

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

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 THE DEFENDANTS ROTHMANS INC.
and ROTHMANS, BENSON & HEDGES INC.**

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1. The defendants Rothmans Inc. and Rothmans, Benson & Hedges Inc. (which have amalgamated with each other under the name Rothmans, Benson & Hedges Inc. - hereafter “**RBH Inc.**”) deny, or where applicable do not admit, the allegations made in the Fresh as Amended Statement of Claim, amended on April 26, 2016 (the “**Statement of Claim**”) by the plaintiff (“**Ontario**” or the “**Province**”), unless expressly admitted, and put the Province to the strict proof thereof.

2. RBH Inc. admits the allegations contained in paragraphs 8, 12, and 26-28 of the Statement of Claim.

3. RBH Inc. denies the allegations contained in paragraphs 2-7, 20-22, 23, 25, 29, 40-45, 48-127, and 141-150 of the Statement of Claim.

4. RBH Inc. has no knowledge in respect of the allegations contained in paragraphs 9-11, 13-19, 24, 30-39, 46-47, 128-140, and 151 of the Statement of Claim.

I. RELIEF CLAIMED

5. RBH Inc. denies that the Province is entitled to the relief claimed in paragraph 1 of the Statement of Claim and says that this action should be dismissed with costs.

II. INTRODUCTION

A. The Plaintiff and the Nature of the Case

6. RBH Inc. denies the allegations in paragraphs 2-4 in the Statement of Claim and denies the Province's ability to seek relief or recover the cost of health care benefits described in paragraph 1 of the Statement of Claim (the "**Claimed Cost**") from RBH Inc., except that RBH Inc. admits that this action is brought pursuant to the provisions of the *Tobacco Damages and Health Care Costs Recovery Act, 2009*, S.O. 2009, C.13 (the "**Act**").

7. RBH Inc. admits only that the Statement of Claim states the definitions referred to in paragraphs 5-6 of the Statement of Claim for the purposes of the Statement of Claim but not otherwise.

B. The Defendants

8. RBH Inc. denies the allegations in paragraph 7 of the Statement of Claim. For clarification, RBH Inc. states that Rothmans Inc. amalgamated into RBH Inc. in 2009.

9. RBH Inc. admits the allegations in paragraph 8 of the Statement of Claim. For clarification, RBH Inc. admits that its corporate headquarters are located at 1500 Don Mills Road, North York, Ontario.

10. RBH Inc. has no knowledge of the allegations in paragraphs 9-11 of the statement of Claim and therefore denies the same.

11. RBH Inc. admits that Philip Morris International Inc. is a Virginia company with offices located at 120 Park Avenue in New York, New York.

12. RBH Inc. has no knowledge of the allegations in paragraphs 13-19 of the Statement of Claim and therefore denies the same.

13. RBH Inc. admits that, at various times since 1950, cigarettes that it has manufactured and promoted have been offered for sale in Ontario, but has no knowledge as to the other defendants in paragraph 20 and therefore denies the same.

14. RBH Inc. denies the allegations in paragraphs 21-22 of the Statement of Claim.

III. THE MANUFACTURE AND PROMOTION OF CIGARETTES SOLD IN ONTARIO

A. Canadian Tobacco Companies

(i) The Defendant Rothmans Inc.

15. RBH Inc. admits that Rothmans of Pall Mall Canada Limited was incorporated in 1956 and that in 1985, Rothmans of Pall Mall Canada Limited changed its name to Rothmans Inc. At the same time, Rothmans Inc. became a holding company and its tobacco business was transferred to its wholly-owned subsidiary, Rothmans of Pall Mall Limited. RBH Inc. further states that Rothmans Inc. amalgamated into RBH Inc. in 2009. RBH Inc. has no knowledge as to the remaining allegations in paragraph 23 of the Statement of Claim and therefore denies the same.

16. RBH Inc. has no knowledge of the allegations in paragraph 24 of the Statement of Claim and therefore denies the same.

(ii) The Defendant Rothmans, Benson & Hedges Inc.

17. RBH Inc. admits that Rothmans of Pall Mall Limited acquired the tobacco business of Rothmans Inc. in 1985. RBH Inc. also admits that Rothmans of Pall Mall, at various times, manufactured and promoted cigarettes offered for sale in Ontario. RBH Inc. denies the remaining allegations in paragraph 25.

18. RBH Inc. admits that Benson & Hedges (Canada) Limited was incorporated in 1934 and that RBH Inc. was formed in 1986 by the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited. RBH Inc. also admits that Benson & Hedges (Canada) Ltd. (renamed Benson & Hedges (Canada) Inc. in 1979), at various times since 1950, manufactured and promoted cigarettes offered for sale in Ontario.

19. RBH Inc. admits that it has, at various times since 1986, manufactured and promoted cigarettes offered for sale in Ontario. RBH Inc. also admits that, between 1986 and 1989, it distributed in Canada, including in Ontario, a small amount of U.S.-sourced tobacco products manufactured by Philip Morris Incorporated (now Philip Morris USA Inc.), but these products accounted for less than 0.1% of all duty-paid cigarettes sold in Canada during this time period.

20. RBH Inc. admits that, at various times since 1950, it (or its predecessors) has manufactured and promoted cigarettes in Ontario and Canada under several brand names, including Rothmans and Benson & Hedges.

21. RBH Inc. denies the allegations in paragraph 29 of the Statement of Claim. RBH Inc. further states that between 1986 and July 2008, Rothmans Inc. maintained a 60% shareholder interest in RBH Inc. Between 1986 and March 2008, corporate entities related to Altria Group, Inc. maintained a 40% shareholder interest in RBH Inc. Since September 2008, RBH Inc. has been an indirect wholly owned subsidiary of Philip Morris International Inc.

(iii) The Defendant JTI-Macdonald Corp.

22. RBH Inc. has no knowledge of the allegations in paragraphs 30-33 of the Statement of Claim and therefore denies the same.

(iv) The Imperial Tobacco Canada Limited

23. RBH Inc. has no knowledge of the allegations in paragraphs 30-39 of the Statement of Claim and therefore denies the same.

B. Multinational Tobacco Enterprises

24. RBH Inc. denies the allegations in paragraphs 40-45 of the Statement of Claim. RBH Inc. states additionally that paragraphs 40-45 of the Statement of Claim purport to collectively categorize separate entities as certain “Groups” or “Lead Companies”, and RBH Inc.

denies that such characterization is accurate, proper or has any legal significance whatsoever relevant to the Province's claims or the Province's ability to seek relief or recover the Claimed Cost from RBH Inc.

25. RBH Inc. has no knowledge of the allegations in paragraphs 46-47 of the Statement of Claim and therefore denies the same.

IV. TOBACCO RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. General

26. RBH Inc. admits that, at various times since 1950, cigarettes that it has manufactured and promoted have been offered for sale in Ontario, but denies that:

- (a) it has committed any tobacco related wrong, or breached any common law, equitable or statutory duty as alleged in the Statement of Claim or at all;
- (b) it manufactures or has manufactured a defective product;
- (c) it fails or has failed to warn, unlawfully sells or markets to children and adolescents or has ever done so;
- (d) it makes or has made any deceitful or negligent misrepresentations;

- (e) it contravenes or has contravened any consumer protection or competition legislation; or
- (f) it takes or has taken part in any conspiracy, concerted action or common design as alleged.

27. RBH Inc. further states the following:

- (a) RBH Inc., through predecessor companies, has been manufacturing tobacco products in Canada for over 100 years;
- (b) At all material times, it was generally accepted by persons in Ontario, as well as by the plaintiff, that there were health risks associated with smoking and that smoking could be difficult to quit. Accordingly, it has been generally accepted that persons below a certain age should not be smoking and it has been unlawful to sell cigarettes to persons under a certain age since 1908;
- (c) Despite the health concerns and the prohibition on selling to underage persons, advertising, promotion and consumption of tobacco products, and selling cigarettes to adults in Ontario is, and has always been, legal, subject to certain exceptions and restrictions, all of which have been fully complied with by RBH Inc. In fact, the federal and provincial governments, including Ontario, were highly supportive of the tobacco industry in Canada and among other things:

- (i) supported the farmers' growing of tobacco in Canada, and especially in Ontario;
 - (ii) supported the sale of tobacco both in Canada and abroad;
 - (iii) provided cigarettes to Canadian soldiers; and
 - (iv) established tax policies to maximize government revenue from the sale of tobacco products;
- (d) Matters of health fall within the jurisdiction of both Ontario and the Parliament of Canada. Apart from collecting its own share of tobacco-related taxes, Ontario generally followed the federal government's lead on tobacco matters, supplementing federal activity where it thought appropriate. Ontario looked to the federal government and its own initiatives to keep it apprised on smoking related issues;
- (e) When Ontario and the federal government were not acting in concert regarding smoking related issues, the federal government acted as the agent of Ontario in giving directions and making representations to RBH Inc. (thereby establishing the applicable standard of care) and in communicating with persons in Ontario;

- (f) Over the last 50 years, federal and provincial governments, including Ontario, became highly involved in regulating the tobacco industry and controlling the messaging to the public regarding the health risks of smoking and received most of the proceeds from the sale of tobacco products. In particular, they dictated:
 - (i) the kinds of tobacco that would be grown;
 - (ii) the type of tobacco products that would be sold;
 - (iii) whether tobacco products required health warnings, and the content, size and placement of those warnings;
 - (iv) the types of promotion that would be permitted;
 - (v) where tobacco products could be sold and used; and
 - (vi) the price at which tobacco products would be sold.
- (g) In particular, the federal government directed RBH Inc. to sell and promote low tar products and represented to both RBH Inc. and persons in Ontario that these products were less hazardous than higher tar products;
- (h) At all times RBH Inc. acted as a reasonable tobacco manufacturer having regard to all the circumstances, which include the fact that its activities were largely

directed by the federal government (as agent for Ontario or otherwise), and that at no time did RBH Inc. commit any tobacco related wrongs;

- (i) In part because of the widespread public awareness of the health risks of smoking, any tobacco related wrong RBH Inc. may have committed did not cause anyone in Ontario to smoke or to continue to smoke, or to be exposed to cigarette smoke;
- (j) The consumption of cigarettes, either as a result of a breach of duty as alleged in the Claim or otherwise has not caused the Claimed Cost to increase beyond what such costs would have been if no cigarettes had been consumed in Ontario;
- (k) In addition, a significant and growing proportion of the Canadian cigarette market is supplied by manufacturers other than those identified in the Claim. Specifically, manufacturers located on aboriginal reserves (the “**Aboriginal Manufacturers**”) produce, promote and provide cigarettes to numerous consumers across Canada. Vendors selling cigarettes produced by the Aboriginal Manufacturers routinely fail to collect the federal and provincial taxes applicable to sales to non-aboriginal purchasers, creating a substantial incentive for non-aboriginal to purchase cigarettes from these manufacturers instead of the manufacturers identified in the Claim. Additionally, cigarettes produced by the Aboriginal Manufacturers dominate the market for contraband cigarettes in Canada. As a result, a significant fraction of the cigarettes consumed in Canada are not supplied by

manufacturers identified in the Claim, but rather by the Aboriginal Manufacturers; and

- (1) Ontario has profited from the sale of tobacco products in the province for well over 50 years. Given Ontario's knowledge of the health risks and its role – directly and through its agent the federal government – in regulating the tobacco business and controlling the messaging to the public regarding the health risks of smoking, Ontario has no claim against RBH Inc. and this action should be dismissed.

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

(i) The Defendants' Knowledge

28. RBH Inc. denies the allegations made in paragraphs 49-50 of the Statement of Claim. RBH Inc. does admit that cigarettes are made from tobacco, which contains naturally occurring nicotine, and further pleads as follows:

- (a) Over many generations, some smokers have expressed the opinion that they have had difficulty stopping smoking. There has been a widespread public belief for generations that smoking is “addictive”. RBH Inc. has always acknowledged that smoking can be difficult to quit for some people. However, in the past, it has disputed whether smoking met the traditional definition of “addiction” as that term is used by health professionals.

- (b) The term “addiction” has had different definitions over the years. Until the late 1980s, government and health professionals considered smoking to be a habit not an “addiction”. Nevertheless, using common parlance, many smokers referred to themselves as being “addicted”. On the basis of a modification to the traditional definition of the term, “addiction” became the preferred term of government, while health professionals refer to both “addiction” and “dependence”.
- (c) As the term “addictive” is commonly used today, RBH Inc. admits that nicotine in cigarette smoke is addictive, and that cigarette smoking is addictive. Regardless of the term used in connection with smoking – “addiction”, “dependence” or “difficult to quit” – smokers can and do quit smoking all the time. Millions of smokers, including in Ontario, have successfully stopped smoking without withdrawal symptoms and without assistance. Neither “addiction” nor “dependence” deprives smokers of their free will or renders them incapable of stopping to smoke.
- (d) At all relevant times, individual insured persons were aware that smoking could be difficult to quit before they started smoking and made informed voluntary decisions to start and to continue to smoke.
- (e) Further, people smoke or continue to smoke for various reasons including but not limited to nicotine, taste, pleasure, ritual and social reasons. As is pleaded herein, the federal government concluded that products delivering too little nicotine

would not advance the health agenda because smokers would reject these products for higher tar and nicotine products.

29. RBH Inc. admits that cigarette smoking causes or contributes to cancers of the lung, bronchus, trachea, larynx, pharynx, lip, esophagus, bladder, kidneys, and pancreas; leukemia; emphysema; chronic bronchitis; chronic airways obstruction; chronic obstructive pulmonary disease; coronary heart disease; peripheral vascular disease; and vascular disease. RBH Inc. states that “cancer of the stomach”, “cancer of the nose”, and “cancer of the oral cavity” are relatively vague terms which might encompass a number of different and varied anatomical structures, but admits that smoking causes cancer in certain of the anatomical structures associated with the stomach, nose, and mouth. RBH Inc. denies that smoking causes or contributes to cancers of the liver, colon, rectum, or uterus or to pulmonary circulatory disease or miscarriage. RBH Inc. states that “fetal harm” is a relatively vague term which might encompass a number of different and varied anatomical structures, but admits that smoking is associated with an increased risk of placental abruption, premature birth, stillbirth, neonatal mortality, and intrauterine growth restriction; and that cigarette smoking causes lower infant birth weight in infants whose mothers were smokers during pregnancy. RBH Inc. further states that many other factors, whether environmental, physiological, genetic, or based upon lifestyle choices, can also have harmful effects on pregnancy. RBH Inc. acknowledges that the Surgeon General’s 2014 Report (entitled “The Health Consequences of Smoking – 50 Years of Progress”) concluded that there is sufficient evidence to infer a causal relationship between smoking and asthma and increased morbidity and general deterioration of health, but RBH Inc.’s position is that at this time, these conclusions are based on inadequate scientific support. RBH Inc. further

states that diseases caused or contributed to by cigarette smoking are complex and may be caused or contributed to by many different factors, whether environmental, physiological, genetic or based upon lifestyle choices. With respect to environmental tobacco smoke (“ETS”) (referred to in the Statement of Claim as “second hand smoke”), RBH Inc. acknowledges that the Surgeon General’s 2006 Report (entitled “The Health Consequences of Involuntary Exposure to Tobacco Smoke”) concluded that there is sufficient evidence to infer a causal relationship between ETS and lung cancer, coronary heart disease, and cough in children, but RBH Inc.’s position is that at this time, these conclusions are based on inadequate scientific support. RBH Inc. denies the remaining allegations in paragraph 51 of the Statement of Claim.

30. RBH Inc. denies the allegations in paragraphs 52-53 of the Statement of Claim. RBH Inc. states that cigarette smoke contains numerous constituents, some of which are acknowledged by public health organizations, such as the U.S. Food and Drug Administration, Health Canada, and the International Agency for Research on Cancer, to be hazardous to health. RBH Inc. further states 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, the Province and the public health community 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 Province and the public health community have reinforced the awareness of persons in Ontario with respect to cigarette smoking and its potential risks. At all material times, RBH Inc. 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 Province and the public health community.

31. RBH Inc. denies the allegations in paragraph 54 of the Statement of Claim and repeats paragraph 28 hereof.

32. RBH Inc. denies the allegations in paragraph 55 of the Statement of Claim.

(ii) Breach of Duty – Design and Manufacture

33. RBH Inc. denies the allegations made in paragraphs 56-62 of the Statement of Claim. RBH Inc. has never breached any duty to with respect to the design or manufacture of cigarettes as alleged or at all, nor has RBH Inc. made any misrepresentations with respect to its products or their characteristics. Rather, at all material times RBH Inc. acted reasonably in designing and manufacturing its products, and in the changes and alterations that it made to the design and manufacture of cigarettes. Specifically with respect to paragraph 59 of the Statement of Claim, it was a federal government program that led to the development of a high nicotine tobacco plant. RBH Inc. further states the following:

- (a) RBH Inc. denies that it manufactures or manufactured its products to create, facilitate, maintain or heighten “addiction”. The federal government itself concluded that RBH Inc. did not add nicotine to its products and, with knowledge of all ingredients in cigarettes, has never suggested that RBH Inc. added chemicals to boost the impact of nicotine.

- (b) When studies suggested a link between smoking and cancer, governments and the health community independently concluded that tar was the substance in tobacco smoke that increased risks to health and that therefore lower tar cigarettes were less hazardous than high tar cigarettes. The federal government advised RBH Inc. of its position and directed it to manufacture and promote lower tar products.
- (c) The federal government urged RBH Inc. and the other members of the Canadian tobacco industry to manufacture low tar cigarettes and encouraged RBH Inc. to market and promote them so as to persuade consumers to switch to such cigarettes.
- (d) The federal government published the “tar” levels of cigarettes first in tables and later directed RBH Inc. to do so on packaging and advertisements to provide information to persons in Ontario with the objective of inducing consumers to switch to lower tar products. These tar levels were determined according to testing protocols developed or approved by the federal government.
- (e) When the federal government and others began publishing the tar levels of cigarette brands, consumers started to switch from higher tar to lower tar products.
- (f) In response to government direction and consumer demand, RBH Inc. began to manufacture products with lower tar. Concerned that Canadians, including

persons in Ontario, were not switching to lower tar products fast enough, the federal government directed RBH to develop and market low tar products to meet specified sales weighted average of the tar (“SWAT”) targets. RBH Inc. complied with the government direction and met those SWAT targets.

- (g) The government and the health community concluded that their health objectives would not be advanced if products with reduced tar and nicotine were unacceptable to consumers, as they would be less likely to switch to lower tar products with poorer taste and less smoking satisfaction.
- (h) Accordingly, officials from the federal government determined that it would be in the best interests of both tobacco growers and smokers if the growers grew varieties of tobacco with a higher content of nicotine than previous varieties. The federal government developed these varieties, which it licensed to the growers. RBH Inc. then purchased tobacco leaves from the growers through the Tobacco Marketing Boards.
- (i) Using these tobacco leaves, RBH Inc. manufactured a range of lower tar products that would respond to the federal government’s direction and also be acceptable to smokers.
- (j) RBH Inc. reasonably relied on the federal government in developing and promoting lower tar products. The federal government considered the concept of

smokers' compensation and concluded and advised RBH Inc. that any compensation that occurred would not negate the benefits of consumers switching to lower tar products.

- (k) RBH Inc. monitored world-wide development of tobacco products, implemented all product modifications as appropriate, and ensured that its products were free of latent defects and were fit for the purpose intended by both the Province and the federal government.

(iii) Breach of Duty to Warn

34. RBH Inc. denies the allegations in paragraphs 63-70 of the Statement of Claim and repeats paragraphs 33, 35 and 49 hereof. RHB Inc. further denies that it breached any common law, equitable, or statutory duties, if any, that in the circumstances existed at all relevant places and times, or failed to warn persons in Ontario, and denies that any of its warnings were inadequate or defective. RBH Inc. also pleads as follows:

- (a) The risks associated with smoking, including difficulty of quitting, have been widely known in Ontario for more than 50 years.
- (b) Before 1972, the federal government determined and advised RBH Inc. that it was not necessary or warranted to place warnings on tobacco products as the health risks were well known and the warnings would have no impact on smoking.

- (c) In 1972, the federal government determined that it was appropriate to have health warnings on tobacco products. Thereafter, the federal government directed the content, size and placement of the warnings on packages and the Province determined what health-related signs would be posted at retail outlets.
- (d) At all times, RBH Inc. complied with the government's direction with respect to warnings. Since 1972, all RBH Inc. cigarettes sold in Ontario carried the government-mandated health warnings.
- (e) Well before and after packages contained warnings, information about the risks of smoking was communicated to persons in Ontario by television and radio programmes, magazines, newspapers, journal articles, government publications, health advocates, parents, physicians, teachers and religious leaders. Persons in Ontario attached credibility to these sources.
- (f) RBH Inc. possessed no more material knowledge about the health risks associated with smoking than the health community, the Province, the federal government or than was contained in information that was publicly disseminated to persons in Ontario.
- (g) At times, statements by representatives of RBH Inc. or the Canadian Tobacco Manufacturers' Council ("CTMC") questioning whether the causal link between smoking and disease and whether smoking was an "addiction" may have been

published. RBH Inc. states that there was an honest belief and a reasonable basis for that questioning.

- (h) In any event, in the 1960s the federal government concluded that smoking caused disease, and in the 1990s that it was appropriate to use the word “addictive” in connection with smoking. More recently the federal government appears to have changed its view on low tar products. These conclusions: (1) were widely communicated to persons in Ontario through the sources referred to in subparagraph (e) above; and (2) were received, believed and relied upon by Ontarians, who did not accept or rely upon any statement made by RBH Inc.

(iv) Breach of the duty - Misrepresentation

35. RBH Inc. denies the allegations made in paragraphs 71-72.3, 73-73.2, and 74-77 of the Statement of Claim and repeats paragraphs 26, 33 and 34 hereof. RBH Inc. has never at any time made representations that were false and has never suppressed any such scientific and medical data. RBH Inc. has no knowledge of the allegations in paragraphs 72.4, 72.5, 73.3, and 73.4 and therefore denies the same. Further, RBH Inc. pleads as follows:

- (a) At all material times RBH Inc. complied with all common law, equitable and statutory duties that, in the circumstances, existed at various places and times;
- (b) Over many generations, some smokers have expressed the opinion that they have had difficulty stopping smoking. There has been a widespread public belief for

generations that smoking is “addictive”. RBH Inc. has always acknowledged that smoking can be difficult to quit for some people. However, in the past, it has disputed whether smoking met the traditional definition of “addiction”.

- (c) The term “addiction” has had different definitions over the years. Until the late and health professionals considered smoking to be a habit not an “addiction”. Nevertheless, using common parlance, many smokers referred to themselves as being “addicted”. On the basis of a modification to the traditional definition of the term, “addiction” became the preferred term of government, while health professionals refer to both “addiction” and “dependence”.
- (d) As the term “addictive” is commonly used today, RBH Inc. admits that nicotine in cigarette smoke is addictive, and that cigarette smoking is addictive. Regardless of the term used in connection with smoking – “addiction”, “dependence” or “difficult to quit” - smokers can and do quit smoking all the time. Millions of smokers, including persons in Ontario, have successfully stopped smoking without withdrawal symptoms and without assistance. Neither "addiction" nor "dependence" deprives smokers of their free will or renders them incapable of stopping to smoke.
- (e) RBH Inc. maintains that, at all relevant times, individual insured persons were aware that smoking could be difficult to quit before they started smoking and made informed voluntary decisions to start and to continue to smoke.

- (f) For over 40 years, the federal government and the Province have directed how tobacco products are permitted to be promoted in Ontario through their involvement in the modification of industry codes and later through legislation.
- (g) Throughout that period, RBH Inc.'s promotion complied with that direction. Specifically, RBH Inc.'s promotional activities never targeted under-aged smokers or non-smokers; all of RBH Inc.'s promotion was designed to persuade adult smokers to choose or continue to choose RBH Inc.'s brands in preference to the brands of its competitors. RBH Inc. supported efforts by retailers to ensure that tobacco products were sold only to adults.
- (h) Through that period, RBH Inc.'s promotion never stated that any of its products were less hazardous than any others. Based upon representations made to persons in Ontario by both the federal government and the health community, persons in Ontario reasonably concluded that, although they still entailed significant health risks, lower tar products were less hazardous than higher tar products.
- (i) Since 1989, RBH Inc. has generally been prohibited, or extremely restricted, from conducting product advertising in Ontario, and has been prohibited from advertising its sponsorship of events since 2003. Accordingly, since those times (and to a large degree even before) the only information or promotion communicated to persons in Ontario with respect to smoking has been that of

governments and the health community. Nevertheless, with knowledge of the health risks, persons in Ontario still choose to start and continue to smoke.

- (j) Since and before that time, the Province has dictated from where tobacco products can be sold and, more recently, where they cannot be displayed or used. As a result of the taxes imposed by the Province and the federal government, the price of tobacco products legally sold in Ontario is largely determined by governments.

(v) Breach of the duty - Manufacturing or Promoting Products for Children and Adolescents

36. RBH Inc. denies the allegations made in paragraphs 78-85 of the Statement of Claim. RBH Inc. has never breached any duty to children or adolescents as alleged or at all, and denies that it targeted children or adolescents in its advertising or other activities. RBH Inc. also pleads as follows:

- (a) At all material times the Province had and undertook a program of informing children and adolescents within Ontario of the risks associated with the consumption of tobacco products, and if such persons have not been informed of such risks, which is denied, the Province failed to perform that program adequately.
- (b) At all material times the Province alone had the obligation to enforce all relevant statutes and regulations pertaining to the sale of tobacco products to under-aged

smokers, as defined from time to time by statutes or regulations, and failed to do so.

(vi) Conspiracy, Concert of Action and Common Design

37. RBH Inc. denies the allegations in paragraph 86 of the Statement of Claim. At no time did RBH Inc. enter into or engage in any improper conspiracy, concert of action or common design with other persons. RBH Inc. further states that:

- (a) RBH Inc. periodically received information from its parent and shareholders but never received any material information about the health risks of smoking that was not generally known by governments and persons in Ontario.
- (b) RBH Inc. was never instructed by any of its parent or shareholders (nor did RBH Inc. ever agree) to suppress any information or do anything contrary to any common law or statutory obligation and denies the existence of any legal or factual conspiracy between it and any of its parent or shareholders.
- (c) In the early 1960s, the federal government invited the Canadian manufacturers to engage in dialogue with it as a single unit on issues related to tobacco. As a result, an ad hoc committee of manufacturers was created which eventually led to the creation of the CTMC.

- (d) Thereafter, for the most part, the federal government directed the regulation of promotion (including warnings) and the development of less hazardous products through the CTMC.
- (e) Neither the CTMC nor any of its other members ever dictated to RBH Inc. what it should or should not do or say. Moreover, there was never any agreement among or between manufacturers to refrain from communicating any information to persons in Ontario or to governments.
- (f) RBH Inc. denies the existence of a conspiracy or of concerted action as alleged or at all and denies it agreed to adopt common policies or a common design as alleged or at all to carry out unlawful acts in Ontario. RBH Inc. repeats paragraphs 34 hereof, and states:
 - (i) If there was any conspiracy, concerted action or a common policy or design as alleged in the Statement of Claim, which is denied, Ontario has no claim in respect thereof because it 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 Ontario in furtherance thereof that Ontario alleges are unlawful;
 - (ii) If any of the acts alleged in the Claim are found to be an unlawful conspiracy or unlawful concerted action, these acts were also engaged in

by Ontario, and Ontario is therefore estopped from relying on such acts in this action; and further

- (iii) In any event Ontario agreed and continues to agree to, and condoned and condones, RBH Inc.'s design, manufacture, marketing, distribution and sale of tobacco, and is therefore estopped from relying on such acts in this action.

(a) Conspiracy within the International Tobacco Industry

38. RBH Inc. denies the allegations in paragraphs 87-107 of the Statement of Claim and repeats paragraph 37 hereof.

(b) Conspiracy within the Canadian Tobacco Industry

39. RBH Inc. denies the allegations in paragraphs 108-116 of the Statement of Claim and repeats paragraph 37 hereof.

(c) Conspiracy within Corporate Groups

• The Rothmans Group

40. RBH Inc. denies the allegations in paragraphs 117-120 of the Statement of Claim, repeats paragraph 37 and refers to paragraph 41 below.

- **The Philip Morris Group**

41. RBH Inc. denies the allegations in paragraphs 121-127 of the Statement of Claim and repeats paragraph 37 hereof. RBH Inc. further states that:

- (a) RBH Inc. periodically received information from its parent and shareholders but never received any material information about the health risks of smoking that was not generally known by governments and persons in Ontario;
- (b) RBH Inc. was never instructed by any of its parent or shareholders (nor did RBH Inc. ever agree) to suppress any information or do anything contrary to any common law or statutory obligation and denies the existence of any legal or factual conspiracy between it and any of its parent or shareholders; and
- (c) RBH Inc. was never the agent of Philip Morris USA Inc., Philip Morris International Inc., or Altria Group, Inc.

- **The RJR Group**

42. RBH Inc. has no knowledge of the allegations in paragraphs 128-134 of the Statement of Claim and therefore denies the same.

- **The BAT Group**

43. RBH Inc. has no knowledge of the allegations in paragraphs 135-140 of the Statement of Claim and therefore denies the same.

44. RBH Inc. denies the allegations in paragraph 141 of the Statement of Claim and repeats paragraph 37 hereof.

(vii) Breach of *Consumer Protection Act, 2002*, the *Competition Act* and their Predecessor Statutes

45. RBH Inc. denies the allegations in paragraphs 142-147 of the Statement of Claim and repeats paragraphs 26 and 33-37 hereof.

V. CONCLUSION

46. RBH Inc. denies the allegations at paragraphs 148-150 of the Statement of Claim and repeats paragraphs 26 and 33-37 hereof.

47. RBH Inc. has no knowledge of the allegations in paragraph 151 of the Statement of Claim and therefore denies the same.

VI. ANSWERS TO THE STATEMENT OF CLAIM AS A WHOLE

A. General Defences

(i) No cause of action

48. The Statement of Claim discloses no cause of action because:

- (a) There has been no pecuniary damage suffered by insured persons in respect of the “cost of health care benefits” as defined by the *Act*;

- (b) The statutory liability the Province is attempting to impose on the defendants in this action is an after the fact attempt to make actionable conduct that was not actionable when it occurred;
- (c) If the Claimed Cost was incurred as alleged or at all, which is denied, it was incurred by the federal government by means of transfer payments, conditional grants and shared cost programmes, and not by the Province;
- (d) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was incurred to provide services to insured persons that the Province was and is required to provide pursuant to Ontario's *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes; and
- (e) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by the conduct and acts or omissions of the federal government and of the Province.

(ii) No breach of duty

49. RBH Inc. states as follows:

- (a) RBH Inc. denies that it has breached any common law, equitable or statutory duties as alleged in the Statement of Claim or at all. Specifically, given the widespread knowledge of consumers of the risks associated with the use of

tobacco products, RBH Inc. did not and does not manufacture a defective product, nor, given that knowledge, had a duty to warn. RBH Inc. did not and does not unlawfully sell or market to or otherwise target children and adolescents, make any deceitful or negligent misrepresentations, contravene any consumer protection or competition legislation, or take part in any conspiracy, unlawful concerted action or common design as alleged or at all.

- (b) RBH Inc. denies that persons have started or continued to smoke, or suffered any tobacco related disease, as a consequence of any alleged breach of duty.
- (c) At all material times RBH Inc. has cooperated with governments in Canada when the latter have properly exercised their constitutional authority in their regulation of the tobacco industry. In particular, RBH Inc. has been guided by, encouraged and participated with the governments and public health agencies in product development initiatives, including the development of raw materials, the reduction of tar and nicotine content in cigarette smoke, the design and manufacture of low tar cigarettes as well as advertising and promotion initiatives, in pursuance of government health objectives of the time, to encourage smokers to switch to lower tar products.
- (d) At all materials times, the manufacture, sale, advertising and promotion of tobacco products in Ontario and throughout Canada has been supervised, regulated and controlled by the Province and the federal government. The

Province encouraged or participated in such supervision, regulation and control in Ontario either directly or indirectly through agreements, express or implied with the federal government. Together the said governments have defined and delineated the duties of tobacco manufacturers in Canada including Ontario and have given advice, recommendations, directions and suggestions in relation to, *inter alia*:

- (i) the nature and scope of research into the properties of cigarettes to be undertaken by RBH Inc. and other Canadian tobacco manufacturers;
- (ii) whether warnings of the health risks and addictive character of cigarettes should be provided to consumers;
- (iii) the content and placement of any such warnings to be provided;
- (iv) product modifications, including the development, manufacture, promotion, distribution and sale of cigarettes containing lower amounts of tar and nicotine as measured by standard smoking machines;
- (v) communications by Canadian manufacturers with consumers about the health risks and addictive character of cigarettes and their tar and nicotine content when measured by standard smoking machines; and

- (vi) the acceptability of the types of advertising and other forms of promotion that have been used in the past by Canadian manufacturers to promote the sale of their products;

- (e) At all material times RBH Inc. complied with the standards, regulations and directives imposed by the said governments, and complied reasonably with their recommendations, suggestions and advice and thereby discharged material duties and met appropriate standards in dealings with consumers or potential consumers.

- (f) By complying with the various standards, regulations, directives, recommendations, suggestions and advice of the said governments, RBH Inc. acted reasonably in all the circumstances and committed no tobacco related wrongs as alleged in the Statement of Claim or at all.

- (g) At various material times the said governments made representations to tobacco manufacturers in Canada which the said governments knew or ought to have known would be and were relied upon by the said manufacturers including representations relating to:
 - (i) the prevalence of public awareness of the health risks and addictive character of cigarettes;

- (ii) whether warnings of the health risks and addictive character of cigarettes were necessary or effective to inform consumers of those risks or properties;
- (iii) whether warnings of the health risks and addictive character of cigarettes would be effective to persuade consumers not to start or to stop smoking;
- (iv) the form and placement of warnings on packages and other materials;
- (v) diminished health risk to consumers from smoking cigarettes containing lower levels of tar as measured by standard smoking machines;
- (vi) whether tar and nicotine measuring standards provided information to consumers on which they could make informed smoking decisions having regard to the health risks and addictive character of cigarettes;
- (vii) whether the phenomenon of smoker “compensation”, if real, negated the health benefits of low tar tobacco;
- (viii) whether altering the tar/nicotine ratio in cigarettes would have less risk to public health; and

(ix) the types of advertising and other forms of promotion that have been used in the past by Canadian tobacco manufacturers to promote the sale of their products.

(h) RBH Inc. relied on the said representations and thereby complied with the standards, regulations, directives, recommendations, suggestions, advice and representations of the said governments and committed no tobacco related wrongs as alleged in the Statement of Claim or at all.

(iii) No damage

50. RBH Inc. states that the Province has (i) suffered no damage, and (ii) incurred none of the Claimed Cost, as a result of anything that the Province alleges in this action that RBH did or failed to do. RBH Inc. further states that:

(a) If RBH Inc. breached any duty, as alleged or at all, which is denied, no such breach caused or contributed to the Claimed Cost as alleged or at all;

(b) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, without limitation, one or more of the following:

(i) the requirement that the Province provide services to insured persons pursuant to the Ontario's *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes;

- (ii) the conduct and acts or omissions of the federal government and of the Province;
 - (iii) the conduct and acts or omissions of individual insured persons as further particularized herein; and
 - (iv) disease or risk of disease in individual insured persons unrelated to smoking cigarettes;
- (c) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by the tax revenue received by the Province from the sale of cigarettes in Ontario so that no cost is ultimately incurred by the Province;
- (d) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost is exceeded by monies received by the Province from the federal government by means of transfer payments, conditional grants and shared-cost programmes for the purpose of funding the Claimed Cost so that no cost is ultimately incurred by the Province; and
- (e) If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was inflated by overbilling, waste, abuse, neglect and other

misconduct by various of the Province, persons involved in the administration and delivery of health care benefits and insured persons; and

- (f) RBH Inc. denies that any alleged breach of duty by RBH Inc. caused persons in Ontario to smoke or to continue to smoke. Further, RBH Inc. states that the consumption of cigarettes, as a result of a breach of duty as alleged in the Statement of Claim, or otherwise, has not caused the Claimed Costs to increase beyond what such costs would have been if no cigarettes had been consumed in Ontario.

(iv) Causation

51. RBH Inc. admits that smoking causes or contributes to disease. These diseases are complex and may be caused or contributed to by many different factors, including genetics, stress, excess weight, alcohol, environmental factors and other consumer products. If RBH Inc. breached any duties, as alleged or at all, which is denied, no such breach caused or contributed to any tobacco related disease in any insured person or any increased risk of tobacco related disease in any insured person.

(v) Limitations

52. RBH Inc. pleads and relies upon the provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes, both in respect of the Province's

claim and in respect of the health care costs of those persons on which the Province's claim is alleged to be based and calculated.

B. Defences Arising out of the Province's Conduct and Knowledge

(i) General

53. If the Province has incurred or will incur the Claimed Costs as alleged, or at all, which is denied, RBH Inc. states that such costs were or will be caused, and the Province's claim to recover such costs is subject to complete defences, by reason of the knowledge, acts or omissions of the federal government acting alone or as an agent for or in concert with the Province or due to the acts or omissions of the Province as particularized herein and including:

- (a) The Province's knowledge of health risks associated with cigarette smoking;
- (b) The Province's licensing and regulation of the production, manufacture and sale of cigarettes, including its failure to enforce or implement such regulation to the extent constitutionally permissible;
- (c) The Province's voluntarily undertaking obligations to pay the cost of health care benefits allegedly caused or contributed to by cigarette smoking;
- (d) The Province's failure to establish or delay in developing, or both, policies and practices, including health care expenditures and taxation policies and practices, legislation and regulations, when the Province knew or should have known of the

alleged risks and costs it alleges are caused or contributed to by cigarette smoking and ETS;

- (e) The Province's failure to fund, develop and implement health promotion and smoking cessation practices and policies, when the Province knew or should have known of the alleged risks and costs it alleges are caused or contributed to by cigarette smoking and ETS;
- (f) The Province's failure to take any steps prior to commencement of this action to attempt to recover the alleged cost of health care benefits by subrogation;
- (g) The Province's delay in implementing and failure 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;
- (h) The Province's own decision to regulate many aspects of the tobacco business and to keep the largest portion of the proceeds from the sale of tobacco products;
- (i) The Province's taxation of cigarettes in excess of the cost (if any) of health care benefits allegedly resulting from tobacco related disease or the risk thereof;
- (j) The Province's own breaches of its duty or duties to insured persons as particularized herein; and

- (k) The Province's undertaking a course of conduct consisting of legislative and regulatory actions, representations, omissions and voluntary actions which the Province intended, knew, or ought to have known would lead RBH Inc. to believe that its conduct in Ontario, if any, was not in breach of any provincial statute or regulation and that its conduct was not actionable. In reliance on that course of conduct, RBH Inc. has continued to allow its tobacco products to be sold and consumed in Ontario, it has complied with applicable legislation and regulations and it has paid the applicable fees and taxes.

54. Further, for decades Ontario has exercised its legislative and regulatory authority with respect to the sale, use and taxation of tobacco, and has either prohibited or regulated all activities and conduct with respect to tobacco and its sale that it considered to be necessary, appropriate or desirable. In this regard, RBH Inc. pleads and relies on the *Minors' Protection Act*, R.S.O. 1990, c M.38 (superseded); *Smoking in the Workplace Act*, R.S.O. 1990, c S.13 (superseded); the *Public Vehicles Act*, R.S.O. 1990, c P.54, s. 20; and the *Smoke-Free Ontario Act*, S.O. 1994, c. 10; O. Reg. 48/06; the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended, and any predecessor statutes and regulations.

55. At all material times, the sale, advertising, promotion and consumption of tobacco products have been legal in Ontario subject to certain exceptions and restrictions all of which have been fully complied with by RBH Inc.

56. At all material times, the Province, through its ministers, ministries, departments, servants and agents, has known as much regarding the material risks associated with smoking cigarettes and ETS as RBH Inc.

57. Despite its knowledge of risks associated with smoking cigarettes and ETS, the Province continued to license and regulate the production, manufacturing, advertising, promotion and sale of cigarettes in Ontario and to impose heavy taxation upon, *inter alia*, manufacturers, distributors and consumers of cigarettes.

58. The Province benefits from the taxes imposed on and in relation to the sale of cigarettes in Ontario, which results in complete mitigation of the claim. RBH Inc. pleads and relies on the *Tobacco Tax Act*, R.S.O. 1990, c. T.10, as amended, and any predecessor statutes.

59. Despite its knowledge of risks associated with cigarette smoking and ETS, the Province took no steps to restrict or limit the sale of cigarettes save for restrictions on sale to persons below a prescribed age and in that case, delayed in implementing such restrictions, and subsequently took no reasonable steps to enforce them. RBH Inc. pleads and relies on the *Smoke-Free Ontario Act*, S.O. 1994, c. 10 and O. Reg. 48/06, as amended, and any predecessor statutes.

60. Despite its knowledge of risks associated with cigarette smoking, the Province voluntarily undertakes the obligation of paying for the costs of health care benefits including

such costs it alleges are caused or contributed to by cigarette smoking and ETS and sets its taxation and health care policies accordingly.

61. Despite its knowledge of risks associated with cigarette smoking, the Province, at all material times, permitted the sale and consumption of cigarettes in Ontario and derived substantial revenue therefrom.

62. The Province is wrongfully attempting, by statute, to make conduct actionable which was not actionable at the time it occurred. As a result and because the Province waited for decades to commence a claim, RBH Inc. pleads that the Province's action should be dismissed on the basis of voluntary assumption of risk, *laches*, estoppel and the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes.

(ii) Voluntary assumption of risk

63. RBH Inc. repeats paragraphs 53-62 hereof and states that at all material times the Province has been aware of health risks associated with cigarette smoking and ETS. Accordingly, the Province voluntarily assumes such risks, whatever their extent, in incurring the costs it alleges are caused or contributed to by cigarette smoking and ETS, and the Province is barred from recovering any of the Claimed Cost from RBH Inc. in this action by reason of its own actions and its voluntary assumption of risk. RBH Inc. further states:

- (a) The Province has had knowledge of the health risks for over 50 years. Despite that knowledge, the Province and the federal government have continued to permit the sale of tobacco products in the province.
- (b) RBH Inc.'s activities over the last 50 years took place with the knowledge and consent of the governments, including the Province.
- (c) Relying on the Province's course of conduct, RBH Inc. has continued to make its tobacco products available for sale in Ontario in compliance with all applicable government direction.

(iii) Contributory negligence

64. RBH Inc. repeats paragraphs 53-62 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed Cost was caused or contributed to, in whole or in part, by the acts or omissions of the federal government acting alone or as agent for or in concert with the Province, or due to the acts or omissions of the Province as pleaded herein, and not any act or omission of RBH Inc. RBH Inc. pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and any predecessor statutes.

65. RBH Inc. repeats and relies on paragraphs 54-63 hereof and states that it was governments that decided many aspects of the tobacco business and who kept the largest portion of the proceeds from the sale of tobacco products. To the extent that insured persons, including under-aged persons, were not informed of the risks associated with smoking cigarettes or

purchased low tar cigarettes as a result of a misrepresentation (all of which is denied), it is because the Province or the federal government, or both, failed to perform their obligations adequately.

(iv) The Province cannot profit from its wrongful conduct

66. RBH Inc. repeats paragraphs 26-45 and 53-62 hereof and states that the Province is barred from recovering any damages or costs it has suffered, the existence of which is denied, as any damages or costs flowed from its participation as set out herein in conduct which the Province itself alleges in the Statement of Claim constituted breaches of duty.

(v) Legal and equitable bars

67. RBH Inc. repeats paragraphs 53-62 hereof and states that by reason of the facts set out therein and the knowledge, conduct and delay of the Province and the prejudice thereby caused to RBH Inc., the Province is barred in law and in equity from advancing the claims made in the Statement of Claim against RBH Inc. RBH Inc. pleads and relies on the *Health Insurance Act*, R.S.O. 1990, c. H.6, as amended, and any predecessor statutes.

(vi) Mitigation

68. RBH Inc. repeats paragraphs 53-62 hereof and states that if the Province has incurred the Claimed Cost, as alleged or at all, which is denied, the Province has failed to mitigate the Claimed Cost.

C. Defences Arising out of Individual Conduct

(i) General

69. If the Province has incurred the Claimed Cost as alleged or at all, which is denied, the Claimed Cost was caused by, and the Province's claim to recover the Claimed Cost is subject to, complete defences by reason of the conduct of individual insured persons, including their voluntary decisions to commence or continue smoking with awareness of the associated risks.

70. All of the insured persons who smoke or have smoked cigarettes were aware or had been warned of risks associated with smoking.

71. Each insured person became aware or received warnings of risks associated with smoking by various means, including, without limitation, one or more of the following:

- (a) Warnings, including on the packaging of cigarettes, as required from time to time pursuant to federal and provincial legislation and regulations and voluntary codes of compliance by Canadian tobacco manufacturers;
- (b) Mandatory displays, signs and other warnings required by provincial legislation in premises where sales of cigarettes take place;
- (c) Discussions and writing, including advertising, in all forms of media including newspapers, magazines, journals, television, movies and radio;

- (d) Education programmes including courses, seminars and lectures and educational literature and other media;
- (e) Oral and written warnings from physicians and other health practitioners;
- (f) Oral and written warnings from family members, friends and other acquaintances;
and
- (g) The common general understandings and historical beliefs about adverse health consequences attributed to cigarette smoking dating back hundreds of years.

72. By reason of the foregoing, RBH Inc. states that all of the insured persons who smoke or have smoked cigarettes were aware or had been warned of associated risks.

73. Each of those insured persons who commenced or continued to smoke cigarettes did so with awareness of the risks associated with smoking, and each such insured person voluntarily consented to accept such risks.

74. 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. RBH Inc. had and has no legal duty to such persons, or alternatively, no legal duty to such persons that has not been fulfilled.

75. RBH Inc. denies that any insured persons began, continued, or were unable to cease smoking by reason of any of the alleged breaches of duty of RBH Inc., or that any alleged breach of duty caused or contributed to any alleged tobacco related disease or increased costs of tobacco related disease in any insured person.

76. If the federal government did not act as an agent for or in concert with the Province, then to the extent insured persons were not adequately informed about the risks of smoking cigarettes or purchased low tar cigarettes as the result of a misrepresentation (all of which is denied), they did so as a result of the breach of duty owed to them by the federal government.

77. Finally, to the extent that the Province incurred health care costs due to smoking by insured persons, which is denied, the cost was caused by Aboriginal Manufacturers who breached duties owed to insured persons by the way they packaged and sold their products.

(ii) Voluntary assumption of risk

78. RBH Inc. repeats paragraphs 69-77 hereof and states that at all material times individual insured persons were aware of health risks associated with cigarette smoking. Accordingly, such persons voluntarily assumed such risks, whatever their extent, when they decided to commence and continue smoking.

(iii) Contributory negligence

79. RBH Inc. repeats paragraphs 69-77 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, then the Claimed 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 RBH Inc. RBH Inc. pleads and relies upon the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, and any predecessor statutes.

(iv) Legal and equitable bars

80. RBH Inc. repeats paragraphs 69-77 hereof and states that by reason of the facts set out therein and the knowledge and conduct of insured persons and the prejudice thereby caused to RBH Inc., the Province is barred at law and in equity from advancing the claims made in the Statement of Claim against RBH Inc.

(v) Limitations

81. RBH Inc. pleads and relies upon the provisions of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, as amended, and any predecessor statutes, in respect of the claims of any individual insured person upon which the Province's cause of action is alleged to rest.

82. RBH Inc. pleads and relies upon the limitation provisions in the *Competition Act*, R.S.C. 1985, c. C-34, as amended, and any predecessor statutes.

(vi) Mitigation

83. RBH Inc. repeats paragraphs 69-77 hereof and states that if the Province has incurred the Claimed Cost as alleged or at all, which is denied, individual insured persons have failed to mitigate the Claimed Cost.

VII. RELIEF SOUGHT BY RBH INC.

84. In the circumstances, RBH Inc. submits that the Province's claim should be dismissed, with costs.

Date: 2016 April 29

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HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
– Plaintiff –

v.

ROTHMANS INC. and others
– Defendants –

ONTARIO
SUPERIOR COURT OF JUSTICE
(PROCEEDING COMMENCED AT TORONTO)

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