragraph 27 above, as alleged in paragraph 53 of the Claim or at all.
30. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN's executives and not as a proximate result of any determination, direction or co-ordination by Industries.

31. By reason of the foregoing denials, the knowledge alleged in paragraph 52 of the Claim, insofar as it is alleged to be knowledge possessed by Industries, is irrelevant to any claim against Industries and is denied.
32. By reason of the foregoing denials, Industries denies the allegations of breach of duty in paragraphs 52 and 53 of the Claim.

B. Breach of Duty of Care

33. Industries repeats paragraphs 20 and 21 above and denies that it owed a duty of care to persons in Alberta as alleged in paragraph 55 of the Claim or at all.
34. Industries says further that no tobacco products have ever been sold in Alberta which can be regarded as “their” products, and accordingly Industries says that paragraphs 55 and 56 of the Claim have no application to Industries.
35. Industries says further that it did not determine, direct or co-ordinate ITCAN’s product development efforts with respect to the tobacco products ITCAN sold in Alberta or anywhere else. Actions taken or not taken by ITCAN in Canada relating to the design, formulation and manufacture of its tobacco products were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN’s executives and not as a proximate result of any determination, direction or co-ordination by Industries.
36. By reason of the foregoing denials, the knowledge alleged in paragraphs 55(e) and (h) of the Claim, insofar as it is alleged to be knowledge possessed by Industries, is irrelevant to any claim against Industries and is denied.
37. By reason of the foregoing denials, Industries denies the allegations of breach of duty in paragraph 55 and 56 of the Claim. Further, in specific answer to paragraph 56 of the Claim, Industries repeats paragraphs 27 and 28 above.

C. Breach of Duty to Warn

38. Industries repeats paragraphs 20 and 21 above and denies that there are or were any tobacco products sold in Alberta which can be regarded as tobacco products of which Industries was a “purveyor”, and accordingly Industries denies and does not plead to the balance of paragraph 58 of the Claim as it has no application to Industries.

39. To the extent that paragraph 59 of the Claim is founded upon conduct referable to tobacco products of which Industries was a “purveyor”, Industries repeats paragraph 38 above and does not plead to paragraph 59 as it has no application to Investments. Alternatively, to the extent that paragraph 59 alleges that Industries was subject to and breached a duty of care to persons in Alberta in respect of tobacco products other than tobacco products of which Industries was a “purveyor”, then Industries denies the existence and breach of such a duty.
40. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN’s executives and not as a proximate result of any determination, direction or co-ordination by Industries.
41. By reason of the foregoing denials, the knowledge alleged at paragraph 57 of the Claim, insofar as it is alleged to be knowledge possessed by Industries, is irrelevant to any claim against Industries and is denied.

D. Deceptive Marketing Practices – *Competition Act (Canada)*

42. Industries repeats paragraphs 20 and 21 above and denies that there are or were any tobacco products sold in Alberta which can be regarded as “their” products, and accordingly Industries denies and does not plead to the balance of paragraphs 60 and 62 of the Claim as they have no application to Industries.
43. To the extent that paragraphs 61 and 63 of the Claim are founded upon conduct referable to “their” tobacco products, Industries repeats paragraph 42 above and does not plead to paragraphs 61 and 63 as they have no application to Investments. Alternatively, to the extent that paragraphs 60 to 63 allege that Industries was subject to and breached a duty of care to persons in Alberta in respect of tobacco products other than tobacco products of which Industries was a “purveyor”, then Industries denies the existence and breach of such a duty.
44. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to the business, legal and scientific judgments of ITCAN’s executives and not as a proximate result of any direction or instruction by Industries.

45. By reason of the foregoing denials, the knowledge alleged in paragraph 60 of the Claim, insofar as it is alleged to be knowledge possessed by Industries, is irrelevant to any claim against Industries and is denied.

E. Unfair Trading Practices – *Fair Trading Act* (Alberta)

46. Industries repeats paragraphs 20 and 21 above and denies that there are or were any tobacco products sold in Alberta which can be regarded as tobacco products that are or were “promoted and supplied” by Industries, or which can be regarded as “their” tobacco products, and accordingly Industries denies and does not plead to the balance of paragraphs 68, 72 and 73 of the Claim as they have no application to Industries.
47. To the extent that paragraphs 64 to 67, 69 to 71, 74 and 75 of the Claim are founded upon conduct referable to tobacco products sold in Alberta that were “promoted and supplied” by Industries in Alberta, or that were “their” tobacco products, Industries repeats paragraph 46 above and does not plead to paragraphs 64 to 67, 69 to 71, 74 and 75 as they have no application to Industries. Alternatively, to the extent that paragraphs 64 to 67, 69 to 71, 74 and 75 allege that Industries was subject to and breached any duties to persons in Alberta in respect of tobacco products other than tobacco products that were “promoted and supplied” by Investments in Alberta, or that were “their” tobacco products, then Industries denies the existence and breach of such duties.
48. Actions taken or not taken by ITCAN in Canada were undertaken by ITCAN pursuant to its own business, legal and scientific judgments and not as a proximate result of any determination, control, direction or instruction by Industries.
49. By reason of the foregoing denials, the knowledge alleged in paragraphs 66 and 68 of the Claim, insofar as it is alleged to be knowledge possessed by Industries, is irrelevant to any claim against Industries and is denied.

F. Exposure

50. Industries denies that any of the identified individual tobacco-related wrongs (the commission of which is denied) caused or contributed to insured persons starting or continuing to smoke or otherwise being exposed to tobacco smoke and states further in respect of such allegations:

- (a) the decision to commence or continue smoking by any individual insured person is an individual decision taken by that person for reasons specific to that person;
- (b) while Industries accepts that smoking is for many people difficult to quit and it can be termed an “addiction” or dependency, Industries states that the decision by any insured person to continue smoking is a true choice exercised by that person, and denies that an insured person who smokes is deprived, by reason of the effects of nicotine, of the ability to exercise a free choice to stop smoking; and
- (c) while Industries accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, Industries states that at all material times insured persons have been aware of, or had available to them, information which recognises the existence of health risks associated with smoking and the fact that smoking is difficult to quit. Therefore, and without prejudice to its primary case, Industries denies that insured persons relied, reasonably or otherwise, on positions adopted by Industries as to the health risks associated with smoking.

G. Disease and the Risk of Disease

51. Industries states that the risks and incidence of diseases that are associated with smoking vary considerably and may depend upon numerous factors including, but not limited to, the amount of tobacco products smoked per day, years smoked, periods of smoking cessation, and the presence or absence of other risk factors associated with the disease. Further, if Industries had any duties or obligations in Alberta (which is denied), and if Industries breached any such duties or obligations (which is denied), no such breach caused or contributed to:
- (a) any tobacco-related disease in any insured person; or
 - (b) any increased risk of tobacco-related disease in any insured person.

H. No Market Share

52. By reason of the facts and matters pleaded above, in particular at paragraphs 20 and 21, Industries has never possessed any share of the market for tobacco products in Alberta

whether as defined by Part 2 of the *Act* or at all. Accordingly, Industries can have no liability quantifiable by reference to its market share and to the extent that liability under the *Act* is determined by reference thereto then Industries can have no liability at all.

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

A. Conspiracy - Generally

53. In the following sections, Industries pleads as fully as it currently is able to the allegations contained in paragraphs 76 to 117, 131, 132 and 134 of the Claim. Industries reserves the right to amend this Statement of Defence if further particulars become known in the future.
54. If Industries has any liability to the Plaintiff by reason of the matters pleaded at paragraphs 51 to 75 of the Claim, which is not admitted but denied, then the extent of such liability will fall to be determined by reference to the extent of the liability of each individual Defendant, if any, with whom Industries is found to be jointly and severally liable in respect of a tobacco-related wrong. Accordingly, without prejudice to the balance of this Statement of Defence, and without advancing a positive case beyond the scope of that otherwise set out in this Statement of Defence, Industries claims the benefit of all and any defences of all and any Defendants with whom Industries is alleged to be jointly and severally liable for the purposes of avoiding or reducing the amount, if any, for which each such Defendant and, hence, Industries is alleged to be jointly and severally liable.
55. Without prejudice to the foregoing, in the generality in respect of paragraphs 76 to 117, 131, 132 and 134 of the Claim, Industries denies that it:
- (a) conspired with any other Defendant with respect to the commission of any tobacco-related wrong, whether directly or through the industry associations identified in the Claim; or
 - (b) acted in concert with a common design with any other Defendant with respect to the commission of any tobacco-related wrong, whether directly or through the industry associations identified in the Claim; or

- (c) was involved either as principal or as agent for any other Defendant or any other person or entity with respect to the commission of any tobacco-related wrong; or
 - (d) was the alter ego and guiding mind directing any other Defendant or any other entity with respect to the commission of any tobacco-related wrong or any other activities relating to the alleged conspiracy; or
 - (e) acted so as to render it jointly or vicariously liable with any other Defendant with respect to any tobacco-related wrong, whether pursuant to section 44(2)(b)(iii) of the *Act* or otherwise pursuant to section 44 of the *Act*, or at all.
56. Further, Industries repeats paragraphs 14 to 17 above and denies that it determined, directed or co-ordinated the policies, systems or positions of the Defendant ITCAN, as alleged or at all.
57. Further, the Plaintiff has no claim in respect of the alleged conspiracy or concerted action because the Plaintiff agreed to and adopted the design of what it alleges is a conspiracy or concerted action and became a party thereto and carried out acts in Alberta in furtherance thereof that the Plaintiff alleges are unlawful.
58. Further, the Plaintiff has profited from the sale of tobacco products and if any of the Defendants has committed a tobacco-related wrong, which is not admitted but denied, then the Plaintiff has directly benefitted from the tax revenue raised by each and every purchase of tobacco products which was entered into in consequence of that tobacco-related wrong. Accordingly, the Crown's cost of health service described in paragraphs 7 and 143 of the Claim must be adjusted to reflect the financial benefits which the Plaintiff has obtained by reason of the foregoing.

B. Conspiracy - Internationally

59. Industries states that it never conspired or acted in concert with any other Defendants including any of the Lead Companies. Industries further states that the risks associated with smoking have been widely known in Alberta, as elsewhere, for over 50 years, that information about the risks of smoking was communicated to persons in Alberta through a variety of sources and that Industries had no materially greater awareness of the potential health risks associated with smoking and of the fact that it may be difficult to

stop smoking, than did persons in Alberta, the federal government, the Plaintiff and/or the public health community.

60. Industries denies that it formed, established, joined or was ever a member of any of the industry organizations identified in the Claim. More particularly, Industries was never a member of, never undertook any activities through or with, never participated in meetings of, and never entered into agreements through or with the TI, the Tobacco Industry Research Committee (“**TIRC**”), the Council for Tobacco Research (“**CTR**”), the Centre for Co-operation in Scientific Research Relative to Tobacco (“**CORESTA**”), the Tobacco Industry Research Commission, the Tobacco Research Council (“**TRC**”), the Tobacco Manufacturers’ Standing Committee (“**TMSC**”), the Committee for Indoor Air Research, the International Committee on Smoking Issues (“**ICOSI**”), the International Tobacco Information Centre/Centre International d’Information du Tabac (“**INFOTAB**”), the Tobacco Documentation Centre (“**TDC**”) or the CTMC.
61. None of the organizations referred to in paragraphs 76 to 103 of the Claim was under the direction or control of Industries and neither was any of those organizations ever used by Industries to determine, direct, control or co-ordinate the operations, systems, policies or positions of ITCAN.
62. With respect to paragraph 87 of the Claim, Industries repeats paragraph 29 above and denies the allegations therein.

C. Conspiracy – Inter-provincially throughout Canada

63. Industries denies paragraph 104 of the Claim, to the extent the allegations therein are directed at Industries, and states that:
- (a) with respect to paragraph 104(a) of the Claim, Industries did not disseminate in Canada the language and message of the “Frank Statement to Cigarette Smokers”, in 1954 or at any other time;
 - (b) with respect to paragraphs 104(b) and (c) of the Claim, Industries did not enter into the alleged agreements in or about 1962;
 - (c) with respect to paragraph 104(d) of the Claim, Industries did not make representations to the Canadian Medical Association in 1963;

(d) with respect to paragraph 104(e) of the Claim, Industries was not involved in the formation of the Ad Hoc Committee on Smoking and Health in or about 1963; and

(e) with respect to paragraph 104(f) of the Claim, Industries did not make representations in or about 1969 to the Canadian federal House of Commons or the Standing Committee on Health, Welfare and Social Affairs.

64. Industries was not involved in the formation of the TI or the CTMC. The TI was a US organization whose members were from the US tobacco industry. The CTMC was a Canadian organization whose members were from the Canadian tobacco industry. Industries has never been a member of the TI or the CTMC. Industries has never controlled or co-ordinated the activities of, or positions taken by, the TI or the CTMC.

65. Industries denies paragraphs 107 and 108 of the Claim. Member companies of the CTMC, which did not include Industries, exclusively decided issues relating to smoking and health including, in particular, the approval and funding of CTMC research. Industries denies that it ever engaged in any co-ordinated efforts with the CTMC (or any other defendant or tobacco industry organisation) as alleged in the Claim.

66. To the extent that the allegations in paragraph 109 are directed at Industries, Industries denies that it destroyed documents detailing the research described, that it denied the existence of the research described, or that it conspired to do either of those things.

67. To the extent that the allegations in paragraphs 112 of the Claim and paragraph 151 of the Particulars Response are directed at Industries, Industries denies that either the TI or the CTMC ever acted as agent for Industries.

VI. RELIEF

68. In answer to the entire Claim, Industries states that the costs that have been incurred or will be incurred by the Plaintiff in respect of health services for insured persons resulting from tobacco-related disease or the risk thereof have not been and will not be caused or contributed to by exposure of insured persons to tobacco products attributable to the tobacco-related wrongs alleged. Further, and in particular:

- (a) if Industries breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to, or will cause or contribute to, the cost of health services as alleged or at all;
- (b) if the Plaintiff has incurred the cost of health services as alleged or at all, which is denied, the cost of health services was caused by one or more of the following:
- i. requirements of the statutes and regulations that were voluntarily enacted by the Plaintiff and which provide for health care in Alberta, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in the definition of “health services” in subparagraphs 41(1)(e)(i) to (vii) of the *Act*;
 - ii. the conduct and acts or omissions of the Plaintiff as further particularized herein;
 - iii. the conduct and acts or omissions of individual insured persons as further particularized herein;
 - iv. disease or risk of disease in individual insured persons unrelated to smoking tobacco products or exposure to tobacco smoke; and
 - v. the manufacture, promotion and sale of tobacco products by persons other than the Defendants, including manufacturers located on First Nations reserves, whose tobacco products are packaged and sold to persons in Alberta in breach of duties owed to them.
- (c) if the Plaintiff has incurred or will incur the cost of health services as alleged, which is denied, then the Plaintiff has made no expenditure and suffered no loss for which it is legally entitled to be compensated by reason of any or all of the following:
- i. that cost constitutes the utilization of a pre-determined budget for the provision of health care generally and is the product of decisions by the Plaintiff based upon, *inter alia*, political expediency, policy considerations and the availability of finance;
 - ii. that cost reflects monies received from the government of Canada by means of transfer payments, conditional grants and shared-cost programmes;

- iii. that cost is or will be exceeded by tax revenues received by the Plaintiff from the sale of tobacco products in Alberta alleged to have been caused by the tobacco-related wrongs alleged; and
- iv. that cost is not influenced by the tobacco-related wrongs alleged.

VII. THE PLAINTIFF'S OWN CONDUCT

69. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Alberta and have been supervised, regulated and controlled by the Plaintiff and the government of Canada. Within that legal and regulatory framework, if the Plaintiff has incurred or will incur the cost of health services that have been or will be provided to insured persons who have suffered tobacco-related disease, as alleged (which is denied), Industries states that such costs were caused, and the Plaintiff's claim to recover such costs is subject to complete defences, by reason of the Plaintiff's own conduct and knowledge.
70. At material times and at least since 1950, the Plaintiff, through its ministers, ministries, departments, servants and agents, has been apprised of the information that was available, according to the state of the art of the day, regarding the health risks associated with smoking tobacco and exposure to tobacco smoke. Despite its knowledge of those risks, the Plaintiff:
- (a) continued to license and regulate the production, manufacture, advertising, promotion, distribution and sale of tobacco products in Alberta and insured persons have relied upon the Plaintiff's activities in such areas in relation to their decisions to take up and continue smoking;
 - (b) has sought to benefit financially from the sale of tobacco products in Alberta, and has so benefited, by taking advantage of its ability to impose and to collect heavy taxation and licensing fees from, *inter alia*, manufacturers, distributors (both wholesalers and retailers) and consumers of tobacco products and, in particular but not exclusively, has justified the fact and scale of the taxation and licensing fees by reference to the health risks associated with smoking tobaccos and exposure to tobacco smoke;

- (c) delayed implementing, and failed to enforce, laws prohibiting the sale to and use of tobacco products by people under the legal age for purchasing them as defined by law from time to time; and
 - (d) has voluntarily undertaken the obligations of paying for the cost of health services, including such costs as it alleges are caused or contributed to by tobacco smoking or exposure to tobacco smoke, and has set its taxation and health care policies accordingly.
71. Further, Industries states that manufacturers of tobacco products in Canada complied at all times with government requests, mandates and directions (including from the Plaintiff) in respect of, *inter alia*,
- (a) the type of tobacco that would be purchased (which tobacco was developed by the government of Canada);
 - (b) the type of tobacco products that would be sold;
 - (c) product modifications;
 - (d) whether tobacco products require health warnings, and the content, size and placement of those warnings;
 - (e) the type of promotion that would be permitted; and
 - (f) where tobacco products could be sold and used,
- and in doing so, acted reasonably in all the circumstances and committed no “tobacco-related wrong” in these respects or otherwise.
72. Further, Industries states that if the Plaintiff has incurred the cost of health services as alleged or at all (which is denied) then that cost was caused or contributed to, in whole or in part, by the Plaintiff’s own acts or omissions as pleaded herein, and not any act or omission of Industries. Industries pleads and relies upon the provisions of the *Contributory Negligence Act*, RSA 2000, c C-27.
73. Further, Industries states that by reason of the facts set out herein and the knowledge, conduct and delay of the Plaintiff and the prejudice thereby caused to Industries, the Plaintiff is barred in law and in equity from advancing the claims made in the Claim

against Industries. Industries also pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco-related wrongs alleged, including (if applicable) the *Limitations Act*, RSA 2000, c L-12.

74. Further, Industries states that, if the Plaintiff has incurred the cost of health services resulting from tobacco-related disease or the risk of tobacco-related disease as alleged (which is denied), the Plaintiff has mitigated its loss and such costs must be adjusted to reflect the financial benefits the Plaintiff thereby obtained.
75. Without prejudice to the foregoing, Industries repeats paragraph 69 above and states that the acts, errors and omissions pleaded therein represent failures by the Plaintiff to act reasonably to mitigate the “cost of health services” as alleged, and any such costs must be adjusted to reflect this failure.

VIII. THE CONDUCT OF INDIVIDUAL INSURED PERSONS

76. If the Plaintiff has incurred the cost of health services as alleged (which is denied), the cost was caused by, and the Plaintiff’s claim to recover that cost is subject to complete defences by reason of, the conduct of individual insured persons, including their voluntary decisions to commence or to continue smoking with awareness of the associated risks.
77. At all material times insured persons who smoke or have smoked tobacco products were aware of the risks associated with smoking.
78. Insured persons became, or should have become, aware of the risks associated with smoking at all material times by various means, including, without limitation, one or more of the following:
- (a) discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;
 - (b) education programmes including courses, seminars and lectures and educational literature and other media;
 - (c) oral and written warnings from physicians and other health practitioners and public health authorities;

- (d) oral and written warnings from family members, friends and other acquaintances;
 - (e) common general understandings and historical beliefs;
 - (f) warnings on the packaging of tobacco products, as required for decades pursuant to federal and provincial legislation and regulations and/or voluntary codes of compliance by Canadian tobacco manufacturers; and
 - (g) mandatory displays, signs and other warnings required by provincial legislation in premises where sales of tobacco products take place.
79. By reason of the foregoing, Industries states that insured persons who smoke or have smoked tobacco products were aware of, or should have been aware of, the associated risks at all material times.
80. Insured persons who commenced or continued to smoke tobacco products did so with awareness of the risks associated with smoking and voluntarily consented to accept such risks.
81. The cause in fact and in law of the commencement and continuation of the use of tobacco products by insured persons was a voluntary choice to smoke tobacco products with awareness of the associated risks. Industries had and has no legal duty to such persons, or, alternatively, no legal duty that has not been fulfilled.
82. Further, the cause of (i) an individual's choice to smoke or to continue to smoke or (ii) disease consists not of alleged breaches of duty but, rather, of some or all of the following:
- (a) individual choices and decisions of the smoker;
 - (b) requests, mandates and directions from the Plaintiff and the government of Canada, and Industries repeats and relies on paragraphs 69 to 71 herein;
 - (c) the many and varied causes of certain diseases including genetics, stress, excess weight, alcohol, environmental factors and other consumer products; and
 - (d) the manufacture, promotion and sale of tobacco products by persons other than Defendants, including manufacturers located on First Nations reserves, whose

tobacco products are packaged and sold to persons in Alberta in breach of duties owed to them.

83. Industries denies that insured persons began, continued or were unable to stop smoking by reason of any of the alleged breaches of duty of Industries (which are denied) or that any such breach of duty caused or contributed to any alleged tobacco-related disease or increased risk of tobacco-related disease in any insured person or the cost of health services.
84. Industries states that at all material times insured persons have been, or should have been, aware of health risks associated with smoking tobacco. Accordingly, such persons voluntarily assume such risks when they decide to commence or continue smoking.
85. Further, Industries states that if the Plaintiff has incurred the cost of health services as alleged (which is denied) then that cost was caused or contributed to, in whole or in part, by the acts or omissions of individual insured persons as pleaded herein, and not any act or omission of Industries. Industries pleads and relies upon the provisions of the *Contributory Negligence Act*, RSA 2000, c C-27.
86. Further, Industries states that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to Industries, the Plaintiff is barred at law and in equity from advancing the claims made in the Claim against Industries.
87. Industries pleads and relies upon the provisions of the limitation of actions statute (or statutes) applicable on proper choice of law analysis to the tobacco-related wrongs alleged in respect of the claims of any individual insured person upon which the Plaintiff's cause of action is alleged to rest, including (if applicable) the *Limitations Act*, RSA 2000, c L-12.
88. Further and in the alternative, Industries states that, if the Plaintiff has incurred the cost of health services as alleged (which is denied), individual insured persons have failed to act reasonably to assist the Plaintiff to mitigate that cost.

IX. PARLIAMENTARY PRIVILEGE

89. At various places in the Claim and the Particulars Response, the Plaintiff improperly references submissions made before a committee of the House of Commons, or presentations to Parliamentary legislative committees. Such statements made in the context of Parliamentary proceedings are subject to common law and statutory privilege protecting Parliamentary freedom of speech. This blanket privilege covers statements made both in Chambers and in committee meetings, and extends to non-Member witnesses. The privilege is absolute.

Any matters that defeat the claim of the Plaintiff:

90. The Claim is barred by the provisions of the *Limitations Act*, RSA 2000 c L-12 (if applicable).

Remedy sought:

91. Industries requests that the claim against it be dismissed with costs on a solicitor client basis or, alternatively, on a party-party basis.