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JUDICIAL CENTRE
OF CALGARY

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

PARTY FILING THIS DOCUMENT CARRERAS ROTHMANS LIMITED

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Statement of facts relied on:

I. INTRODUCTION

1. The Defendant Carreras Rothmans Limited (hereinafter “**CRL**” or the “**Defendant CRL**”) denies, or where applicable does not admit, all allegations contained in the Statement of Claim (the “**Claim**”), unless and except where expressly admitted herein, and puts the Plaintiff to the strict proof thereof.
2. In general answer to the whole of the Claim, CRL denies that it took part in any conspiracy or concert of action with a common design as alleged or at all and specifically denies that it has owed or breached any common law, equitable or statutory duty or obligation to persons in Alberta as alleged in the Claim. CRL denies that any such alleged breach of duty or obligation caused any population of insured persons to commence or continue to smoke or otherwise use tobacco products or to be exposed to tobacco smoke. CRL specifically denies that it acted in a manner that wrongfully caused any person in Alberta to commence or continue smoking or otherwise using tobacco products or the Plaintiff to incur the cost of health services resulting from tobacco-related disease or the risk thereof.
3. CRL adopts headings used in the Claim but does not thereby admit any facts or allegations contained within such headings. Except where indicated to the contrary, CRL adopts on the same basis the defined terms used in the Claim.
4. Except where expressly admitted below, CRL denies the allegations contained in paragraphs 3 to 9, 15, 33, 44 to 46, 50 to 81, 83, 84(d), 85 to 104, 107 to 109, 112, 118 to 120, 131, 132 and 136 to 143 of the Claim. In respect of paragraph 3 and allegations throughout the Claim, CRL denies that it has any predecessors, parents, affiliates or related companies for whom it is legally responsible.
5. CRL has no knowledge of the facts alleged in paragraphs 10 to 14, 16 to 23, 25 to 32, 34 to 43, 47 to 49, 82, 84(a)-(c)(e)-(k), 105, 106, 110, 111, 113 to 117, 121 to 130 and 133 to 135 of the Claim, and puts the Plaintiff to the strict proof thereof.
6. CRL denies that the Plaintiff is entitled to the relief sought in paragraphs 1 and 144 of the Claim.

7. In respect of paragraph 2 of the Claim, CRL repeats paragraph 3 above.

II. THE DEFENDANTS

8. In respect of paragraphs 9 and 50 of the Claim, CRL denies that it is a “Manufacturer”.

9. In respect of paragraph 15 of the Claim, the Defendant CRL admits that it has a registered office at Globe House, 1 Water Street, London, England but says that it is incorporated pursuant to the laws of England and Wales.

10. The Defendant CRL was incorporated in 1905 as John Sinclair, Limited. In September of 1972, by way of a corporate name change, it became known as Carreras Rothmans Limited.

11. Since March of 1984 the Defendant CRL has been dormant in accordance with the meaning ascribed to that term in the *Companies Act* (U.K.), as amended.

12. The Claim as supplemented by the Plaintiff’s Response to Requests for Particulars (the “**Particulars Response**”) indicates that the Plaintiff’s claim is directed at a corporate entity (the “**Other Rothmans Entity**”) that is not the Defendant CRL. CRL says, and the fact is, that:

(a) it never had subsidiary companies that included Rothmans Inc and its predecessors or Rothmans, Benson & Hedges Inc and its predecessors;

(b) it does not have predecessors that include Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada Limited and/or Carreras Limited;

(c) it is not, and never was, a predecessor and amalgamating company to the Defendant Rothmans, Benson & Hedges Inc.;

(d) it is not now Rothmans, Benson & Hedges Inc.; and

(e) it does not have, nor has it ever had, predecessors, parents or affiliates in Canada.

13. CRL says that the Plaintiff’s allegations as pleaded are directed at the Other Rothmans Entity and disclose no cause of action against the Defendant CRL.

14. CRL says further that:

- (a) the Plaintiff's allegations relating to acts or omissions of alleged predecessors of the Other Rothmans Entity, including Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada Limited and Carreras Limited, disclose no cause of action against the Defendant CRL; and
 - (b) the Plaintiff's allegations relating to acts or omissions of alleged parents, affiliates or related companies of the Other Rothmans Entity disclose no cause of action against the Defendant CRL.
16. CRL denies that the "Rothmans Group" is a designation with any legal significance whatsoever and makes no admissions as to the membership of the "Rothmans Group".
 17. CRL 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, CRL denies that it was in such relation to any of the companies identified at paragraph 45 of the Claim and at paragraph 17 of the Plaintiff's Particulars Response. CRL denies that it "took the lead in the Conspiracy", as alleged in paragraph 84(d) of the Claim, or at all.
 18. CRL specifically denies paragraphs 77, 83 and 118 to 120 of the Claim. Other companies in the "Rothmans Group", including Rothmans of Pall Mall Canada Limited and other members of the "Rothmans Group" in Canada, developed their own policies, systems and positions pursuant to their own respective business, legal and scientific judgments and not as a proximate result of any determination, direction or co-ordination by CRL.
 19. Further, CRL denies that any tobacco-related wrongs committed in Canada (which are not admitted but denied) are a proximate or direct result of the meetings, communications or structures identified in the Claim.
 20. In respect of paragraphs 76, 131 and 132 of the Claim, CRL 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.
 21. CRL denies that it acted either as principal or as agent for any other Defendant, and specifically denies that either Rothmans of Pall Mall Canada Limited or any of the other

members of the “Rothmans Group” that are listed at paragraph 45 of the Claim and paragraph 17 of the Particulars Response, or any of their predecessors, ever acted as agent for CRL, as alleged in paragraph 46 of the Claim and/or paragraph 149 of the Particulars Response or at all.

22. CRL 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.
23. In answer to the whole of the Claim, CRL says, and the fact is, it does not carry on, and has never carried on, business in Alberta and has never designed, formulated, added substances to, manufactured, promoted, marketed, advertised, distributed or sold cigarettes or other tobacco products in Alberta.
24. CRL says that 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 CRL. Any plea otherwise is deficient by reason of the absence of a pleading of material facts in support.

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

25. CRL 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 tobacco 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 tobacco 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 that smoking is difficult to quit and that smoking poses serious health risks.

26. 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.
27. 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.
28. CRL says 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, CRL 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

29. CRL repeats paragraphs 23 and 24 above and denies that it owes, or has ever owed, a duty to persons in Alberta as alleged in paragraphs 52, 55, 58, 63 and 75 of the Claim or at all.
30. Further, and in the alternative, to the extent that CRL owes or owed a duty to persons in Alberta (which is not admitted but denied), CRL complied with and discharged any such duty, whether based in common law, equity or statute.

31. Further, and in the alternative, if CRL breached any duty to persons in Alberta (which is not admitted but denied), CRL says no such breach resulted in persons in Alberta starting or continuing to smoke tobacco products manufactured or promoted by the Defendants, or being exposed to tobacco smoke, or suffering tobacco-related disease or an increased risk of tobacco-related disease.

A. Breaches of Duty not to Misrepresent or Deceive

32. CRL repeats paragraphs 23 and 24 and 29 to 31 above and denies the allegations in paragraphs 52 and 53 of the Claim.

33. In further answer to paragraphs 52 and 53 of the Claim, CRL says it 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 on these issues made by CRL outside of Alberta were based on CRL's reasonably and genuinely held beliefs given the scientific state of the art.

34. CRL says further 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.

35. CRL says further that at no time did it hide facts, suppress research or discourage the expression of views on the issues set out in paragraph 33 above, as alleged in paragraph 53 of the Claim or at all.

36. Actions taken or not taken in Canada by Rothmans of Pall Mall Canada Limited or any other member of the "Rothmans Group" in Canada were undertaken by each such entity pursuant to its own business, legal and scientific judgments and not as a proximate result of any determination, direction or co-ordination by CRL.

37. 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 CRL, is irrelevant to any claim against CRL and is denied.

B. Breach of Duty of Care

38. CRL repeats paragraphs 23 and 24 and 29 to 31 above and denies the allegations in paragraphs 54 to 56 of the Claim. Further, in specific answer to paragraph 56 of the Claim, CRL repeats paragraph 33 and 34 above.
39. CRL says further that no tobacco products have been sold in Alberta which can be regarded as “their” tobacco products, and accordingly CRL says paragraphs 55 and 56 of the Claim have no application to CRL.
40. Further, CRL says that it did not determine, direct or co-ordinate any of the efforts of Rothmans of Pall Mall Canada Limited or any other member of the “Rothmans Group” in Canada relating to the addition of substances to or the design, formulation, manufacture or promotion of tobacco products any of those entities sold in Alberta. Each such entity undertook its own research and development with respect to specific products it sold in Alberta, and determined the appropriate product development and marketing for products it sold in Alberta, based on its specific knowledge and appreciation of federal and provincial business, legal and consumer requirements and circumstances.
41. 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 CRL, is irrelevant to any claim against CRL and is denied.

C. Breach of Duty to Warn

42. CRL repeats paragraphs 23 and 24 and 29 to 31 above and denies the allegations in paragraphs 58 and 59 of the Claim.
43. CRL says further that no tobacco products have been sold in Alberta which can be regarded as tobacco products of which CRL was a “purveyor”, and accordingly CRL says paragraphs 58 and 59 of the Claim have no application to CRL.
44. Further, CRL says that actions taken or not taken in Canada by Rothmans of Pall Mall Canada Limited or any other member of the “Rothmans Group” in Canada were undertaken by each such entity pursuant to its own business, legal and scientific judgments and not as a proximate result of any determination, direction or co-ordination by CRL.

45. By reason of the foregoing denials, the knowledge alleged in paragraph 57 of the Claim, insofar as it is alleged to be knowledge possessed by CRL, is irrelevant to any claim against CRL and is denied.

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

46. CRL repeats paragraphs 23 and 24 and 29 to 31 above and denies the allegations in paragraphs 60 to 63 of the Claim.
47. CRL says further that no tobacco products have been sold in Alberta which can be regarded as “their” tobacco products, and accordingly CRL says paragraphs 60 to 63 of the Claim have no application to CRL.
48. Further, CRL says that actions taken or not taken in Canada by Rothmans of Pall Mall Canada Limited or any other member of the “Rothmans Group” in Canada were undertaken by each such entity pursuant to its own business, legal and scientific judgments and not as a proximate result of any determination, direction or co-ordination by CRL.
49. 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 CRL, is irrelevant to any claim against CRL and is denied.

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

50. CRL repeats paragraphs 23 and 24 and 29 to 31 above and denies the allegations in paragraphs 64 to 75 of the Claim.
51. CRL says further that no tobacco products have been sold in Alberta which can be regarded as tobacco products that CRL “promoted and supplied” in Alberta, or which can be regarded as “their” tobacco products, and accordingly CRL says that paragraphs 64 to 75 of the Claim have no application to CRL.
52. Further, CRL says that actions taken or not taken in Canada by Rothmans of Pall Mall Canada Limited or any other member of the “Rothmans Group” in Canada were undertaken by each such entity pursuant to its own business, legal and scientific

judgments and not as a proximate result of any determination, direction or co-ordination by CRL.

53. 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 CRL, is irrelevant to any claim against CRL and is denied.

F. Exposure

54. CRL 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 says further in respect of such allegations:

- (a) the decision to commence or to continue smoking by any individual insured person is an individual decision taken by that person for reasons specific to that person;
- (b) while CRL accepts that smoking is for many people difficult to quit and it can be termed an “addiction” or dependency, CRL says 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 CRL accepts that the nature and amount of material available to insured persons regarding the risks associated with smoking has changed over time, CRL says 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, CRL denies that insured persons relied, reasonably or otherwise, on positions adopted by CRL as to the health risks associated with smoking.

G. Disease and the Risk of Disease

55. CRL says 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, amount of tobacco smoked per day, years smoked, periods of smoking cessation and the

presence or absence of other risk factors associated with the disease. Further, if CRL had any duties or obligations in Alberta (which is denied), and if CRL 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

56. By reason of the facts and matters pleaded above, in particular at paragraphs 23 and 24, CRL has never possessed any share of the market for tobacco products in Alberta whether as defined by Part 2 of the *Crown's Right of Recovery Act*, SA 2009, c C-35 (the "*Act*") or at all. Accordingly, CRL 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 CRL can have no liability at all.

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

A. Conspiracy - Generally

57. In the following sections, CRL pleads as fully as it is currently able to the allegations contained in paragraphs 76 to 112, 118 to 120, 131, 132 and 136 of the Claim. CRL reserves the right to supplement this Statement of Defence if further particulars become known.
58. If CRL 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 CRL 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, CRL claims the benefit of all and any defences of all and any Defendants with whom CRL 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, CRL is alleged to be jointly and severally liable.

59. Without prejudice to the foregoing, in the generality in respect of paragraphs 76 to 112, 118 to 120, 131, 132 and 136 of the Claim, CRL 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 in respect of 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.
60. Further, CRL repeats paragraphs 18 to 20 above and denies that it determined, directed or co-ordinated the policies, systems or positions of, or conspired or acted in concert with, Rothmans of Pall Mall Canada Limited or any other member of the “Rothmans Group” in Canada, as alleged or at all.
61. CRL denies the existence of the alleged conspiracy or concert of action. In the alternative, the Plaintiff has no claim in respect of the alleged conspiracy or concert of 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.
62. 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 cost of health services 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

63. CRL says that it never conspired or acted in concert with any other Defendant including any of the Lead Companies, as alleged or at all. CRL says further 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 CRL 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.
64. In respect of paragraph 87 of the Claim, CRL repeats paragraph 35 above and denies the allegations therein.

C. Conspiracy – Inter-provincially throughout Canada

65. CRL says that it never conspired or acted in concert with, or co-ordinated the positions on cigarette smoking and health issues or alleged associated misrepresentations of, any of the Defendants in Canada including Rothmans of Pall Mall Canada Limited or any other member of the “Rothmans Group” in Canada or the Canadian Tobacco Manufacturers’ Council (the “CTMC”), as alleged or at all.
66. To the extent that the allegations in paragraph 112 of the Claim and paragraph 151 of the Particulars Response are directed at CRL, CRL denies that either the Tobacco Institute or the CTMC ever acted as agent for CRL.

VI. RELIEF

67. In answer to the whole of the Claim, CRL says 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 CRL 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 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 services 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

68. 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), CRL says 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.
69. 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 products 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 tobacco 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 costs 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.
70. Further, CRL says 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.
71. Further, CRL says 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 by any act or omission of CRL. CRL pleads and relies upon the provisions of the *Contributory Negligence Act*, RSA 2000, c C-27.

72. Further, CRL says that by reason of the facts set out herein and the knowledge, conduct and delay of the Plaintiff and the prejudice thereby caused to CRL, the Plaintiff is barred in law and in equity from advancing the claims made in the Claim against CRL. CRL 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.
73. Further, CRL says 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.
74. Without prejudice to the foregoing, CRL repeats paragraph 68 above and says 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

75. If the Plaintiff has incurred the cost of health services as alleged, which is denied, then that 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.
76. At all material times insured persons who smoke or have smoked tobacco products were, or should have been, aware of risks associated with smoking.
77. Insured persons became, or should have become, aware of risks associated with smoking at all material times by various means including, without limitation, one or more of the following:
- (a) discussions and writing 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, 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.
78. By reason of the foregoing, CRL says that insured persons who smoke or have smoked tobacco products were, or should have been, aware of the associated risks at all material times.
79. 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.
80. 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 with awareness of the associated risks. CRL had and has no legal duty to such persons or, alternatively, no legal duty that has not been fulfilled.
81. Further, the cause of (i) an individual insured person'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 CRL repeats and relies on paragraphs 68 to 70 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.
82. CRL denies that any insured persons began, continued or were unable to stop smoking by reason of any of the alleged breaches of duty of CRL (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 to the cost of health services.
83. Further, CRL says that at all material times individual insured persons have been, or should have been, aware of health risks associated with smoking tobacco products. Accordingly, such persons voluntarily assume such risks when they decide to commence and continue smoking.
84. Further, CRL says 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 by any act or omission of CRL. CRL pleads and relies upon the provisions of the *Contributory Negligence Act*, RSA 2000, c C-27.
85. Further, CRL says that by reason of the facts set out herein and the knowledge and conduct of insured persons and the prejudice thereby caused to CRL, the Plaintiff is barred at law and in equity from advancing the claims made in the Claim against CRL.
86. CRL pleads and relies upon 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.
87. Further and in the alternative, CRL says 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

88. 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:

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

Remedy sought:

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