

**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

**STATEMENT OF DEFENCE OF
CARRERAS ROTHMANS LIMITED**

1. The defendant Carreras Rothmans Limited (hereinafter "CRL" or the "defendant CRL") denies, or where applicable does not admit, all allegations contained in the Amended Fresh as Amended Statement of Claim (the "Statement of 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 Statement of Claim, CRL denies:
 - (a) that it took part in any conspiracy, concert of action or common design as alleged or at all; or
 - (b) that it owed or breached any common law, equitable or statutory duty or obligation to persons in Ontario as alleged in the Statement of Claim; or
 - (c) that any such alleged breach of duty or obligation caused any population of insured persons to smoke cigarettes, to continue to smoke cigarettes or to be exposed to cigarette smoke; or

- (d) that it acted in a manner that wrongfully caused any person in Ontario to smoke or continue smoking or the plaintiff to incur the cost of health care benefits resulting from tobacco related disease or the risk thereof.
3. CRL adopts headings used in the Statement of 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 Statement of Claim.
4. Except where expressly admitted below, CRL denies the allegations contained in paragraphs 9, 20, 40 to 44, 50 to 55, 68, 73.2(g), 73.3(f), 73.4(b)(g), 77, 79, 86 to 107, 115, 117 to 120, 141 and 148 to 150 of the Statement of Claim.
5. CRL has no knowledge in respect of the allegations contained in paragraphs 7, 8, 10 to 19, 21 to 39, 45 to 49, 56 to 67, 69 to 73.1, 73.2(a)-(f), 73.3 (a)-(e), 73.4(a)(c)-(f), 74 to 76, 78, 80 to 85, 108 to 114, 116, and 121 to 140 and 142 to 147 of the Statement of Claim and puts the plaintiff to the strict proof thereof.

I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

6. CRL denies that the plaintiff is entitled to the relief sought in paragraphs 1 to 4 and 149 of the Statement of Claim.
7. In respect of paragraphs 5 and 6 of the Statement of Claim, CRL repeats paragraph 3 above.

B. The Defendants

8. In respect of paragraph 9 of the Statement of Claim, the defendant CRL:
- (a) 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; and

- (b) says, and the fact is, it was incorporated in 1905 as John Sinclair, Limited, and became known as Carreras Rothmans Limited as the result of a corporate name change on September 7, 1972.
9. Since March 31, 1984 the defendant CRL has carried on no business of any kind, and has been dormant in accordance with the meaning ascribed to that term in the *Companies Act* (U.K.), as amended. Consequently, CRL cannot have been a participant in any conduct which took place after March 31, 1984 and accordingly CRL denies that it was a participant in any conduct alleged to have taken place after that date and which forms the basis of allegations made in the Statement of Claim.
10. The Statement of Claim as supplemented by the Response to Demands for Particulars provided on September 15, 2014 (the “Particulars”) and by the Further Particulars provided on March 3, 2016 pursuant to the Order of Master Short (the “Further Particulars”) 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:
- (a) it has never had subsidiary companies that included Rothmans Inc or Rothmans, Benson & Hedges Inc or any of their predecessors;
- (b) it does not have predecessors in interest that include Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada or Carreras Limited; and
- (c) it does not have, nor has it ever had, subsidiary companies or predecessors in interest in Canada.
11. 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.
12. CRL says further that:
- (a) the plaintiff’s allegations relating to acts or omissions of alleged subsidiary companies of the Other Rothmans Entity disclose no cause of action against the defendant CRL; and
- (b) the plaintiff’s allegations relating to acts or omissions of alleged predecessors in interest of the Other Rothmans Entity, including Rothmans of Pall Mall Limited,

Rothmans of Pall Mall Canada and Carreras Limited, disclose no cause of action against the defendant CRL.

13. In respect of paragraph 20 of the Statement of Claim, CRL denies that it has any predecessors in interest for whom it is in law responsible, and denies that it is a “manufacturer”.
14. In respect of paragraphs 86 and 150 of the Statement of 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 care benefits.
15. CRL denies that it acted either as principal or as agent for any other defendant, and specifically denies that Rothmans Inc or any of its predecessor corporations ever acted as agent for CRL, as alleged in paragraph 118.2 of the Statement of Claim or at all. In respect of the allegation in section 5 of the Further Particulars that the agency relationship alleged in paragraph 118.2 of the Statement of Claim relates to “the parent/subsidiary relationship”, CRL repeats paragraph 10(a) above and denies that Rothmans Inc or any of its predecessor corporations was a subsidiary of CRL.
16. 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 or with a common design with any other defendant.
17. CRL says that it does not carry on, and has never carried on, business in Ontario and has never manufactured, promoted, marketed, advertised, distributed or sold cigarettes in Ontario.
18. Any activity including but not limited to the design, manufacture, promotion, marketing, advertising, distribution or sale of cigarettes in Ontario by another defendant or company cannot and does not constitute the action of CRL. Any plea otherwise is deficient by reason of the absence of a pleading of material facts in support.

II. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

Multinational Tobacco Enterprises

19. CRL denies, if it is alleged, that it is or ever was a Multinational Tobacco Enterprise.
20. 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”.
21. CRL is unable to determine what, if any, legal or other significance the plaintiff ascribes to the term “Lead Companies” as defined in paragraphs 42 and 43 of the Statement of Claim. Without prejudice to the foregoing, CRL denies that it was in such relation to any of the companies identified in paragraph 44 of the Statement of Claim, and specifically denies the allegation that it has directed or co-ordinated within those companies common policies relating to smoking and health.
22. From time to time during the period between September 7, 1972 and March 31, 1984, CRL had dealings with the Canadian company then named Rothmans of Pall Mall Canada Limited (“RPMCL”). CRL never had dealings with any Canadian company named Rothmans Inc or Rothmans, Benson & Hedges Inc or Rothmans of Pall Mall Limited. Further, it is specifically alleged in paragraph 44 of the Statement of Claim that such companies were not incorporated, or if incorporated were not named Rothmans Inc or Rothmans, Benson & Hedges Inc or Rothmans of Pall Mall Limited, until various dates after March 31, 1984 by which time CRL had ceased to carry on business of any kind. Further, CRL never had dealings with any company named Rothmans of Canada Kings Limited.
23. CRL specifically denies the allegations contained in paragraphs 42, 68, 89 and 117 to 120 of the Statement of Claim. To the extent that CRL had any involvement in the communications, meetings, committees and conferences referred to, they were not used by CRL as vehicles to direct or co-ordinate RPMCL’s activities or its policies on smoking and health. CRL did not direct RPMCL to adopt policies or positions on smoking and health in Canada. Actions RPMCL took or refrained from taking in Canada

were undertaken by RPMCL pursuant to its own business, legal and scientific judgments and not as a proximate result of any direction or co-ordination by CRL.

24. Further, CRL denies that any alleged tobacco related wrongs in Canada (the commission of which is denied) are a proximate or direct result of the communications, meetings or structures identified in the Statement of Claim.

III. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Breaches of Common Law, Equitable or Statutory Duties or Obligations

25. CRL repeats paragraphs 17 and 18 above and denies that it owes or ever owed a duty to persons in Ontario.
26. Further, and in the alternative, to the extent that CRL owes or ever owed a duty to persons in Ontario (which is not admitted but denied), CRL complied with any such duty, whether based in common law, equity or statute.
27. Further, and in the alternative, if CRL breached any duty to persons in Ontario (which is not admitted but denied), CRL says no such breach resulted in persons in Ontario starting or continuing to smoke cigarettes manufactured or promoted by the defendants, or being exposed to cigarette smoke, or suffering tobacco related disease or an increased risk of tobacco related disease.

The Defendants' Knowledge

28. 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.

29. The number of discrete compounds identified in cigarette smoke has increased rapidly over time and now totals over 4,000, most 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.
30. 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.
31. CRL says that, at all material times, persons in Ontario 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 Ontario 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 Ontario, the federal government, the plaintiff and/or the public health community.
32. To the extent that the allegations in paragraphs 73.2(g), 73.3(f) and 73.4(b)(g) are directed at CRL, CRL denies that it suppressed or concealed scientific and medical data. CRL had no policy to avoid public disclosure or to conceal its knowledge of such data.

Exposure

33. 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 cigarette 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 information available to them, 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.

Disease and the Risk of Disease

34. 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, cigarettes 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 Ontario (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.

No Market Share

35. By reason of the facts and matters pleaded above, in particular at paragraphs 18 and 19 CRL has never possessed any share of the market for cigarettes in Ontario whether as defined by the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, SO 2009 c 13 (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.

Conspiracy, Concert of Action and Common Design

36. In the following sections, CRL pleads as fully as it is currently able to the allegations contained in paragraphs 86 to 120, 141 and 150 of the Statement of Claim. CRL reserves the right to supplement this Statement of Defence if further particulars become known in the future.
37. If, which is denied, CRL has any liability to the plaintiff by reason of the matters pleaded in paragraphs 56 to 85 and 142 to 147 of the Statement of Claim, 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.
38. Without prejudice to the foregoing, to the extent that the conduct alleged in paragraphs 86 to 120, 141 and 150 of the Statement of Claim occurred after March 31, 1984, CRL repeats paragraph 9 above including that it cannot have been a participant in such conduct after it ceased to carry on business of any kind.

39. Without prejudice to the foregoing, in the generality in respect of paragraphs 86 to 120, 141 and 150 of the Statement of 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 Statement of Claim; or
 - (b) acted in concert or 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 Statement of Claim; or
 - (c) was involved either as principal or as agent for any other defendant with respect to the commission of any tobacco related wrong; or
 - (d) 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 4(2)(b)(iii) of the *Act* or otherwise pursuant to section 4 of the *Act*, or at all.
40. Further, CRL denies that it directed or co-ordinated the activities or policies of or positions taken by RPMCL, as alleged or at all.
41. Further, the plaintiff has no claim in respect of the alleged conspiracy, concert of action or common design because the plaintiff agreed to and adopted the design of what it alleges is a conspiracy, concert of action or common design and became a party thereto and carried out acts in Ontario in furtherance thereof that the plaintiff alleges are unlawful.
42. 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 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. In the premises, the cost of health care benefits described in paragraph 2 of the Statement of Claim must be adjusted to reflect the financial benefits which the plaintiff has obtained by reason of the foregoing.

(i) Conspiracy within the International Tobacco Industry

43. 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 Ontario, as elsewhere, for over 50 years, that information about the risks of smoking was communicated to persons in Ontario 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 Ontario, the federal government, the plaintiff and/or the public health community.
44. With respect to allegations contained in paragraphs 68, 73 to 73.4 and 88 to 107 of the Statement of Claim, CRL denies that it agreed with any other defendant to suppress or conceal, or suppressed or concealed, or directed any Direct Breach Defendant to suppress or conceal, or had any policy to suppress or conceal information about the risks associated with smoking and exposure to smoke.

(ii) Conspiracy within the Canadian Tobacco Industry

45. CRL says that it never conspired or acted in concert or common design with, or coordinated the positions on smoking and health issues of any of the defendants in Canada or their predecessors including RPMCL, or the Canadian Tobacco Manufacturers' Council (the "CTMC"), as alleged or at all.
46. In respect of paragraph 115 of the Statement of Claim, CRL specifically denies that the CTMC ever acted as agent for CRL.

IV. RELIEF

47. In answer to the whole of the Statement of Claim, CRL says the costs that have been incurred or will be incurred by the plaintiff in respect of health care benefits 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 care benefits as alleged or at all;
- (b) if the plaintiff has incurred the cost of health care benefits as alleged or at all, which is denied, the cost of health care benefits 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 Ontario, namely the statutes, programmes, services, benefits or similar matters associated with disease, as set out in the definition of “health care benefits” in subparagraph 1(1) 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 cigarettes or exposure to cigarette smoke; and
 - (v) the manufacture, promotion and sale of cigarettes by persons other than the defendants, including manufacturers located on Indian reserves, whose cigarettes are packaged and sold to persons in Ontario in breach of duties owed to them.
- (c) if the plaintiff has incurred or will incur the cost of health care benefits 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 benefits 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 cigarettes in Ontario alleged to have been caused by the tobacco related wrongs alleged; and
- (iv) that cost is not influenced by the tobacco related wrongs alleged.

V. THE PLAINTIFF'S OWN CONDUCT

48. At all material times the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario 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 care benefits that have been or will be provided to insured persons who have suffered tobacco related disease, as alleged (which is denied), CRL 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.
49. 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 cigarettes and exposure to cigarette smoke. Despite its knowledge of those risks, the plaintiff:
- (a) continued to license and regulate the production, manufacture, advertising, promotion, distribution and sale of cigarettes in Ontario 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 cigarettes in Ontario, 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 cigarettes 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 cigarettes and exposure to cigarette smoke;
 - (c) delayed implementing, and failed to enforce, laws prohibiting the sale to and use of cigarettes 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 care benefits, including such costs as it alleges are caused or contributed to by cigarette smoking or exposure to cigarette smoke, and has set its taxation and health care policies accordingly.
50. 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.

51. Further, CRL states that if the plaintiff has incurred the cost of health care benefits 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 *Negligence Act*, RSO 1990, c N.1.
52. Further, CRL 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 CRL, the plaintiff is barred in law and in equity from advancing the claims made in the Statement of 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, 2002*, SO 2002, c 24.
53. Further, CRL says that if the plaintiff has incurred the cost of health care benefits 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.
54. Without prejudice to the foregoing, CRL repeats paragraph 48 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 care benefits" as alleged, and any such costs must be adjusted to reflect this failure.

VI. THE CONDUCT OF INDIVIDUAL INSURED PERSONS

55. If the plaintiff has incurred the cost of health care benefits 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.
56. At all material times insured persons who smoke or have smoked cigarettes were, or should have been, aware of risks associated with smoking.

57. 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 cigarettes, 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 sale of cigarettes take place.
58. By reason of the foregoing, CRL says that insured persons who smoke or have smoked cigarettes were, or should have been, aware of the associated risks at all material times.
59. Insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking and voluntarily consented to accept such risks.
60. The cause in fact and in law of the commencement and continuation of the use of cigarettes by insured persons was a voluntary choice to smoke cigarettes 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.
61. Further, the cause of (i) an individual insured person's choice to smoke or to continue to smoke cigarettes 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 48 to 50 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 cigarettes by persons other than defendants, including manufacturers located on Indian reserves, whose cigarettes are packaged and sold to persons in Ontario in breach of duties owed to them.
62. 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 care benefits.
63. Further, CRL says that at all material times individual insured persons have been, or should have been, aware of health risks associated with smoking cigarettes. Accordingly, such persons voluntarily assume such risks when they decide to commence and continue smoking.
64. Further, CRL says that if the plaintiff has incurred the cost of health care benefits 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 *Negligence Act*, RSO 1990, c N.1.
65. 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 Fresh Statement of Claim against CRL.
66. 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, 2002*, SO 2002, c 24.

67. Further and in the alternative, CRL says that if the plaintiff has incurred the cost of health care benefits as alleged, which is denied, individual insured persons have failed to mitigate that cost.
68. CRL requests that the claim against it be dismissed with costs.

Date: 2016 April 29

HARPER GREY LLP
Barristers & Solicitors
3200-650 W. Georgia St.
Vancouver, BC V6B 4P7

Christopher M. Rusnak
Tel: (604) 895-2838
Fax: (604) 669-9385
Lawyers for the Defendant,
Carreras Rothmans Limited

TO: **MINISTRY OF ATTORNEY GENERAL**
Crown Law Office - Civil
8th Floor, 720 Bay Street
Toronto, Ontario M7A 2S9

Ronald E. Carr LSUC#: 13341F
Tel: (416) 326-2704
Antonin I. Pribetic LSUC #: 34843S
Tel: (416) 212-1333
Shahana Kar LSUC #: 33311O
Tel: (416) 212-6455
Lynne M. McArdle LSUC #: 40561H
Tel: (416) 212-7138
Sunil S. Mathai LSUC #: 49616O
Tel: (416) 326-0486
Fax: (416) 326-4181

Lawyers for the Plaintiff, Her Majesty the Queen in Right of Ontario

AND TO: **STIKEMAN ELLIOTT LLP**
5300 Commerce Court West
199 Bay Street
Toronto ON M5L 1B9

David R. Byers LSUC # 22992W
Tel: (416) 869-5697
Vanessa Voakes LSUC # 58486L
Tel: (416) 869-5538
Fax: (416) 947-0866

Lawyers for the Defendants, British American Tobacco p.l.c, B.A.T Industries p.l.c., and British American Tobacco (Investments) Limited

AND TO: **BORDEN LADNER GERVAIS LLP**
Scotia Plaza
40 King Street West
Toronto, ON M5H 3Y4

Guy Pratte
Tel.: (416) 350-2638
Ira Nishisato
Tel.: (416) 367-6349
Cindy Clarke
Tel.: (416) 367-6321
Fax: (416) 361-7307

Lawyers for the Defendant, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and JTI MacDonald Corp.

AND TO: **BORDEN LADNER GERVAIS LLP**
World Exchange Plaza
1100 – 100 Queen Street
Ottawa, ON K1P 1J9

Peter Doody
Tel.: (613) 787-3510
Fax: (613) 230-8842

Lawyers for the Defendant, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc., and JTI MacDonald Corp.

AND TO: **ORMSTON LIST FRAWLEY LLP**
720 – 40 University Avenue
Toronto, ON M5J 1T1

John Ormston
Tel.: (416) 594-0791 ext. 111

Fax: (416) 594-9690

Lawyers for the Defendant, Canadian Tobacco Manufacturers' Council

AND TO: **GOWLINGS LAFLEUR HENDERSON LLP**

One First Canadian Place
100 King Street West
Suite 1600
Toronto, ON M5X 1G5

Michael Watson

Tel.: (416) 369-7245

Steven Sofer

Tel.: (416) 369-7240

Fax: (416) 369-7250

Lawyers for the Defendant, Rothmans Inc., Rothmans Benson & Hedges Inc.

AND TO: **MCCARTHY TÉTRAULT LLP**

Toronto Dominion Bank Tower
5300 – 66 Wellington Street West
P.O. Box 48
Toronto, ON M5K 1E6

R. Paul Steep

Tel.: (416) 601-7998

Sarit Batner

Tel.: (416) 601-7756

Elder C. Marques

Tel.: (416) 601-7822

Fax: (416) 868-0673

Lawyers for the Defendant, Phillip Morris International Inc., Philip Morris U.S.A.
and Altria Group

AND TO: **OSLER, HOSKIN & HARCOURT LLP**

One First Canadian Place
100 King Street West
P.O. Box 50
Toronto, ON M5X 1B8

Deborah Glendinning

Tel.: (416) 862-4714

Craig Lockwood

Tel.: (416) 862-5988

Fax: (416) 862-6666

Lawyers for the Defendant, Imperial Tobacco Canada Limited

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Plaintiff

-and- ROTHMANS INC. et al.
Defendants

Court File No. CV-09-387984

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

**STATEMENT OF DEFENCE OF
CARRERAS ROTHMANS LIMITED**

HARPER GREY LLP
3200 Vancouver Centre
650 West Georgia Street
Vancouver, BC V6B 4P7

Christopher M. Rusnak
Tel: (604) 895-2838
Fax: (604) 669-9385

Lawyers for the Defendant,
Carreras Rothmans Limited