

Form 17 (Rule 22(1))

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

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No. S010421
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH
COLUMBIA

PLAINTIFF

AND:

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

DEFENDANTS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

THIRD PARTY

THIRD PARTY NOTICE OF R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.

TO: THE ATTORNEY GENERAL OF CANADA

AND TO: His Solicitor

TABLE OF CONTENTS

<i>I. INTRODUCTION.....</i>	<i>3</i>
<i>II. THE INVOLVEMENT OF FEDERAL GOVERNMENT DEPARTMENTS AND OFFICIALS WITH THE TOBACCO INDUSTRY.....</i>	<i>6</i>
<i>III. EARLY OPERATIONAL CONDUCT OF OFFICIALS PRIOR TO THE SMOKING AND HEALTH CONFERENCE IN 1963.....</i>	<i>10</i>
<i>IV. THE 1963 NATIONAL CONFERENCE ON SMOKING AND HEALTH AND THE IMPLEMENTATION OF THE NATIONAL SMOKING AND HEALTH PROGRAMME....</i>	<i>15</i>
A. Overview of the National Smoking and Health Programme.....	15
B. Implementing the National Programme: Informing Smokers and Non-Smokers of the Properties of Cigarettes.....	19
C. Implementing The National Programme; Printed Warnings	21
D. Implementing the National Programme: Monitoring Advertising and Promotion	23
<i>V. FURTHER EVOLUTION OF THE NATIONAL SMOKING AND HEALTH PROGRAMME.....</i>	<i>25</i>
A. Implementing the National Programme: Introduction of the Less Hazardous Cigarette and Smoking Programme.....	25
B. The Design and Development of a “Less Hazardous Cigarette” by Officials.....	35
C. Continued Monitoring, Encouraging and Endorsing by the Federal Government of the Advertising and Promotion of Light and Mild Cigarettes	40
<i>VI. WARNINGS IN THE POST 1988 ERA.....</i>	<i>42</i>
<i>VII. THE RELIEF SOUGHT WITH RESPECT TO THE FEDERAL GOVERNMENT...43</i>	
A. A Declaration Pursuant to s. 3(4) of the Act, that RJRTI’s Liability Be Reduced	43
B. In the Alternative, Contribution and Indemnity Under the Negligence Act	44
C. In the Alternative, Damages to the Extent of Any Liability to the Plaintiff for the conduct of JTI	45
D. In the Alternative, Indemnity in Whole or In Part to the Extent of Any Liability of RJRTI to the Plaintiff for the conduct of JTI	46

THIS ACTION has been brought by the Plaintiff, Her Majesty the Queen in Right of British Columbia, against the Defendants, including R.J. Reynolds Tobacco International, Inc. ("RJRTI"). The Plaintiff's claim against RJRTI is set out in the Writ of Summons and Statement (the "Statement of Claim") of Claim wherein the Plaintiff alleges, *inter alia*, that RJRTI is jointly and severally liable for breaches of duty by JTI Macdonald Corp. ("JTI") and certain breaches of duty of other Defendants to the proceedings as alleged in the Statement of Claim. None of the statements of fact or allegations contained herein are intended to be, nor should they be construed as, admissions of the allegations or claims advanced by the Plaintiff. RJRTI repeats and relies on its Statement of Defence.

TAKE NOTICE that the Defendant, RJRTI, claims against you for:

- (a) A declaration that RJRTI's liability be reduced to the extent that the Federal Government's conduct, wrongful or not, caused or contributed to smoking or to disease or the risk of disease;
- (b) Contribution and indemnity pursuant to the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333, based upon the Federal Government's conduct as a manufacturer;
- (c) Damages, measured by the extent of any liability of RJRTI to the Plaintiff for the conduct of JTI;
- (d) An order that the Federal Government indemnify RJRTI, in whole or in part, to the extent of any liability of RJRTI to the Plaintiff for the conduct of JTI;
- (e) Costs; and
- (f) Such other relief as to this Honourable Court seems just.

The material facts on which the Defendant, RJRTI relies are:

I. INTRODUCTION

1. The Federal Government, at times material to the allegations in the Statement of Claim, undertook an active role in the tobacco industry in Canada and, in particular, gave

cigarette manufacturers in Canada support and direction and set the standard of care that those cigarette manufacturers, acting reasonably, met at material times. In furtherance of that role, through the conduct of Officials working in its departments and agencies, the Federal Government implemented numerous operational programmes including:

- (a) Research into the potential health risks of smoking;
- (b) Monitoring and assessing the level of awareness of consumers in British Columbia of the potential health risks of smoking;
- (c) Considering the need to educate and advise consumers in British Columbia as to the properties of cigarettes and to inform and/or remind those consumers of the potential health risks of smoking;
- (d) Providing such education, advice and information and/or reminders at certain material times as was considered necessary;
- (e) Research into and development of varieties of tobacco leaf including the genetic modification of tobacco leaf to suit the Canadian and export tobacco markets;
- (f) The promotion to Canadian cigarette manufacturers of varieties of tobacco leaf, including genetically modified tobacco leaf, for use in the manufacture of cigarettes sold in British Columbia, with a view, *inter alia*, to reducing the potential health risks of smoking;
- (g) Working with the Canadian cigarette manufacturers to develop potentially less hazardous cigarettes and, indeed, taking a position of leadership in relation to the same;
- (h) Giving advice, recommendations and directions to Canadian cigarette manufacturers as to whether printed warnings on packages of cigarettes were necessary or desirable;
- (i) Giving advice, recommendations and directions as to the form of such warnings;

- (j) Giving advice, recommendations and directions to Canadian cigarette manufacturers in respect of advertising and promotion of cigarettes;
 - (k) Giving advice, recommendations and directions to Canadian cigarette manufacturers on the need for them to promote cigarettes to consumers in British Columbia with a lower yield of “tar”;
 - (l) Giving advice, recommendations and directions to Canadian cigarette manufacturers on the form of packaging to be used by manufacturers; and
 - (m) Imposing taxes for the purpose of obtaining the majority of the revenue from the sale of cigarettes to consumers in British Columbia and at levels intended to influence the market for cigarettes in Canada.
2. The Plaintiff alleges that RJRTI and JTI are each a “manufacturer”, which is denied. For the purpose of this Third Party Notice, RJRTI adopts the definitions of “manufacturer,” “tobacco related wrong”, “exposure”, “tobacco related disease”, “consumers” and “cost of health care benefits” used in the Statement of Claim and the *Tobacco Damages and Health Care Costs Recovery Act* S.B.C. 2000, c. 30 (the “Act”).
3. The Federal Government is a manufacturer. It has:
- (a) manufactured tobacco products;
 - (b) caused, directly or indirectly, through arrangements with contractors, licensees, franchisees or others, the manufacture of tobacco products; and
 - (c) engaged in or has caused, directly or indirectly, other persons to engage in the promotion of tobacco products, including cigarettes.
4. RJRTI denies that JTI has committed any “tobacco related wrongs” and that any alleged “tobacco related wrongs” have caused or contributed to exposure, tobacco related disease or the risk of disease and to the Plaintiff incurring the cost of health care, as alleged or at all. In particular, but without limiting the generality of the foregoing, RJRTI denies that JTI has withheld information about the properties of cigarettes or of cigarette smoke and

their potential health risks. RJRTI denies that it is jointly and severally liable for breaches of duty of JTI or any other Defendant. RJRTI repeats its Statement of Defence herein.

II. THE INVOLVEMENT OF FEDERAL GOVERNMENT DEPARTMENTS AND OFFICIALS WITH THE TOBACCO INDUSTRY

5. The Federal Government was, at material times, responsible for protecting the health of Canadians, including consumers, in British Columbia and was, in particular, responsible for providing them with accurate and reliable health information and determining what may or should be sold to consumers. Consumers in British Columbia relied on the Federal Government with respect to the same.
6. Health Canada, the successor to the Department of National Health and Welfare, the Department of Pensions and National Health and the Products Safety Branch of the former Department of Consumer and Corporate Affairs (collectively referred to herein as “Health Canada”), was established pursuant to the *Department of Health Act*, S.C. 1996, c. 8 and predecessor statutes. At material times, Health Canada has had a statutory duty and responsibility under Section 4 of the *Department of Health Act* and predecessor sections to promote and preserve the health and well being of the people of Canada.
7. At material times, Health Canada has assumed duties and obligations separate and apart from its governing statutes including those arising from the conduct of Officials, as particularized herein, who engaged in or undertook research into the extent and nature of smoking, the properties of cigarettes, the potential health risks of smoking, the level of awareness of consumers of the potential health risks of smoking and who engaged in the research and design of tobacco and tobacco products and in the promotion of tobacco and tobacco products.
8. Without limiting the foregoing, Officials of Health Canada, based on their knowledge of smoking and health matters, their engagement in the activities pleaded in paragraph 7 above and their relationship with consumers and with cigarette manufacturers including JTI:

- (a) made certain representations and provided certain information and advice about the properties of cigarettes and the potential health risks of smoking to consumers in British Columbia, intending that consumers in British Columbia would rely, and consumers did rely, on such representations, information and advice, and
 - (b) made certain representations and requests, provided certain information and advice and gave direction to cigarette manufacturers, including JTI in relation to the same intending that the cigarette manufacturers would rely, on such representations, information and advice. The cigarette manufacturers did rely on these representations, information and advice and did comply with these requests and directions.
9. In relation to matters material to the allegations in the Statement of Claim, including matters in respect of which the Federal Government assumed duties and obligations to consumers in British Columbia and to cigarette manufacturers, Health Canada made operational decisions to implement policy through its Ministers, Deputy Ministers, its Health Services and Promotion Branch and its officials, its Health Protection Branch (including at material times the Tobacco Product Section, the Tobacco Bureau and the Non-Medical Use of Drugs Directorate) and its committees and inter-departmental committees and administrative heads, its Assistant Deputy Ministers and Executive Directors General and through other officials known and unknown to RJRTI, herein referred to as "Officials". Ministers of Health who acted in ways material to this action include Mr. Monteith, Ms. LaMarsh, Mr. MacEachen, Mr. Munro, Mr. Lalonde, Ms. Begin and Mr. Epp. Deputy Ministers of Health include Drs. Cameron, Crawford, Morrison and LeClair. Assistant Deputy Ministers of Health include Dr. A. J. Liston. Committee members include Drs. Colburn and Watkinson. Other Officials include Dr. Best, M. Palko, Dr. Pett, Dr. Chapman, Dr. Draper, Dr. Layton, J. Nightscales and G. B. Schreiber.
10. Agriculture Canada is established pursuant to the *Department of Agriculture and Agri-Food Act*, R.S.C., 1985, c. A-9, s. 4, and predecessor statutes which have conferred broad powers, duties and functions with respect to agriculture, agricultural products, and

research related to agriculture and products derived from agriculture including the operation of experimental farms.

11. From 1906, and at material times thereafter, Officials of Agriculture Canada at the Delhi Research Station and elsewhere carried out a programme in cooperation with and in support of the tobacco industry, including tobacco growers and cigarette manufacturers, including JTI, which programme included:

- (a) research into and analysis of the chemical and physical composition of tobacco for the purpose of determining which varieties produced the quality required by manufacturers and consumers of cigarettes in British Columbia;
- (b) research into the chemical constituents of tobacco smoke;
- (c) research regarding nicotine and tobacco varieties for the purpose of providing tobacco manufacturers with a level of nicotine in the leaf believed by Officials to be suitable for use by manufacturers in tobacco products;
- (d) participation in the following
 - (i) Tobacco Variety Evaluation Committee,
 - (ii) Evaluation Committee on Agricultural Chemicals for Tobacco,
 - (iii) Canadian Tobacco Quality Evaluation Committee,
 - (iv) Manufacturers' Smoke Evaluation Committee,
 - (v) Canadian Tobacco Research Group, and
 - (vi) Delhi Engineering Research Group;
- (e) the initiation of smoke preference studies of tobacco treated with experimental pesticides;
- (f) control and approval of the varieties of tobacco seed available for use in Canada;

- (g) breeding and/or genetic engineering of improved smoking quality tobacco varieties for use by cigarette manufacturers; including frequent consultation and cooperation with cigarette manufacturers on the influence of genetic variation in nicotine, tar and surface waxes/lipids on flavours and aroma in relation to mutagenicity/biological activity of tobacco smoke;
- (h) participation in the creation of Centre de Coopération pour les Recherches Scientifiques Relatives au Tabac (hereafter “C.O.R.E.S.T.A.”) as a world tobacco organization and attendance at the International Tobacco Scientific Congresses sponsored by C.O.R.E.S.T.A. to present scientific reports;
- (i) publishing the results of its research in Tobacco Science, the Canadian Journal of Plant Science, the Canadian Journal of Genetics and Cytology and other scientific journals and in The Lighter, its own publication;
- (j) attendance at the Tobacco Chemists Research Conference meetings; hosting several such meetings which included the presentation of reports on tobacco growing and tobacco product manufacturing;
- (k) advising and/or directing cigarette manufacturers regarding the content of nicotine in tobacco to be used in tobacco products sold in British Columbia;
- (l) research into the agricultural practices and chemical fertilizers (“cultural practices”) that cause variations in the chemical content of tobacco leaf, including nicotine;
- (m) since 1970, participation with Officials of Health Canada in the “Less Hazardous Cigarette Programme” including the Delhi Tobacco and Health Bio-Assay Programme; and
- (n) since about 1970, the manufacture of cigarettes for testing on Agriculture Canada’s smoking machines and for testing by consumer panels to determine smoker satisfaction.

12. Agriculture Canada also undertook or sponsored research programmes relating to tobacco, smoking and health in support of the smoking and health programme developed by Health Canada as further particularized herein.
13. In relation to matters material to this action, including the matters particularized in paragraphs 9-12 above, the Federal Government assumed duties and obligations to consumers in British Columbia and to cigarette manufacturers. In these regards Agriculture Canada made operational decisions through its Ministers, Deputy Ministers and Assistant Deputy Ministers, and through its research divisions, committees and inter-departmental committees, as well as officials of Agriculture Canada, known and unknown to RJRTI, including those employed as research scientists at the Delhi Research Station, herein also referred to as "Officials". Ministers of Agriculture who acted in ways material to this action include Mr. Whelan. Committee members include Dr. Hamilton. Other Officials include B. B. Migicovsky, B. F. Zilkey, L. S. Vickery, R. Sims, P. W. Johnson, Drs. Pandey and Court at the Delhi Research Station, and W.H. Cherry and Dr. W.F. Forbes at the University of Waterloo.
14. If RJRTI is liable to the Plaintiff, which is denied, then the Federal Government is liable to RJRTI as alleged herein, based on vicarious liability for the actions of its servants or Officials and the *Crown Liability and Proceedings Act*, R.S.C. 1985, c-50.

III. EARLY OPERATIONAL CONDUCT OF OFFICIALS PRIOR TO THE SMOKING AND HEALTH CONFERENCE IN 1963

15. Prior to the 1950's, it was widely known by consumers in British Columbia and the Federal Government that smoking was potentially harmful to health.
16. In 1908, Parliament enacted the *Tobacco Restraint Act* 7-8 Edw VII c. 73, which prohibited the sale of tobacco products to persons under the age of 16 years.
17. In the 1940's, Officials published a booklet, in a series of publications on health, entitled "Smoking" which outlined potential health risks associated with smoking and the "habituating" or "addicting" properties of cigarettes.

18. In 1945, a study of the role of nicotine in the smoking “habit” sponsored by a cigarette manufacturer was published in a scientific journal and then summarized by Officials in Agriculture Canada’s publication, “The Lighter”. The study suggested that, for many individuals, nicotine was a major factor in their smoking habit, although the study also concluded that it was “equally certain” that “with many individuals nicotine is not a factor in their cigarette habit” and that, even among those for whom nicotine was a “major factor...a cigarette containing no nicotine would be grudgingly accepted as better than no cigarette at all.”
19. At all material times, consumers in British Columbia and the Federal Government have been aware of the potential risks of smoking. During the 1950’s publicity regarding the potential risks of smoking was fuelled by epidemiological studies appearing in the public and scientific literature reporting a statistical association between smoking cigarettes and a rising incidence of lung cancer. These studies were later supplemented by clinical and experimental studies that were regarded by some members of the scientific and public health communities as providing additional evidence that implicated smoking as a potential cause of lung cancer and other diseases such as heart disease, chronic bronchitis and chronic obstructive pulmonary disease. At material times, Officials knew or ought to have known of these studies and on occasion republished summaries of the studies in official Health Canada publications. Officials published no conclusions from them in the 1950’s however, in the 1950’s, Officials described smoking and health as a priority issue.
20. Also beginning in the 1950’s, advised by Officials that filters were a possible means of reducing potentially harmful constituents in cigarette smoke, JTI and other cigarette manufacturers developed and incorporated filters into their cigarette designs.
21. In 1954, the Minister of National Health and Welfare informed Parliament that the Federal Government had allocated funds to the National Cancer Institute of Canada, as the agency through which clinical and statistical research into smoking and health was to be directed. Officials in various Federal departments, such as the Dominion Bureau of Statistics, Indian Health Services and Veterans Affairs, also co-operated with and assisted

the National Cancer Institute in respect of smoking and health issues. At the request of Officials, JTI provided substantial grants, beginning in the early 1950's, to support independent research to be conducted under the auspices of the National Cancer Institute of Canada into the relationship between tobacco smoke and cancer and the potential identification of disease-causing constituents in tobacco smoke. These grants were renewed on an annual basis and ceased only at the insistence of the National Cancer Institute of Canada.

22. Between 1954 and 1962, a number of professional medical bodies and foreign governments made statements regarding the association between lung cancer and smoking which were known or ought to have been known to Officials. On occasion, Officials disseminated these statements to other parties, including the Plaintiff. In 1954, the British Government announced a "strong presumption" that smoking is a cause of cancer.
23. In 1955, Officials commissioned and undertook a major epidemiological study known as the "Veterans Study" to examine the relationship between smoking and disease.
24. In 1957, the U.S. Surgeon General published a statement in which he identified an "increasing and consistent body of evidence that excessive cigarette smoking is one of the causative factors in lung cancer."
25. In 1957, Health Minister Monteith also advised Parliament that it was premature to expect conclusions from the Veterans Study as to the cause of lung cancer.
26. In July 1957, the Deputy Minister of Health, advised or requested cigarette manufacturers to embark on a programme of "selective reduction"; namely, to support independent research directed to identifying the presence in cigarette smoke of compounds or groups of compounds that might be responsible, in whole or in part, for the potential risks of smoking and to developing means of removing or greatly reducing yields of the same.
27. In July 1957, a cigarette manufacturer advised the Deputy Minister of Health that no health related claim was being made for filters on cigarettes, and the Deputy Minister agreed or advised this was appropriate.

28. In 1958, the National Cancer Institute of Canada stated that “[w]hile it has not been established that cigarette smoking is a cause of lung cancer” studies show that smokers have a greater risk.
29. In 1960, Dr. Layton, the Principal Medical Officer, Research Development Health Canada, expressed the view that “most experts” had reservations about the causal link between smoking and lung cancer.
30. In March, 1962, the Royal College of Physicians, in London in March, 1962, concluded that:

Cigarette smoking is a cause of lung cancer and bronchitis, and probably contributed to the development of coronary heart disease and various other less common diseases.

31. In April 1962, the Dominion Council of Health, a body in which the Federal Government and all the Provinces were represented, stated that “overwhelming evidence” showed a direct relationship between cigarette smoking and lung cancer.
32. At a November, 1962 meeting of the Dominion Council of Health, Officials recommended the implementation of a national smoking and health programme to include:
 - (a) Cooperation among Federal, Provincial and local authorities to inform and/or remind the public generally, and, in particular, medical professionals, parents, young people and school children, of the potential health risks of smoking;
 - (b) Restriction of cigarette advertising;
 - (c) A mandatory warning of potential health risks of smoking;
 - (d) Restriction of the production of tobacco and of its sale or use, particularly with respect to young people; and
 - (e) Collaboration with the tobacco industry to eliminate or reduce the deleterious effects of smoking.

33. In April, 1963, at the request of Officials, the Dominion Council of Health recommended that the Minister of National Health and Welfare undertake a national health education programme consistent with the recommendations described in paragraph 32 herein and emphasized that it was essential for Provincial and Federal health departments to work together to inform and/or remind consumers in British Columbia of the potential health risks associated with cigarette smoking.
34. Officials based and implemented their smoking and health initiatives on their independent judgment about the relationship between smoking and disease. In implementing their smoking and health initiatives, Officials knew or ought to have known of the research carried out at that time relating to the properties of cigarettes and the potential health risks of smoking.
35. During this period and for decades thereafter, Officials, with full knowledge of the material facts necessary to support a proper judgment, and on the basis of definitions of “addiction” and “habit” accepted in the scientific and public health community, endorsed the view that smoking was properly to be considered a habit and not an addiction.
36. During this period of time, the cigarette manufacturers met regularly with Officials and sought advice and directions on how the cigarette manufacturers could cooperate in initiating and furthering medical research and designing a cigarette that could reduce the potential health risks from smoking. The cigarette manufacturers complied with the advice, requests and directions of Officials.
37. The advice, requests or direction of Officials, and cigarette manufacturers’ subsequent reliance and actions thereon, were reasonable and lawful in the circumstances. If, however, as alleged in the Statement of Claim, JTI or other Defendants breached duties or obligations owed to consumers in British Columbia with respect to their research or cigarette design, so as to have caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI or any other Defendant, all of which is denied, the Federal Government is liable to RJRTI by reason of Officials’ conduct as

particularized in paragraphs 15 to 36 or, alternatively, this conduct, wrongful or not, caused or contributed to exposure, tobacco related disease or the risk of disease.

38. The said implementation of operational initiatives, activities and decisions of Officials was reasonable and lawful in the circumstances. If, however, insofar as it is alleged in the Statement of Claim that, before 1963, JTI or other Defendants breached duties or obligations to consumers in British Columbia by failing to inform and/or inadequately informing them about the properties of cigarettes or the potential health risks of smoking, so as to have caused or contributed to exposure, tobacco related disease, or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI or any other Defendant, all of which is denied, the Federal Government is liable to RJRTI by reason of Officials' conduct as particularized in paragraphs 15 to 36 or, alternatively, this conduct, wrongful or not, caused or contributed to smoking or to exposure, tobacco related disease or the risk of disease.

IV. THE 1963 NATIONAL CONFERENCE ON SMOKING AND HEALTH AND THE IMPLEMENTATION OF THE NATIONAL SMOKING AND HEALTH PROGRAMME

A. Overview of the National Smoking and Health Programme

39. In June 1963, Ms. LaMarsh, then Minister of National Health and Welfare, made public a conclusion that "there is sufficient evidence that cigarette smoke is a contributory cause of lung cancer and that it may be associated with chronic bronchitis and coronary heart disease." Ms. LaMarsh publicly stated that the Federal Government had "a duty to inform the public of the risk to health of cigarette smoking." Ms. LaMarsh stated that special efforts should be made to dissuade children and adolescents from acquiring the smoking habit. The Minister announced that a conference with representatives of the Provinces, health agencies and professionals as well as cigarette manufacturers would be held to address initiatives directed to the potential health risks of smoking.
40. Officials at Health Canada developed a national smoking and health programme (hereafter the "National Programme" or the "National Smoking and Health Programme") through which they operationally implemented governmental policy on smoking and health. The National Programme was implemented as a result of the recommendations of

the first National Conference on Smoking and Health held in 1963. The National Programme resulted in Officials taking steps to protect smokers from the potential risks of smoking including tobacco related disease through a nation-wide programme of education, information exchange with the Provinces and research into the potential risks of smoking and the possibilities of reducing those potential risks. At or following this Conference, Officials expressly acknowledged that it was the duty of Health Canada to ensure that smokers were properly and adequately informed of the potential risks of smoking to health and the properties of cigarettes.

41. Health Canada, through its Officials, asserted and maintained throughout the material time, leadership in developing and executing smoking and health programmes, including the National Programme, and emphasized a spirit of co-operation. This included acquiring knowledge of all material aspects of smoking and health issues including epidemiological studies, clinical and experimental studies, studies in the chemical composition of tobacco and tobacco smoke, techniques of measuring smoke constituents, as well as techniques for developing and manufacturing cigarettes and studies intended to consider smoking behaviour, including in relation to habituation and compensation.
42. In implementing the National Programme, Officials embarked upon a course of conduct to:
 - (a) inform and/or remind smokers and potential smokers about the potential risk to health of smoking;
 - (b) encourage smokers to smoke in moderation or stop smoking;
 - (c) dissuade non-smokers, particularly children and adolescents, from starting to smoke;
 - (d) conduct research into manufacturing a potentially less hazardous cigarette; and
 - (e) conduct research into the extent and nature of smoking.
43. Arising out of the 1963 National Conference on Smoking and Health, two committees were established under the chairmanship of Health Canada Officials to develop the

National Programme, which was implemented through or under the direction of Health Canada Officials, namely, the Technical Advisory Committee on Health Education Concerning Smoking Hazards and the Technical Committee On Research Concerning Smoking Hazards.

44. The Technical Advisory Committee on Health Education Concerning Smoking Hazards, under the chairmanship of Health Canada Officials and comprised of other Officials, as well as representatives of the Provincial Governments, including the Plaintiff, and representatives of cigarette manufacturers, began meeting in January, 1964. The Committee reviewed current approaches to education about smoking; recommended the components of an effective programme to inform and/or remind smokers and non-smokers of the potential risks of cigarette smoking to dissuade young people from smoking; and, identified the role of different agencies in implementing the programme. The Committee addressed matters such as cigarette advertising and promotion practices, warnings, labelling of cigarette packages and smoking on television.
45. The Technical Committee On Research Concerning Smoking Hazards also began meeting in January 1964. It conducted research to develop, improve and evaluate the components of the National Programme. Under the chairmanship of Health Canada Officials, it was composed of experts in various disciplines including sociology, psychology and epidemiology and included Officials of Health Canada expert in those disciplines.
46. Since 1906, Officials of Agriculture Canada have conducted research to support cigarette manufacturers in order to improve the quality of tobacco grown in Canada. Beginning in or about 1964, Officials of Agriculture Canada became involved in researching the ingredients in tobacco and tobacco smoke at the Delhi Research Station for the purpose of supporting the National Programme.
47. Agriculture Canada had established the Delhi Research Station in 1933 as part of a tobacco development program undertaken by Officials, although it did not receive its name until 1967. The mandate of the Delhi Research Station included improving the

quality of Canadian tobacco leaf, and the development of domestic and export markets, including the sale of cigarettes and tobacco to consumers in British Columbia.

48. At the 1963 National Conference on Smoking and Health, the Federal Government announced a 5-year, anti-smoking budget starting in 1964.
49. In the same period, both the Federal Government and the Plaintiff were receiving large amounts of money from tobacco taxes. In 1962, the Federal Government received approximately \$420 million from tobacco taxes, which was 7% of the Federal Government's income in that year. In that same year, the Plaintiff received approximately \$40 million from tobacco taxes.
50. In 1963, at the request of Ms. LaMarsh, a committee of cigarette manufacturers was established informally to represent the position of the Canadian tobacco industry at the 1963 National Conference on Smoking and Health. This committee later developed into the Canadian Tobacco Manufacturers Council ("CTMC"). JTI was, at material times, a member of the CTMC.
51. In 1965, Officials concluded that consumers in British Columbia had been adequately informed and were aware of the potential risks to health of smoking. Officials advised cigarette manufacturers that it was unnecessary or inadvisable for the cigarette manufacturers to issue definitive statements to consumers in British Columbia, at that time, concerning the relationship between smoking and health.
52. The Federal Government owed a duty and had obligations to consumers in British Columbia to provide adequate information, to the extent necessary, about the properties of cigarettes and the potential risks of smoking and JTI reasonably relied upon the advice of the Federal Government particularised at paragraph 51 above and on the knowledge of Officials to devise and implement a programme that would assess the potential health risks of smoking, and to, the extent necessary, to educate and inform and/or remind consumers in British Columbia of those potential risks and the properties of cigarettes. Further, JTI reasonably relied on the knowledge of those Officials to direct product development in the light of research into the properties of cigarettes.

B. Implementing the National Programme: Informing Smokers and Non-Smokers of the Properties of Cigarettes

53. In 1964, 1967 and 1968, Officials repeated that it was the duty of health agencies, including Health Canada, to inform the public of the potential risks of smoking.
54. The National Programme was implemented through a variety of means. Officials routinely participated in nation-wide health education programmes relating to cigarette smoking. School programmes and other information and educational means were employed to inform and educate children. Consumers in British Columbia were informed and/or reminded of the potential risks of smoking and the properties of cigarettes through media or intermediaries such as public interest groups and medical professionals. The level of awareness of consumers in British Columbia of the potential health risks of smoking was monitored and assessed. Officials also established co-operative working relationships with Provincial Governments, including the Plaintiff and national or local organizations committed to the objectives of the National Programme. These efforts were co-ordinated through the Technical Advisory Committee on Health Education Concerning Smoking Hazards and through an internal committee of Health Canada on Smoking and Health.
55. In or about April 1964, on the recommendation of the Technical Advisory Committee on Health Education Concerning Smoking Hazards, Officials published a Smoking and Health Reference Book (Canada) which was provided to the Plaintiff and was widely circulated to health professionals and others for the purpose of informing and/or reminding consumers in British Columbia about the properties of cigarettes and the potential health risks of smoking.
56. In 1964, a Teachers' Information Kit was prepared as part of the National Programme. The Teachers' Information Kit was prepared in conjunction with Provincial authorities, including the Plaintiff, and was made available to and incorporated in the curriculum of the schools in British Columbia. It adequately informed and/or reminded children and adolescents of the potential health risks of smoking and the properties of cigarettes. Other literature and materials about the potential risks of smoking to health and the

properties of cigarettes were similarly prepared by Officials as part of the National Programme and made available to Provincial authorities, including the Plaintiff, for incorporation in the curriculum of schools in British Columbia.

57. As part of the National Programme, Officials further informed and/or reminded children and adolescents of the potential health risks of smoking and the properties of cigarettes through monthly advertisements circulated to secondary school students. Officials sponsored National Film Board films including, "Let's Discuss Smoking" and a 1965 Canadian Youth Conference on Smoking and Health, and provided poster publications, film strips and film clips circulated to children and adolescents in Canada.
58. In 1967, Health Canada stated that it had been and continued to be the duty of "public health officials" to implement a "preventative programme" in respect of smoking.
59. As part of the National Programme, Officials informed and/or reminded consumers in British Columbia of the potential health risks of smoking and the properties of cigarettes through posters, publications, bibliographies, news releases, radio promotions, television commercials, audio visual aids and by encouraging newspapers to publish articles presenting the Federal Government's position on smoking and health.
60. During this period, the cigarette manufactures met regularly with Officials. The cigarette manufacturers complied with the requests and directions of Officials at that time including complying with a request to form an ad hoc committee to represent the industry at the 1963 National Conference on Smoking and Health.
61. The potential health risks of smoking and the properties of cigarettes were already known to consumers in British Columbia before the National Programme. The information provided under the National Programme further ensured that consumers in British Columbia knew of the properties of cigarettes and the potential health risks of smoking.
62. If, however, as alleged in the Statement of Claim, JTI or other Defendants breached duties or obligations owed to consumers in British Columbia by inadequately informing them about the properties of cigarettes or the potential health risks of smoking, so as to have caused or contributed to exposure, tobacco related disease or to the risk of disease

and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI or any other Defendant, all of which is denied, the Federal Government is liable to RJRTI by reason of Officials' conduct as particularized in paragraphs 39 to 60 or, alternatively, this conduct, wrongful or not, caused or contributed to exposure, tobacco related disease or to the risk of disease.

C. Implementing The National Programme; Printed Warnings

63. In 1965, warning label legislation was enacted in the United States. At that time, Officials took the position that warnings were not necessary, would be ineffective, were undesirable and could be counterproductive. In particular, in May 1965, the Deputy Minister of Health asserted to cigarette manufacturers that the labelling of cigarette packages with health warnings was unrealistic and "silly". In 1965, the position of Officials, stated to cigarette manufacturers, was that public awareness of the potential health risks of tobacco was ubiquitous. The cigarette manufacturers relied on that advice, request or direction and did not place warnings on cigarette packages at that time.
64. In 1968, the Parliamentary Committee on Health and Welfare (the "Isabelle Committee") was charged with the responsibility to review several Bills relating to smoking and health and report to Parliament. In December 1968, in submissions to the Isabelle Committee, the Minister of Health advised that he intended to recommend to the Federal Cabinet that legislation be enacted to require health warnings to be placed on cigarette packages. The warning the Minister favoured would have stated:

Warning: The smoke of these cigarettes contains cancer-producing chemicals, irritants, nicotine, carbon monoxide, and other toxic substances that should not be inhaled into the lungs.

65. The Isabelle Committee reported in late 1969. It recommended several possible forms of printed warnings, despite widespread awareness of the properties of cigarettes and the potential health risks of smoking, including warnings of dependency, be placed on all cigarette packaging and advertising and promotional materials on cigarette vending machines.

66. The Isabelle Committee concluded that the precise wording of the warning should only be determined after further study and consultation, including possible testing across Canada.
67. Officials considered and rejected the warnings initially favoured by the Minister of Health and also rejected those recommended by the Isabelle Committee. Instead, in June, 1971, the Federal Government introduced Bill C-248 which, if enacted, would have required a warning on cigarette packaging in the following form:

Warning: Danger to health increases with the amount smoked,
avoid inhaling.

This proposed warning reflected the judgment of Officials as to the terms of a warning they considered to be effective to inform and/or remind smokers of the potential risks of smoking and the properties of cigarettes. Bill C-248 was not enacted into law.

68. In September 1971, the CMTC, after negotiations and in response to a request by Officials, announced that, effective about April 1972, its then members would place a warning on cigarette packaging. The warning that was placed on cigarette packages, starting in about May 1972, was as follows:

Warning ... the Department of National Health and Welfare
advises that danger to health increases with amounts smoked.

The wording of this warning was insisted upon by the Minister of Health and was derived from the language of Bill C-248, save for the deletion of the reference to "avoid inhaling" and the inclusion of an attribution of the warning to the Department of Health and Welfare.

69. In October, 1972, the Legislature of British Columbia statutorily mandated the use of the voluntary warning on cigarette packaging and advertising.
70. In December 1972, Officials requested the inclusion of the phrase, "avoid inhaling" on packaging and requested the same wording be used in advertising, which request gave rise to continued discussions between Officials and the CTMC until changes were introduced in 1975.

71. Numerous surveys, including those conducted by Officials, confirmed that public awareness of the risks of smoking made it unnecessary to place warnings on cigarette packages and advertising. The Federal Government reasonably and lawfully determined that warnings on cigarette packages were unnecessary at all material times that such determinations were made. Between 1968 and 1972, the Federal Government reasonably and lawfully conducted consultation and study on the precise wording of a warning. If, however, as alleged in the Statement of Claim, JTI or other Defendants breached duties or obligations owed to consumers in British Columbia by not providing warnings on its cigarette packages before 1972 so as to have caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI or any other Defendant, all of which is denied, the Federal Government is liable to RJRTI by reason of Officials' conduct as particularized in paragraphs 63 to 70 or, alternatively, this conduct, wrongful or not, caused or contributed to exposure, tobacco related disease or to the risk of disease.
72. If a warning on cigarette packages and other materials was ever necessary, which is denied, the warning agreed to and mandated by Officials and given to consumers in British Columbia in December 1972 was sufficient to inform them adequately and was reasonable and lawful in the circumstances. If, however, as alleged in the Statement of Claim, JTI or other Defendants breached duties or obligations owed to consumers in British Columbia by providing only an inadequate or ineffective warning, which caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI or any other Defendant, all of which is denied, the Federal Government is liable to RJRTI by reason of the conduct of Officials particularized in paragraphs 63 to 70 or, alternatively, this conduct, wrongful or not, caused or contributed to exposure, tobacco related disease or to the risk of disease.

D. Implementing the National Programme: Monitoring Advertising and Promotion

73. At material times, Officials monitored the advertising and promotional practices of the cigarette manufacturers to ensure that they were consistent with the National Programme. In 1964, Officials commissioned their own analysis of Canadian tobacco products

advertising and promotion and at material times thereafter, requested changes to those practices to be consistent with the National Programme.

74. As early as 1962, at the request or direction of Officials, JTI agreed not to advertise or promote its cigarettes on the basis of express or implied health claims about the safety or relative safety of its cigarettes, and, in particular, not to participate in a US-style “tar derby” in which different brands of cigarettes were promoted on the basis of reducing machine-measured tar and nicotine yields.
75. In 1964, JTI and other cigarette manufacturers entered into a Cigarette Advertising Code, the contents of which were developed in consultation with and endorsed by Officials. The purpose of the Cigarette Advertising Code was to regulate the advertising and promotion of cigarettes in Canada by prohibiting, *inter alia*:
 - (a) the making of claims that smoking a particular brand promotes physical health or that smoking a particular brand was better for health than smoking any other brand;
 - (b) advertising aimed at children; and
 - (c) certain forms of “life-style” advertising.
76. From time to time, the cigarette manufacturers amended the voluntary advertising codes at the request or direction of Officials to ensure that cigarette advertising and promotion did not target underage smokers, make implied or explicit health claims about the relative safety of different brands of cigarettes or depend on “life-style” promotion.
77. At material times, Officials agreed that the advertising codes established promotional and advertising practices that were consistent with their public education programme, including the National Programme. From time to time, Officials requested changes to the advertising codes consistent with the National Programme, which were implemented by the cigarette manufacturers.
78. The advertising and promotion permitted under the advertising codes agreed to and endorsed by Officials were reasonable and lawful in the circumstances. JTI complied

with the various advertising codes and applicable laws regulating cigarette marketing in effect from time to time and, therefore, did not commit tobacco related wrongs as alleged, or at all. If, however, JTI's advertising or promotion breached duties or obligations owed to consumers in British Columbia so as to have caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI, all of which is denied, the Federal Government is liable to RJRTI by reason of the conduct of Officials particularized in paragraphs 73 to 77 or, alternatively, this conduct, wrongful or not, caused or contributed to exposure, tobacco related disease or to the risk of disease.

V. FURTHER EVOLUTION OF THE NATIONAL SMOKING AND HEALTH PROGRAMME

A. Implementing the National Programme: Introduction of the Less Hazardous Cigarette and Smoking Programme

79. By the mid-1960's, the international and Canadian scientific consensus was that lowering the "tar" yield of tobacco smoke would likely reduce the incidence of tobacco related disease in the population of smokers. This view was later reinforced by, and Officials accepted, the scientific consensus based upon: their independent assessment of epidemiological evidence correlating the potential risk of contracting smoking related disease to "tar" yields as measured by standard machine testing methods; their independent analysis of studies of smoking behaviour, and its effect on deliveries of "tar" to the smoker, and their acceptance of the proposition that a correlation existed between "tar" yields and the potential risk of contracting disease.
80. In the mid-1960's, Officials at Health Canada and Agriculture Canada explored ways to reduce "tar" in tobacco smoke. This approach reflected the conclusion of Officials that a programme of identifying and removing specific toxic constituents from tobacco smoke ("selective reduction") was unlikely to yield satisfactory results and that a programme of general reduction of "tar" exposure was reasonably expected to reduce the incidence of disease.

81. In or about late 1966, Officials of Health Canada began to collect information about the yields of different brands of Canadian cigarettes in order to analyse the implications of that information in the context of the National Programme.
82. Further, during 1966, Officials at Health Canada, including Dr. Pett, Dr. Colburn, Deputy Minister Crawford and Minister of Health MacEachen, examined whether the National Programme should be changed in a variety of ways, including providing information about “tar” and nicotine yields to smokers, an approach that had previously been rejected, setting maximum “tar” and nicotine yields for Canadian cigarettes, restricting cigarette advertising and altering the price of different brands of cigarettes by means of differential taxation to influence smokers in their choice of brands.
83. At that time, Officials of Health Canada concluded that, notwithstanding the knowledge of the public as to the potential risks to health of smoking, a portion of current smokers would choose to continue to smoke and that a portion of non-smokers would choose to begin to smoke. Officials implemented a programme to provide relevant and accurate information to smokers to guide them in making choices about their smoking behaviour, including inducing them to choose brands of cigarettes with a lower yield of tar and nicotine as measured by standard testing methods (“light and mild products”). This programme, as further particularized herein, involved providing information and advice to smokers about “tar”, nicotine and carbon monoxide yields as measured by standard testing methods as well as information and advice to smokers about smoking behaviour and advice about the unreliability of standard testing methods using machines to determine the exposure of individual smokers. Officials also gave advice, made requests or gave directions to cigarette manufacturers involving the development and promotion of light and mild products and the use of standard testing machines. At the same time, and in conjunction with Health Canada, Officials of Agriculture Canada were developing tobacco varieties particularly suitable for use in light and mild products that were sold in British Columbia.
84. Beginning in late 1968, Officials of Health Canada, including the Minister of Health, began to implement an operational programme, as further particularized herein, to induce

smokers to select light and mild products. In 1969, the Isabelle Committee endorsed the practice of Officials of Health Canada of encouraging smokers to use low “tar” cigarettes. In furtherance of the programme, Officials provided information to consumers in British Columbia to discourage the consumption of high “tar” brands and to encourage smokers to switch to light and mild products.

85. On November 20, 1968, Officials of Health Canada published tables showing the “tar” and nicotine yields of cigarette brands sold in Canada (the “League Tables”). This information was published so that smokers could compare the “tar” and nicotine yield of cigarette smoke on a brand-basis and thereby to encourage smokers to switch to lower “tar” products. Officials of Health Canada continued to publish League Tables, from time to time until 1986.
86. In 1968, Dr. Chapman of Health Canada confirmed to representatives of the tobacco growers and to cigarette manufacturers that Officials of Health Canada intended to protect the health of smokers by, *inter alia*, implementing a program to reduce the “tar” yield in cigarette smoke and by taking measures to promote the consumption of light and mild products. One of these measures was the publication of the League Tables.
87. The information contained in the League Tables was generated by a testing protocol selected in 1968 by Officials that measured the “tar” and nicotine yields in the smoke of particular brands of cigarettes consistently and reproducibly over time. This protocol was recommended by Officials and was ultimately agreed to by the cigarette manufacturers.
88. Officials had the principal role in the collection of “tar” and nicotine information and in the publication of such information and in advising or requesting or directing manufacturers to print that information on cigarette packaging and advertising.
89. Given the variations in individual smoking behaviour, it was never the purpose of the testing protocol to measure “tar” and nicotine deliveries to particular individual consumers in British Columbia. Rather, the testing protocol created a single, standardized test to ensure consistency and reproducibility and to provide consumers in British Columbia with comparative brand information. This testing protocol became a basis for

the “tar” and nicotine information provided to consumers in British Columbia by or at the direction of Officials, throughout the material period. Officials knew or ought to have known at material times that the machine-measured yield did not and could not measure the “tar” and nicotine yields to particular consumers in British Columbia. The third League Table published in 1969 expressly stated that machine measurement may not be an accurate measure of individual exposure to “tar” and individual smoking behaviour will vary.

90. Notwithstanding the known shortcomings of the League Tables to indicate “tar” and nicotine deliveries for any particular consumer, Officials continued to publish League Tables from time to time until 1986. In publishing the League Tables, Officials disclosed the parameters of the standard testing protocol that was used. That information was widely publicized in the media and elsewhere and was used by health professionals and others in advising consumers in British Columbia about the potential health risks of smoking, the properties of cigarettes and in encouraging smokers to switch to lower yield products.
91. In June 1969, representatives of the CTMC advised the Isabelle Committee that its members would make no health claims for low yield cigarettes and recommended that representations of this nature should not be made to consumers in British Columbia by Officials.
92. Officials, with the assistance initially of the University of Waterloo, played the principal role in the collection of “tar” and nicotine information, the publication of such information and requests that it be printed on cigarette packaging and advertising.
93. When the League Tables were published by Officials, they were accompanied by representations or advice to smokers. In particular, continuing smokers were advised, typically by the Minister, not to be concerned about small differences in “tar” and nicotine yields, that brands could be compared within test periods by ranking brands in relation to others, that the tables were to be used by smokers to help reduce exposure to smoke constituents, but that smokers should not rely on the brand of cigarette as the only

way to reduce exposure, and that smokers could reduce exposure by changing the manner in which they smoked a cigarette.

94. Smokers were advised in the League Tables that the amount of “tar” and nicotine inhaled by a smoker depended upon how the smoker smoked the cigarette as well as the “tar” and nicotine yield of the cigarette, and that the reduction in “tar” and nicotine intake to be obtained by choosing low “tar” and nicotine brands might not be achieved if more cigarettes were smoked, more puffs taken, or cigarette smoke was inhaled more deeply or smoked to a shorter butt length. Smokers were thereby advised of the means by which any possible “compensation” could be avoided.
95. Publication of the League Tables by Officials was temporarily suspended in 1975 when, at the request or direction of Officials, the cigarette manufacturers agreed to publish “tar” and nicotine yields on all cigarette packages and on advertising, as measured by the same or comparable testing protocol which had been selected by Officials for use in the League Tables. Officials monitored the accuracy of the information on the packages and advertising.
96. On the advice, request or direction and with the active guidance and assistance of Officials, the cigarette manufacturers designed and developed cigarettes that complied with the maximum limits established by Officials and as a result delivered lower average “tar” yield as measured by the standard testing methods. The maximum sales weighted average “tar” and nicotine in cigarette smoke was lowered in stages until 1984. The design features which lowered the “tar” and nicotine yield of cigarette smoke as measured by standard testing methods were all known to Officials. The design features were applied to all cigarettes so that the “tar” and nicotine yields decreased materially from the early 1970’s to the mid 1980’s.
97. At material times, Officials knew and kept abreast of advances in medical and scientific knowledge on matters pertaining to the smoking of tobacco and its potential effects on health, including matters relating to cigarette design. Without limiting the generality of the foregoing, those Officials knew and kept abreast of research relating to the so-called phenomenon of smoker “compensation”. The Federal Government sponsored research at

the University of Waterloo and elsewhere from approximately 1968 into the mid-1980s. In the 1970's, Officials and researchers from the University of Waterloo attended international smoking and health conferences at which they published statements that the phenomenon of compensation did not affect most smokers.

98. Officials also knew and kept abreast of advances in chemical, biological, medical and technical knowledge and techniques concerning the growing, harvesting, curing and manufacture of tobacco and tobacco products.
99. The advice, requests or directions to JTI to lower the "tar" and nicotine yield of cigarettes continued during a series of meetings between representatives of the cigarette manufacturers and Officials, starting in January 1970. Relevant meetings were attended by Mr. Munro, the Minister of Health, Dr. LeClair, then Deputy Minister of Health, Dr. Watkinson, Director General of Health, and Dr. Colburn, Director of Use of Tobacco Programme, at which scientific research into bioassays, smoking behaviour and compensation were also discussed.
100. Representatives of the CTMC attended a meeting of the Inter-departmental Committee on Less Hazardous Smoking on May 20, 1971. This Inter-departmental Committee included Officials from Health Canada including Drs. Colburn and Watkinson, and Officials of Agriculture Canada including Dr. Hamilton and B. F. Zilkey. Officials of Health Canada again requested agreement to a "tar" reduction programme. Representatives of CTMC raised the issue of smoker compensation. The CTMC representatives advised that for some smokers there was a tendency to change smoking patterns to obtain a minimum daily level of nicotine when using low yield cigarettes and that this could increase the intake of "tar" and gases. Officials advised or represented to the representatives of the CTMC that the evidence was that only a minority of smokers compensated fully or permanently when smoking light and mild products and that health benefits existed from choosing to smoke them. In response to the apparent tendency of some smokers to change their smoking patterns and on the basis of the belief that smokers smoked in order to obtain nicotine, rather than tar, it was decided to attempt to reduce the ratio of tar to nicotine in tobacco by breeding tobacco varieties with higher levels of nicotine which

could be filtered down to obtain a potentially less hazardous low “tar” and medium nicotine cigarette. The stated position of Officials of Health Canada, until approximately 1999, was that these lower yield cigarettes were safer than higher “tar” cigarettes. This position was repeated to representatives of the CTMC, including JTI, on subsequent occasions as the basis for the low “tar” programme.

101. On January 22, 1973, Mr. Lalonde directed Health Canada to finance research into a “safer” cigarette and announced publicly that Health Canada’s research efforts were being co-ordinated with that of the cigarette manufacturers.
102. In February, 1973, and again in March, 1974, the Minister of Health in publishing the League Tables, and in reiterating the representations and advice that were typical on the occasion of such publication, commended the manufacturers for their efforts to bring down yields of “tar” and nicotine and, in 1973, also convinced them to accept maximum “tar” and nicotine yields in cigarettes. Mr. Lalonde, in repeating the advice that switching to low “tar” and nicotine brands is only one way for smokers to reduce exposure, also recommended that switching to low “tar” brands be only one step to discontinuing smoking altogether. Smokers were also advised that some brands of cigarettes were ventilated on or near the filter and that “tar” and nicotine deliveries might be increased if the “openings” were blocked. This advice or warning continued in subsequent publications of the League Tables by Officials.
103. By the fiscal year end of March 31, 1973, responsibility for the National Smoking and Health Programme was assumed by the Use of Tobacco Bureau of the Non-Medical Use of Drugs Directorate.
104. In April 1973, Mr. Lalonde stated at a meeting with the CTMC that Health Canada supported research into a “safer” cigarette and that Officials at Health Canada were doing research with Agriculture Canada and cigarette manufacturers towards developing tobacco varieties that would lead to lower “tar” and nicotine yields in cigarettes.
105. On or about May 16, 1973, Officials of Health Canada confirmed to the cigarette manufacturers that they were continuing to request Agriculture Canada and the cigarette

manufacturers to direct research and production efforts into lowering the “tar” content in cigarette smoke.

106. In or about February 1974, the smoking and health research financed by Health Canada at Delhi to further the production of light and mild products was outlined to JTI.
107. In March 1975, Mr. Lalonde reiterated the requests of the CTMC to develop and promote light and mild products.
108. In March, 1976, Mr. Lalonde, wrote to the CTMC making a number of requests including the listing of “tar” and nicotine on advertisements for all cigarette lengths in which a brand was available, the use of posters in tobacco sales outlets to draw attention to the “tar” and nicotine levels printed on packages, the lowering of “tar” and nicotine maximums in Canadian cigarettes, the elimination of the promotion of higher “tar” brands, and the preparation of a report on the potential effectiveness of using differential pricing of cigarettes according to “tar” and nicotine levels.
109. The cigarette manufacturers began publishing “tar” and nicotine yields on its packages of light and mild products, as measured by the standard testing protocol approved by Officials, and in compliance with Mr. Lalonde’s request.
110. A comprehensive report was published by Officials of Health Canada in March, 1977, entitled “Smoking and Health in Canada” which noted, *inter alia*, that
 - (a) in response to pressure from Officials, cigarettes were being marketed with much lower yields of “tar” and nicotine than previously;
 - (b) low yield cigarettes may be “safer”;
 - (c) smokers of low yield cigarettes may be susceptible to compensation, making a high nicotine but low “tar” cigarette desirable; and
 - (d) filters were an important improvement to cigarettes, making them increasingly safe and more effective in removing carcinogens in cigarette smoke.

111. In June 1977, Mr. Lalonde publicly stated that Health Canada continued to have the objective of reducing “tar” and nicotine yields in cigarettes.
112. In published reports, following a meeting of the Federal and Provincial Health Ministers in June, 1977, the participants (including Health Canada Officials) requested or directed that cigarette manufacturers lower the “tar” and nicotine yields in cigarettes. Officials also wished to examine ways to modify the Federal excise tax on cigarettes so that those with higher “tar” levels would be taxed at a higher rate. Officials represented that the introduction of “light cigarettes” by cigarette manufacturers was an appropriate reaction to Health Canada’s campaign to warn Canadians of the potential health risks of smoking. Officials noted the increase in sales of “light” products with approval.
113. In 1978 and thereafter, CTMC representatives met repeatedly with Officials at the Health Protection Branch of Health Canada. Dr. Morrison informed the CTMC that the goal of Officials of Health Canada continued to be to ensure further reductions in “tar” and nicotine yields of cigarettes. Officials requested the cigarette manufacturers to accept targets for the reduction of “tar” and nicotine in cigarettes sold in Canada. The cigarette manufacturers agreed with Officials to attempt to reduce the “Sales Weighted Average Tar” content of cigarettes (or “SWAT” level) in accordance with government targets, namely, to reduce SWAT to 12 milligrams by December 31, 1984. SWAT levels are a measurement of the average “tar” yield of cigarettes as measured by the standard testing methods, taking into account the sales volumes of the brands. The SWAT levels were successfully reduced from about 15 milligrams in 1978 to approximately 12 milligrams in 1984.
114. In League Tables published from 1973 to 1984, Officials at Health Canada publicly acknowledged that Health Canada, at material times, actively requested the production and marketing of light and mild products.
115. In 1978, the Minister of Health, Ms. Begin, took credit for the availability of light and mild products on the market, asserting the fact that their availability had been achieved in response to the efforts of Health Canada, triggered initially by publication in 1968 of the first comprehensive report on tar and nicotine levels in Canadian cigarettes.

116. From 1968, until at least 1983, Health Canada, including the Minister of Health, Ms. Begin, in 1981, repeatedly informed smokers that they could reduce their intake of harmful substances by switching to a brand with lower “tar” and nicotine yields provided they did not compensate by smoking more cigarettes per day or smoking more intensively. In 1983, Ms. Begin made reference to “compensation” and, in particular, to smokers blocking ventilation openings which was one of the means by which Officials believed that smokers might compensate.
117. On January 24, 1983, Ms. Begin informed those smokers who switched from high yield to low yield cigarettes that, after switching, and depending on how they smoked, they could experience an even higher yield than experienced before switching. Notwithstanding this information, Ms. Begin continued to recommend smokers switch to low yield cigarettes.
118. In January 1983 and again in January 1984, Ms. Begin published a Press Release to advise smokers of the carbon monoxide yield in brands of Canadian cigarettes. She advised consumers in British Columbia of her request of cigarette manufacturers to reduce SWAT to 12 milligrams by the end of 1984, expressed optimism concerning the continuing efforts by cigarette manufacturers to reduce “tar” and nicotine yields, and repeated the advice, based on tests conducted for Health Canada, that actual yields are affected by the way in which cigarettes are smoked. Her advice or representation to consumers in British Columbia was that “tar” and nicotine values printed on packages were a satisfactory buyer’s guide to cigarettes with lower average yields, but that Health Canada’s studies showed that actual intake depended at least as much on how the cigarette was smoked as the published yield levels.
119. On August 1, 1985, Officials of Health Canada, again in furtherance of the National Smoking and Health Programme, encouraged the production of light and mild products and lowering “tar” and nicotine yields as measured by standard testing methods.
120. In January 1986, Health Canada informed smokers that:

- (a) they might actually experience three times the average “tar” yield shown on the packages;
 - (b) notwithstanding (a) above, the published “tar” and nicotine yields were a satisfactory buyer’s guide to selecting cigarettes with lower average yields;
 - (c) nevertheless, these printed “tar” and nicotine yields were not good estimates of the potential risk to health for individual smokers; and
 - (d) that some cigarettes may be potentially less hazardous than others.
121. Officials of Health Canada published and widely disseminated other information, beyond the League Tables, all with an aim of encouraging smokers to switch to lower “tar” cigarettes as measured by standard testing methods. Whatever views consumers in British Columbia had about the potential reduction in health risks associated with “Light” and “Mild” cigarettes was largely if not entirely the result of the dissemination of information or advice to consumers in British Columbia by Officials and others at the direction of or in reliance on information provided by Officials.
122. Health Canada continued to publish the League Tables until 1988 but continued thereafter to encourage smokers to switch to light and mild products, Officials knew or ought to have known of the relevant epidemiological and scientific research pertaining to the smoking of tobacco, including “compensation”, its effects on health, and the methods by which the “tar” and nicotine yield of tobacco smoke was or could be reduced.
123. Until August 2003, Health Canada’s website continued to advise continuing smokers that light and mild products reduced the risk of cancer.

B. The Design and Development of a “Less Hazardous Cigarette” by Officials

124. For many years, Officials of Agriculture Canada, particularly those at the Delhi Research Station, undertook a comprehensive research and development programme as part of actively supporting the cigarette manufacturers in the production and marketing of tobacco products. The purposes of this research and of the programme included improvements to the quality (including nicotine and sugar levels) and marketability of

Canadian tobacco varieties with reference to the desires and preferences of consumers in British Columbia and, later, to further Health Canada's Less Hazardous Cigarette programme, as particularized herein.

125. In 1968, Officials of Health Canada initiated studies at the University of Waterloo including a chemical and physical analysis of currently marketed Canadian cigarettes and an analysis of "tar", nicotine and carbon monoxide yields, butt length and paper, as well as studies of how smoking behaviour changes with the use of lower yield cigarettes. Officials of Health Canada also initiated statistical studies involving the monitoring of "tar", nicotine and carbon monoxide yields in currently marketed Canadian cigarettes. All of these studies were for the purpose of publishing League Tables and for the purpose of developing a programme to manufacture a potentially less hazardous cigarette.
126. In or about 1969, Officials of Agriculture Canada at the Delhi Research Station embarked upon a programme to develop a potentially less hazardous cigarette (hereafter the "Less Hazardous Cigarette Programme"). The programme continued until the late 1980's and included:
 - (a) identifying and reducing compounds believed to be deleterious to health in existing varieties of tobacco plants;
 - (b) development of new varieties of tobacco which, when smoked, yielded a lower "tar" to nicotine ratio; and
 - (c) development of new tests to assess the relative safety of the new varieties of tobacco plants (bioassay).
127. In or about 1971, Officials of Agriculture Canada and Health Canada, as one component of the Less Hazardous Cigarette Programme, established the Inter-departmental Committee on Less Hazardous Smoking with a mandate to develop a cigarette capable of being marketed as potentially "less hazardous" than alternative or pre-existing cigarettes.
128. On July 14, 1971, Dr. Hamilton, Assistant Director, General Eastern Division of the Research Branch of Agriculture Canada, announced that Agriculture Canada would

assume an important role in developing programmes related to smoking and health, by undertaking research into factors that affect the physiology and chemistry of tobacco plants, and that control the “tar” and nicotine levels in tobacco smoke. This research became an integral component of the Less Hazardous Cigarette Programme.

129. On or about November 18, 1971, Dr. Chapman of Health Canada confirmed to representatives of the tobacco growers and cigarette manufacturers that Officials of Health Canada were interested in protecting the health of smokers by, amongst other things, reducing the “tar” and nicotine content of cigarette smoke and by producing lower yield products.
130. In 1972, the CTMC joined with Agriculture Canada in a research agreement to develop reconstituted sheet tobacco, which could be used to reduce the overall yield of tar and nicotine from a cigarette.
131. By late 1972, Officials of Agriculture Canada, particularly those at the Delhi Research Station, were responsible for leading the research and development of a potentially less hazardous cigarette under the Less Hazardous Cigarette Programme.
132. On January 22, 1973, the Ministers of Agriculture, Mr. Whelan, and Health, Mr. Lalonde, announced the development of new laboratories, which were then constructed, at the Delhi Research Station to develop tobacco varieties and cultural, curing, and other processing techniques that could contribute to the production of potentially less hazardous cigarettes. It was contemplated the varieties would contain a lower percentage of tar-producing constituents than the existing varieties. The objective was that new types of tobacco, when combined with improvements in manufacturing processes, such as the production of reconstituted tobacco sheet and advancements in filter design, would enable further steps to be taken in the production of lower yield products that would expose smokers to fewer harmful substances.
133. In January, 1973, the Minister of Health announced a three-way programme of co-operative research which was then undertaken among Health Canada, Agriculture Canada, and the University of Waterloo to contribute to international efforts to produce

potentially less hazardous light and mild products, to develop the types of tobacco products that would be required in the future and to facilitate Health Canada's guidance of the tobacco industry in matters affecting health. The Minister of Health confirmed that regular communications on these matters between the two government departments and the cigarette manufacturers were continuing. The Minister also confirmed that Health Canada was involved in a programme (the Less Hazardous Cigarette Programme) which was one component of a broad programme to reduce the hazards of cigarette smoking, and which included public education and studies to help Canadians avoid or discontinue smoking.

134. As part of the Less Hazardous Cigarette Programme, in 1973, Health Canada through, *inter alia*, Dr. Colburn and Dr. Forbes at the University of Waterloo, undertook studies of smoking behaviour and responses of smokers to modified cigarettes. Also in 1973 and 1974, Officials at the Delhi Research Station were researching the phenomenon of compensation and noted their belief that smokers need to maintain sufficient "dose levels".
135. As part of the Less Hazardous Cigarette Programme, beginning in 1974, the Non-Medical Use of Drugs Directorate of Health Canada sponsored research at the University of Guelph into developing biological tests into the relative safety of both commercial and experimental cigarettes.
136. In 1975, the Non-Medical Use of Drugs Directorate of Health Canada sponsored research into the mutagenicity of Canadian experimental cigarettes.
137. In 1977, Officials at the Delhi Research Station and Health Canada Officials conducted a project entitled "Delhi Tobacco and Health Bio-Assay Programme" as part of the Less Hazardous Cigarette Programme.
138. In 1977, Officials at Health Canada in a published report identified the potential need for cigarettes with lower "tar" and carbon monoxide yields but with a sufficient nicotine yield to satisfy certain smokers. In June, 1977, representatives of the cigarette manufacturers were advised by Officials that the Federal Government was sponsoring

research into developing strains of tobacco consistent with this objective, which when combined with filtering technology would be suitable for use in light and mild products. Officials further advised of progress in product developed at the Delhi Research Station; of studies into the mutagenicity of tobacco leaf; the effects of nicotine concentration on smoking behaviour; of options to obtain reductions of maximum constituent levels; reductions in biological activity, and of long-range research and development.

139. At material times, the Federal Government publicized the results of its research.
140. The Delhi Research Station also manufactured cigarettes from the tobacco varieties that it had designed or developed for evaluation by various manufacturers.
141. The result of the Less Hazardous Cigarette Programme was, *inter alia*, that Officials of Agriculture Canada at the Delhi Research Station had, between about 1979 and 1983, created varieties of tobacco leaf, including Nordel, Delgold, Newdel and Candel which contained significantly higher levels of nicotine than previously available varieties. These varieties which when smoked, produced a lower “tar” to nicotine ratio and, therefore, were believed to produce a safer cigarette. These varieties were tested at the Delhi Research Station for their relative safety and to determine whether they were consistent with acceptable levels of biological activity or mutagenicity and whether they would be acceptable to consumers in British Columbia when manufactured into cigarettes for the purpose of improving marketability. Officials licensed those varieties and promoted them for use by all growers of tobacco in Canada and for use by cigarette manufacturers in their products for sale to consumers in British Columbia.
142. By the summer of 1980, Officials at Agriculture Canada were advising consumers in British Columbia and cigarette manufacturers that the new varieties of tobacco “that Agriculture Canada had developed, could be tailor-made for today’s light cigarette brands, combining low-tar and high nicotine”. By the spring of 1981, Officials at Health Canada advised and represented to consumers in British Columbia and the cigarette manufacturers in published material that, “The relatively low-tar/nicotine ratio of Canadian tobacco offers manufacturers greater flexibility in producing lighter cigarettes and still maintains sufficient nicotine and flavour to satisfy consumer demands.” Similar

statements were published on multiple occasions including those in Volumes 53, 54 and 55 of "The Lighter", a publication of Agriculture Canada.

143. By 1983, the tobacco varieties promoted by Health Canada and developed by Officials of Agriculture Canada, directly or indirectly, in response to grower requirements and the international market for tobacco leaf, and in order to satisfy consumer demand for "light" cigarettes, comprised about 95% of the tobacco available to cigarette manufacturers. By 1983, nearly all tobacco products consumed in British Columbia were manufactured from these varieties.
144. Licensing fees and royalties earned on those tobacco strains have been paid to the Federal Government.

C. Continued Monitoring, Encouraging and Endorsing by the Federal Government of the Advertising and Promotion of Light and Mild Cigarettes

145. In the period between 1972 and 1988, Officials continued to monitor, encourage and endorse the advertising and promotional practices set out in the advertising codes. At material times, Officials of Health Canada requested or directed the cigarette manufacturers to market lower yield cigarettes to meet its SWAT and Sales Weighted Average Nicotine ("SWAN") targets and, thereafter, monitored the cigarette manufacturers' promotional activities. Particulars include advice, requests or directions by Drs. Colburn and Draper of Health Canada in February 1974 to cigarette manufacturers to advertise and promote lower yield products, and requests by Minister of Health, Mr. Lalonde, in February 1973, to decrease the promotion of higher "tar" brands, reduce "tar" levels in widely available higher "tar" products and to develop and promote lower yield products in preference to higher "tar" products. Such requests were repeated at meetings that took place between Officials of Health Canada and cigarette manufacturers on a regular basis over the material period.
146. Officials at Health Canada monitored the introduction of "mild" versions of popular brands by tobacco manufacturers and their increasing market share acknowledging that, in 1977, their introduction had been made in response to public demand and the requests of Officials.

147. At material times, Officials at Health Canada influenced the content of and monitored compliance with the cigarette advertising and promotion codes agreed to from time to time by the CTMC. These codes prohibited advertising or promotion on the basis of relative health claims for different brands of cigarettes. Officials at Health Canada brought any infractions to the attention of the cigarette manufacturers. Until 1999, Officials at Health Canada, raised no objections to the use of the descriptors "Light" and "Mild" on the cigarette manufacturers' products.
148. Beginning in or about 1976, Officials of Health Canada endorsed the use of the descriptors "Light" and "Mild" in JTI's marketing and promotional practices.
149. Officials at Health Canada also monitored the advertising budgets of the Canadian cigarette manufacturers on a regular basis until advertising and promotion were banned by legislation. Prior to the ban, Officials at Health Canada requested that resources devoted to advertising and promoting the light and mild products be increased.
150. At material times, the cigarette manufacturers at the advice, request or direction of Officials developed, manufactured and promoted lower yield cigarettes, described to consumers as "mild", or "light" cigarettes with descriptions such as, "Special Mild" "Extra Mild" and "Ultra Mild". JTI complied with the requests received from time to time from Officials in relation to the design, manufacture, advertising and promotion of its light and mild products and other product design features that were designed to reduce the potential health risks of smoking and, thereby, did not commit tobacco related wrongs as alleged or at all.
151. Officials reasonably and lawfully conducted research into light and mild products, reasonably and lawfully believed that their use by consumers reduced the potential risks to health from smoking those products, reasonably and lawfully conveyed that information to consumers in British Columbia, and reasonably and lawfully encouraged cigarette manufacturers to promote light and mild products preferentially. If, however, as alleged in the Statement of Claim, JTI breached duties or obligations owed to consumers in British Columbia by misinforming or deceiving them about the attributes or properties of its products, including light and mild products, or by preferentially promoting light and

mild products, so as to have caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI, all of which is denied, the Federal Government is liable to RJRTI by reason of the conduct of Officials particularized in paragraphs 79 to 150 or, alternatively, this conduct, wrongful or not, caused or contributed to exposure, tobacco related disease, or to the risk of disease.

152. Officials reasonably and lawfully created tobacco leaf which they believed would reduce the potential health risks of smoking, and reasonably and lawfully encouraged and directed the cigarette manufacturers in the design and manufacture of products that Officials believed would reduce the potential health risks of smoking. If, however, as alleged in the Statement of Claim, JTI breached duties or obligations owed to consumers in British Columbia by designing and manufacturing cigarettes as it did, which breach caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI, all of which is denied, the Federal Government is liable to RJRTI by reason of the conduct of Officials' particularized in paragraphs 1, 11, 20, 21, 26 and 79 to 150 or, alternatively, this conduct, wrongful or not, caused or contributed to exposure, tobacco related disease or to the risk of disease.

VI. WARNINGS IN THE POST 1988 ERA

153. After 1988, the Federal Government legislated or regulated the tobacco industry in relation to the form and content of warnings on cigarette packages, advertising, promotional and sponsorship practices and the form and content of disclosure of smoke constituents.
154. Warnings endorsed and requested by the Officials in 1975, and, thereafter, remained on cigarette packages until the content of the warnings was changed by legislation, effective in 1989. Since that time, the warnings on cigarette packages have been in the terms set forth in the Regulations. Between 1989 and 1996, the warnings required by legislation had the authority of law. In 1995, the Supreme Court of Canada declared the legislation authorizing the Regulation requiring specific warnings to be *ultra vires* the Parliament of

Canada but suspended the effect of the declaration for one year. Until the passage of the *Tobacco Act*, S.C. 1997, c.13, warnings stipulated by the *ultra vires* Regulation remained on cigarette packages voluntarily and since that time they have been legislated.

155. In 1988, Officials proposed a printed warning regarding addiction to the cigarette manufacturers. Officials considered and rejected a warning regarding addiction when the 1988 Regulations were enacted. Since 1994 Regulation has required a specific warning that cigarettes are addictive.
156. Notwithstanding the regulation of the cigarette manufacturers, Officials continued to communicate with consumers in British Columbia to inform and/or remind them of the potential health risks of smoking and the properties of cigarettes.
157. If a warning on cigarette packages and other materials was ever necessary, which is denied, the warnings required by the Federal Government from time to time after 1988 were sufficient to inform and/or remind consumers in British Columbia of the properties of cigarettes and the potential health risks of smoking and were reasonable in the circumstances. At all material times, JTI complied with the relevant regulations in force from time to time and committed no “tobacco related wrongs” as alleged or at all.
158. If, as alleged in the Statement of Claim, JTI breached duties or obligations owed to consumers in British Columbia after 1988 by misinforming or by inadequately or ineffectively informing and/or reminding them of the potential health risks of smoking or the properties of cigarettes, which breach caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI or any other Defendant, all of which is denied, the Federal Government is liable to RJRTI by reason of the conduct of Officials as particularized in paragraphs 153 to 156 or, alternatively, this conduct, wrongful or not, caused or contributed to exposure, tobacco related disease or to the risk of disease.

VII. THE RELIEF SOUGHT WITH RESPECT TO THE FEDERAL GOVERNMENT

A. A Declaration Pursuant to s. 3(4) of the Act, that RJRTI's Liability Be Reduced

159. If, as alleged in the Statement of Claim, JTI or other Defendants breached duties or obligations owed to consumers in British Columbia so as to have caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI or any other Defendant, all of which is denied, RJRTI is entitled to a declaration that the amount of any liability of RJRTI for the cost of health care benefits be reduced to the extent that the conduct of Officials at material times and as pleaded herein, wrongful or not, caused or contributed to exposure, tobacco related disease or to the risk of disease.

B. In the Alternative, Contribution and Indemnity Under the Negligence Act

160. If, as alleged in the Statement of Claim, JTI or other Defendants breached any duties or obligations owed to consumers in British Columbia so as to have caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI or any other Defendant, all of which is denied, the Federal Government, as a manufacturer, also breached duties or obligations owed to consumers in British Columbia in respect of the matters particularized herein so as to have caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and is thus liable to the Plaintiff under the Act for the cost of health care benefits. RJRTI claims contribution and indemnity pursuant to the *Negligence Act*, R.S.B.C. 1996, c. 333.
161. Without limiting the foregoing, if as alleged in certain paragraphs of Parts III, IV or V of the Statement of Claim, certain representations made by cigarette manufacturers, including JTI, about the properties of cigarettes and the potential health risks of smoking were false when made or were ineffective or inadequate to inform consumers as to the same when made, which is denied, Officials knew or ought to have known that their same or similar representations, information and advice about the properties of cigarettes and the potential risks of smoking were false, ineffective or inadequate.

162. Based upon the Federal Government's conduct as a manufacturer, the Federal Government is liable to the Plaintiff under the Act for the cost of health care benefits. RJRTI claims contribution and indemnity pursuant to the *Negligence Act*, R.S.B.C. 1996, c. 333. If, as alleged in the Statement of Claim, RJRTI is jointly and severally liable for breaches of duty by JTI or any other Defendant, which is not admitted but specifically denied, RJRTI claims, on the basis of the facts particularized herein, that Canada, as a manufacturer, is jointly and severally liable to the Plaintiff.

C. In the Alternative, Damages to the Extent of Any Liability to the Plaintiff for the conduct of JTI

163. By virtue of their conduct as particularized herein and the relationship between Officials and JTI, Officials assumed a duty of care to JTI in giving advice and in making representations, requests or in giving directions to JTI in respect of its design, manufacture, marketing and promotion of tobacco products to consumers in British Columbia and in respect of its communication to consumers in British Columbia about the properties of cigarettes and the potential health risks of smoking, including in the form of printed warnings on packs and other materials.

164. As particularized herein, Officials made representations and requests to JTI and gave advice and directions in relation to matters alleged in the Statement of Claim to be tobacco related wrongs and JTI reasonably relied on the same and the knowledge of the Officials. At all materials times, Officials knew or ought to have known that JTI would reasonably rely on and act in accordance with such advice, representations, requests and directions.

165. It was reasonably foreseeable to Officials that JTI could come under a statutory liability or other liability for a breach of duty or obligation, if, in acting on the representations and advice and following the requests and directions of those Officials, it breached any duties or obligations to consumers in British Columbia, as alleged in the Statement of Claim.

166. If, as alleged in the Statement of Claim, JTI breached duties or obligations owed to consumers in British Columbia, so as to have caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health

care benefits, all of which is denied, then the conduct of Officials particularized herein was negligent and in breach of a duty owed to JTI.

167. Without limiting the foregoing, if, as alleged in certain paragraphs of Parts III, IV or V of the Statement of Claim, certain representations, made by cigarette manufacturers, including JTI, about the properties of cigarettes and the potential health risks of smoking were false when made or ineffective or inadequate to inform consumers as to the same when made, which is denied, Officials knew or ought to have known that their similar or same representations, information and advice about the properties of cigarettes and the potential health risks of smoking were false, ineffective or inadequate and that JTI would reasonably rely on those representations and that information and advice.
168. If, as alleged in the Statement of Claim, RJRTI is jointly and severally liable with JTI, which is expressly denied, RJRTI claims damages to the extent of any liability of RJRTI to the Plaintiff for the conduct of JTI.

D. In the Alternative, Indemnity in Whole or In Part to the Extent of Any Liability of RJRTI to the Plaintiff for the conduct of JTI

169. At material times, JTI acted on the requests or the directions of Officials as particularized herein. These requests or directions, made by Officials, resulted in JTI acting in a manner that was not manifestly tortious or apparently illegal.
170. If, as alleged in the Statement of Claim, JTI, in so acting, breached duties or obligations owed to consumers in British Columbia, so as to have caused or contributed to exposure, tobacco related disease or to the risk of disease and to the Plaintiff incurring the cost of health care benefits and if RJRTI is jointly and severally liable with JTI, all of which is denied, then the Federal Government is required to indemnify RJRTI to the extent of JTI's liability to the Plaintiff.

IF YOU INTEND TO DEFEND this claim against you, or if you have a set off or counterclaim that you wish to have taken into account at the trial, **YOU MUST**

- (a) **GIVE NOTICE** of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and **YOU MUST ALSO DELIVER** a copy of

the Appearance to the Defendants' address for delivery, which is set out in this Third Party Notice, and

- (b) **FILE** a Statement of Defence in the above registry of this court within the Time for Defence provided for below and **DELIVER** a copy of the Statement of Defence to the Defendants' address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (c) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (d) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this notice is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this notice is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.


TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to JTI's solicitors within 14 days after the end of the Time for Appearance provided for above.

(1)	The ADDRESS OF THE REGISTRY is: 800 Smithe Street, Vancouver, B.C. V3M 1C9
(2)	The Defendant's ADDRESS FOR DELIVERY is: 2500 – 700 West Georgia Street Vancouver, B.C. V7Y 1B3 Fax number for delivery: (604) 661-9349
(3)	The NAME and OFFICE ADDRESS of the Defendant's SOLICITORS are: Farris, Vaughan, Wills & Murphy LLP 2500 – 700 West Georgia Street Vancouver, B.C. V7Y 1B3

Dated: _____

Nov. 2 / 2007



Solicitors for the Defendant,
R.J. Reynolds Tobacco International, Inc.

**IN THE SUPREME
COURT OF BRITISH COLUMBIA**

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH
COLUMBIA

PLAINTIFF

AND:

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

DEFENDANTS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

THIRD PARTY

THIRD PARTY NOTICE OF R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.

JJK/cn

File no.: 12974-0003-0000

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