File No. 33563

SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF BRITISH COLUMBIA)

BETWEEN:

ATTORNEY GENERAL OF CANADA

APPELLANT /
RESPONDENT ON CROSS-APPEAL

- and -

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

RESPONDENT

- and -

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RESPONDENT ON CROSS-APPEAL'S FACTUM

PART I – FACTS & OVERVIEW

Overview

1. In this action, the government of British Columbia seeks to recover its costs of providing health care services to victims of smoking-related diseases from tobacco manufacturers alleged to have committed tobacco related wrongs. The manufacturers seek by cross-appeal to pass on any liability to Canada by means of third party claims which the Court of Appeal has struck out. The Attorney General of Canada ("Canada") opposes the cross-appeals brought by the defendant tobacco manufacturers, which challenge the conclusions of a five member panel of the British Columbia Court of Appeal.

2. What is at stake here is the ability of Canada to protect the health of the Canadian public through its tobacco control policies, free of the spectre of indeterminate liability to tobacco manufacturers sued for the cost of health care services arising from tobacco-related disease.

3. Canada did not act "in the commercial stream" or come "to participate directly in the commercial aspects of the Canadian tobacco industry" as is argued by the defendants. In fact, the third party notices do not allege that Canada acted as an industry player. Rather, they allege that Canada's research into and development of tobacco varieties arose as part of broader programmes to address the adverse health effects of cigarettes.

4. The *Tobacco Damages and Health Care Costs Recovery Act* (the "*Act*", the "*Costs Recovery Act*") does not apply to Canada. The province of British Columbia enacted the *Act* to seek recovery of the costs of treating tobacco related illnesses from "tobacco companies", not Canada. British Columbia has not sought to apply the *Act* to Canada and it contains no indication that Canada is subject to its terms; nor does the *Crown Liability and Proceedings Act* makes the *Act* applicable.

5. Canada is not a manufacturer under the *Act*, but even if it were, the *Act* would be inapplicable to it, as provinces do not have the legislative competence to bind the federal Crown. Only the Parliament of Canada can enact statutes to provide that an action be brought against the Crown in right of Canada.

6. A finding that the *Act* is inapplicable to Canada does not depend upon the operation of the doctrine of inter-jurisdictional immunity. Alternatively, if the doctrine is engaged, its application here would be eminently justified. The ability to determine when, and under what circumstances the federal Crown may incur civil liability involves a core federal power. The intrusion which would result from a holding that a province may unilaterally impose liability upon the federal Crown would involve a serious and significant impairment of that power.

7. The defendants can have no right of contribution or indemnity against Canada, whether under the *Negligence Act* or otherwise, as Canada has no liability to British Columbia.

8. It is plain and obvious, as the Court of Appeal held, that any duty of care in negligence which Canada owed to the tobacco manufacturers for "failure to warn" or "negligent design" is negated by policy considerations. The potential for creation of a widening sphere of indeterminate liability here is a significant policy concern which negates any *prima facie* duty of care found to exist. Canada's actions involved developing programmes, pursuant to a broad statutory discretion to act in the public interest to respond to the health risks of tobacco products. A duty of care would conflict with the balancing of a myriad of interests required for the development of such programmes. If the issue of a duty to smokers is raised, it is similarly plain and obvious that no such duty arises for these reasons.

9. The doctrine of equitable indemnity has no application. The Court of Appeal did not err in finding that it is plain and obvious that Canada cannot be held to have undertaken to indemnify the cross-appellants for any liability to the plaintiff. Finally, the requests for declaratory relief must fall with the claims associated with them.

Facts

10. The background facts with respect to this action and the *Costs Recovery Act*, as well as the policy, legislative and regulatory context are set out in Canada's factum on appeal at paragraphs 7-26. The additional facts below relate specifically to the matters at issue in the cross-appeal.

The *Tobacco Damages and Health Care Costs Recovery Act*

11. The *Act* came into force in January 2001.[1] At the time of its introduction, the government of British Columbia stated that the tobacco "industry" should be held accountable for the costs of

[1] S.B.C. 2000, c. 30, Appellants' Joint Book of Authorities ("A.B.A."), Vol. V, Tab 76.

treating tobacco related illness and made reference to "tobacco companies".[2] When the *Act* came into force, the British Columbia *Interpretation Act* provided that the only government bound by the *Act* was "Her Majesty in Right of British Columbia".[3] The *Act* contains no indication that it was intended to apply to Canada.[4]

12. The British Columbia Court of Appeal unanimously held that Canada is not a "manufacturer" under the *Act* and that Canada can have no liability to British Columbia under the *Act*.[5]

13. At paragraph 10 of its Statement of Facts on the cross-appeal, Imperial Tobacco Canada Limited ("Imperial") states that "[t]he *Costs Recovery Act* creates a statutory tort". This is incorrect. The *Act* creates a stand-alone statutory cause of action, the characteristics of which were previously described by this Court in *B.C. v. Imperial Tobacco*.[6] At paragraph 63 of their Statement of Facts on cross-appeal, Rothmans, Benson & Hedges Inc., et al. ("RBH") states that the *Act* merely alters traditional tort law. That is also incorrect. The *Act* creates an entirely new stand-alone statutory cause of action.

Other Claims as Dealt with by the Court of Appeal

14. Because it was held that Canada cannot be liable to the plaintiff under the *Act*, the Court also unanimously held that the defendant tobacco manufacturers cannot seek contribution and indemnity under the provisions of the *Negligence Act*.[7] It also held that it was plain and obvious that a claim based upon the doctrine of equitable indemnity would fail.[8]

15. With respect to the claims in the third party notices founded on negligence arising from a duty of care between Canada and tobacco manufacturers, Hall J.A., for the minority, did not find

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[2] *British Columbia v. Imperial Tobacco Ltd.*, 2009 BCCA 540 at para. 31, A.R., Vol. I, p. 54.
[3] R.S.B.C. 1996, c. 238, ss. 14, 29, Appellant's Supplementary Book of Authorities ("A.S.B.A."), Tab 42.
[4] *British Columbia v. Imperial Tobacco Ltd.*, *supra* at para. 33, A.R., Vol. I, p. 56.
[5] *Ibid.*, Hall J.A. for the minority at para 33 A.R., Vol. I, p. 56; Tysoe J.A. for the majority, concurring on this issue, at para 66 A.R., Vol. I, p. 71.
[6] 2005 SCC 49, Vol. I, Tab 8.
[7] R.S.B.C. 1996, c. 333; *British Columbia v. Imperial Tobacco Ltd.*, *supra*, Hall J.A. for the minority at para 33, A.R., Vol. I, p. 56; Tysoe J.A. for the majority, concurring on this issue, at para 66, A.R., Vol. I, p. 71.
[8] *Ibid.*, Hall J.A. for the minority at paras 54-57, 33, A.R., Vol. I, pp. 64-66; Tysoe J.A. for the majority, again concurring on these issues, at para 67, A.R., Vol. I, p. 71.

it necessary to conduct a detailed duty of care analysis. He held that it was plain and obvious that no duty of care existed due to a lack of foreseeability of the defendants' harm.[9]

16. Tysoe J.A., for the majority, held that the foreseeability criteria under the *Anns/Cooper* test were met, and conducted a full duty of care analysis.[10] He held that it was not plain and obvious that no *prima facie* duty of care was owed by Canada to tobacco manufacturers. He thus proceeded under the second stage of the *Anns/Cooper* test to determine if there were residual policy considerations which should negate any *prima facie* duty of care.

17. Tysoe, J.A. first examined allegations he described as "negligent design".[11] Relying on his reasons in the companion *Knight*[12] decision, Tysoe J.A. held that "it is plain and obvious that the policy consideration involving indeterminate liability is sufficient to negate the *prima facie* duty of care owed by Canada in connection with the claim of negligent design."[13]

18. With respect to allegations he described as "failure to warn", Tysoe J.A. adopted the reasons given by Hall J.A. in *Knight* and held that "[t]his claim is against Canada in its role as regulator" and that "the *prima facie* duty of care in this regard is negated by policy considerations."[14]

19. Negligent misrepresentation was the only issue on which the Court of Appeal was not unanimous in finding that it was plain and obvious that Canada did not owe tobacco manufacturers a duty of care. The majority's refusal to strike that aspect of the claim is the subject matter of Canada's appeal.

20. As the Court of Appeal unanimously concluded that Canada was not a manufacturer under the *Act*, the Court found it unnecessary to decide whether or not the *Act* applies to Canada as a matter of constitutional law.[15] In the event that this issue arises in this appeal, the Chief Justice has stated the following constitutional question:

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[9] *Ibid.*, paras 46 and 53, A.R., Vol. I, pp. 61 and 64.
[10] *Ibid,*, para 69, A.R., Vol. I, p. 72.
[11] *Ibid,*, para 85, A.R., Vol. I, p. 77.
[12] *Knight v. Imperial Tobacco Canada Limited*, 2009 BCCA 541, A.R., Vol. I, p. 80.
[13] *British Columbia v. Imperial Tobacco Ltd.*, *supra* at para. 86, A.R., Vol. I, pp. 77-78.
[14] *Ibid,*, para 89, A.R., Vol. I, p. 78.
[15] *Ibid,*, para 64, A.R., Vol. I, p. 70.

> Is the *Tobacco Damages and Health Care Costs Recovery Act*, S.B.C. 2000, c. 30, constitutionally inapplicable to the federal Crown because the latter is constitutionally immune from liability under the Act?[16]

Position on the Cross-Appellant's Statement of Facts

21. Canada takes issue with certain of the cross-appellants' statements of fact. While the pleadings must be taken to be true for the purposes of a motion to strike, the cross-appellants make certain assertions which are inconsistent with the pleadings, in an attempt to create the impression of an arguable case, or one that requires a trial to resolve. By contrast, in returning to the pleadings themselves, it is evident that no trial is needed to determine that it is plain and obvious that the claims in question must fail.

22. Imperial states with respect to the main claim: "Imperial's allegations against Canada in the TPN are virtually identical to British Columbia's allegations against Imperial".[17] That is not the case. For example, a significant and central difference between the main claim and the conduct alleged against Canada in the third party notices is that Canada is not alleged to have produced or supplied a harmful and defective product, cigarettes, for consumption by consumers.[18] Furthermore, unlike the defendants, who acted for commercial purposes, Canada's conduct is alleged to have been carried out through government programmes put in place to reduce the hazards of cigarette smoking. Canada acted pursuant to both general departmental and tobacco-specific legislation or regulations. These differences are significant in terms of the application of the *Act* to Canada as a "manufacturer" and potential liability in negligence, as will be discussed further below.

23. Imperial asserts in its overview "[t]his is not a case about a regulator"[19], repeating a theme raised in its response to the appeal to the effect that "the allegations in the TPN do not relate to Canada's role as a regulator, but relate to Canada's role as an active participant in the commercial tobacco industry".[20] This is incorrect. For example, on the topic of regulation of warnings, central to the issue of "failure to warn" raised in this cross-appeal, the third party

[16] Order re Constitutional Question to be stated, August 24, 2010, A.R., Vol. IV, p.41.
[17] Imperial Cross-Appeal Factum, para 13.
[18] Amended Statement of Claim, paras 49-54, A.R., Vol. II, pp. 19-20.
[19] Imperial Cross-Appeal Factum, para 3.
[20] Factum of Imperial Tobacco Canada Limited on Appeal ("Imperial Factum"), para. 5.

notices in fact allege Canada's escalating assertion and exercise of regulatory authority over tobacco manufacturers and their conduct:

> 28. At a November 1962 meeting of the Dominion Council of Health, Officials considered the implementation of a national smoking and health programme to include: …
> (c) a mandatory warning of health hazards of smoking;
> …
> 55. The position of Officials about the advisability of warning labels began to change in or about 1966. In 1968, the Parliamentary Committee on Health and Welfare (the "Isabelle Committee") was charged with the responsibility of reviewing several Bills relating to smoking and health and reporting to Parliament. In December 1968, the Minister of Health stated publicly that cigarette smoking was a serious health hazard and that consumers should avoid cigarette smoking entirely. The Minister also advised the Isabelle Committee that he intended to recommend to the Federal Cabinet that legislation be enacted to require health warnings to be placed on cigarette packages.
> …
> 57. Officials considered and rejected the warning initially proposed by the Minister of Health and also that recommended by the Isabelle Committee. Instead, in June, 1971, the Minister of Health introduced Bill C-248 which, if enacted, would have required a warning on cigarette packaging …
> …
> 137. After 1988, the Federal Government legislated or regulated the tobacco industry in relation to the form and content of warnings on cigarette packages, advertising, promotion and sponsorship practices and the form and content of disclosure of smoke constituents.
> …
> 141. At all material times, ITCAN complied with the Regulations in place from time to time and thereby committed no tobacco related wrongs.[21]

24. In addition to the foregoing kinds of allegations which specifically reference proposed and actual regulatory action by Canada, the third party notices are replete with allegations of Canada's "direction" of the tobacco manufacturers' conduct. They allege as a general proposition that Canada "set the standards of care that cigarette manufacturers, acting reasonably, met at material times".[22] The source of this ability to "direct" and to "set standards" was evidently Canada's statutory and regulatory authority.

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[21] Imperial TPN, A.R., Vol. II, pp. 72, 79, 80, 99, and 100; see also Third Party Notice of Rothmans, Benson & Hedges Inc. and Rothmans Inc., ("RBH TPN") paras. 28, 55, 57, 137, 141, A.R., Vol. II, pp. 127, 134, 153, and 154; and Third Party Notice of JTI-Macdonald Corp. ("JTI TPN") paras. 32, 64, 67, 153, 161, A.R., Vol. III, pp. 13, 14, 21, 22, 43, 45.

[22] Amended Third Party Notice of B.A.T. Industries P.L.C. and British American Tobacco (Investments) Limited ("B.A.T. TPN"), para. 67 A.R., Vol. III, p. 174; see also Imperial TPN, para. 163, A.R., Vol. II, p. 105; and JTI TPN, para. 159, A.R., Vol. III, p. 44.

25. In their Statement of Facts, B.A.T. Industries P.L.C., et al. ("B.A.T.") state that, "Canada itself developed and produced tobacco, which it required defendants to use, and then it collected fees and royalties when this government tobacco entered the commercial stream and was sold in the form of cigarettes to consumers."[23] In fact:

(a) the only allegation of production of tobacco by Canada was as part of research programmes (discussed below) which resulted in the creation of certain tobacco varieties;

(b) while it is alleged that Canada advocated their use to reduce the toxic constituents of cigarettes, there is no allegation that Canada required the industry to use these tobacco varieties; and

(c) there is no allegation that Canada supplied or sold tobacco to the industry or to smokers. What is alleged is that Canada licenced tobacco varieties to growers and collected royalties from such licencing.

26. The cross-appellants focus extensively on Canada's alleged involvement in the development and licencing of tobacco varieties in their facta. In their overviews, it is suggested that Canada was acting in the "commercial stream" or "came to participate directly in the commercial aspects of the Canadian tobacco industry".[24] In fact, the third party notices do not allege that Canada acted as an industry player. The development of tobacco varieties is alleged to have arisen as part of Canada's broader programmes to address the health effects of cigarettes. It is alleged, for example:

> 33. Officia1s at Health Canada developed a national smoking and health programme (hereinafter the "National Programme" or the "National Smoking and Health Programme") … The National Programme resulted in Officials taking steps *to protect smokers from the risks of smoking including tobacco related disease* through a nation-wide programme of education, information exchange with the provinces, and research into the risks of smoking and the possibilities of reducing those risks.
> …
> 42. … 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.*

[23] Factum of B.A.T. Industries P.L.C. and British American Tobacco (Investments) Limited ("B.A.T. Factum"), para. 63.
[24] B.A.T., ibid.; Factum of Rothmans, Benson & Hedges Inc., Rothmans Inc., Philip Morris USA Inc., and Philip Morris International Inc. on Cross-Appeal ("RBH Cross-Appeal Factum"), para, 22.

> …
> 118. On January 22, 1973, the Minister of Agriculture, Mr. Whelan and the Minister of Health, Mr. Lalonde, announced the construction of new laboratories at the Delhi Research Station in order to develop tobacco varieties and cultural, curing and other processing techniques that could contribute to the production of light and mild products. The contemplated tobacco varieties were ones containing 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 light and mild products that would expose smokers to fewer harmful substances.*
>
> 119. On January 22, 1973, the Minister of Health announced a three-way programme of cooperative research between Health Canada and Agriculture Canada, and the University of Waterloo to contribute to international efforts to produce less hazardous light and mild products, to develop types of tobacco products that would be required in the future, and to facilitate Health Canada's leadership and guidance of the tobacco industry in matters affecting health. .... The Minister also confirmed that Health Canada was involved in a programme which was one component of a broad programme (the Less Hazardous Cigarette Programme) *to reduce the hazards of cigarette smoking*, which included public education, studies of ways to help Canadians avoid or discontinue smoking, and surveillance of cigarettes on the market.[25]

27. Canada's research into and development of tobacco varieties is thus alleged to have occurred in the context of government programmes introduced under Health Canada's mandate to protect the public health. In the words of the foregoing paragraphs, Canada acted "to protect smokers from the risks of smoking including tobacco related disease", to "expose smokers to fewer harmful substances", "to facilitate Health Canada's leadership and guidance of the tobacco industry in matters affecting health" and "to reduce the hazards of cigarette smoking". Such allegations are not those of a mere business participant entering into the commercial stream of the tobacco industry.

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[25] Imperial TPN A.R. Vol. II, pp. 74, 76, 94, and 95; and RBH TPN, A.R., Vol. II, pp. 128, 130, 148, and 149.

PART II – QUESTIONS IN ISSUE

28. Canada submits on the issues raised by the cross-appellants that:

(a) The Court of Appeal did not err in finding that it is plain and obvious that Canada is not a "manufacturer" under, and is not bound by, the *Act*; whether directly or as a result of the application of the *Crown Liability and Proceedings Act;*

(b) If Canada falls within the *Act* and it purports to bind Canada, the constitutional question is raised. The *Act* does not apply to Canada because:

(i) The province lacks the constitutional authority to govern the civil liability of the federal Crown; or, in the alternative,

(ii) The federal Crown is not subject to such authority by virtue of the doctrines of federal Crown immunity and interjurisdictional immunity; and

(c) No error was committed by the Court of Appeal in striking out the claims founded on "negligent design" or "failure to warn", or based on the doctrine of equitable indemnity.

PART III – ARGUMENT

Questions of Law or Statutory Interpretation May be Determined on a Motion to Strike

29. This Court has been prepared to strike out proceedings on the basis of question of law or statutory interpretation issues where the threshold "plain and obvious" standard is satisfied.[26] Where, as here, numerous proceedings may be affected by the Court's legal determinations, such an approach is particularly apt. The rule is clear that the test on a motion to strike for failure to

[26] E.g., *Cooper*, *Edwards* and *Syl Apps*, as cited in Canada's Appeal Factum at para. 30; *Vaughan v. Canada* 2005 SCC 11, A.S.B.A., Tab 29; *Kripps v. Touche Ross & Co.* (1992), 94 D.L.R. (4th) 284 (C.A.) at paras 86-87, as cited by Hall J.A. in *British Columbia v. Imperial Tobacco Ltd., supra* at para. 62, A.R., Vol. I, p. 69. See also Behie, "Determination of an Issue Before Trial", (2005) 63 *The Advocate* 81 at p.85: "The courts, including the Supreme Court of Canada, have used thus rule to clarify the law in many areas. Further, the idea that a trial in such cases is necessary to clarify the law is not consistent with the reason for the rule and could arguably create added and unnecessary expense."

disclose a reasonable cause of action is a simple one, assuming that the facts as stated in the statement of claim can be proved, is it "plain and obvious" that the statement of claim discloses no reasonable cause of action? If the action is certain to fail because it contains a radical defect, the relevant portions of a plaintiff's statement of claim should be struck out.[27]

A. The *Costs Recovery Act* does not Apply to Canada

(i) The *Act* Was Not Intended to Apply to the Federal Crown

30. The Act does not indicate the necessary intention to displace the federal Crown's immunity from statute. The defendant B.A.T. concedes at paragraph 108 of its factum on cross appeal, that the Crown historically enjoyed such immunity. In fact, in the case of the federal Crown, this immunity continues, both at common law and by virtue of section 17 of the federal *Interpretation Act*[28], in cases where it is applicable.

31. At common law, for the Crown to be bound by statute, there must be: (1) expressly binding words; (2) a clear intention to bind manifest from the terms of the statute; or, (3) an intention to bind where the purpose of the statute would be wholly frustrated if the Crown was not bound, such that an absurdity, as opposed to simply an undesirable result, would occur.[29]

32. The *Act*, properly construed, has no application to the federal Crown. Canada is neither mentioned nor referred to in the statute. Subsections 1(1) and 1(2) of the *Act* contain a detailed and exhaustive definition of the entities to which the *Act* applies and does not apply.[30] Nothing in those provisions or elsewhere in the *Act* expresses an intention to bind the federal Crown or suggests that an absurdity would somehow result if the federal Crown were not bound by the statute.

33. Similarly, the British Columbia *Interpretation Act* does not make the *Act* binding on Canada. Section 14(1) states "unless it specifically provides otherwise, an enactment is binding on the government". "Government" is defined in section 29 as "Her Majesty in right of British

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[27] See *Hunt v Carey Canada Inc.*, [1990] 2 S.C.R. 959 at 980, A.B.A., Vol. II, Tab 26, p. 76.
[28] R.S.C. 1985, c. 121, A.S.B.A., Tab 43.
[29] *Alberta Government Telephones v. Canadian Radio–television and Telecommunications Commission*, [1989] 2 S.C.R. 225 at para. 130, A.S.B.A., Tab 2.
[30] A.B.A., Vol. I, Tab 76.

Columbia". The omission of the federal Crown cannot be said to be inadvertent. Section 29 defines "government of Canada" and "Canada" to mean "Her Majesty in right of Canada or Canada, as the context requires".[31] The *Interpretation Act* clearly contemplates two separate government entities, only one of which, the province, is said to be bound.

34. The substitution of "government" for the prior wording of "Her Majesty" in subsection 14(1) of the *Interpretation Act* during the 1996 statute revision process simply had the effect of bringing the legislation in line with the 1988 decision of the British Columbia Court of Appeal in *Federal Business Development Bank* v. *Hillcrest Motor Inn Inc*.[32] That decision recognized that such a provision was without effect in respect of the federal Crown. Accordingly, the revision came squarely within the scope of subparagraphs 2(1)(e) and (h) of the *Statute Revision Act*[33] which permit minor amendments to clarify the intent of the Legislature and the omission of provisions that have no legal effect. The majority of the Court of Appeal accepted that the amendment was at least presumptively within the authority of the Chief Legislative Counsel.[34]

35. In any event, at the time the *Act* was enacted, the definition of "government" in the *Interpretation Act* was limited to "Her Majesty in right of British Columbia". As indicated by Hall J.A., this "militates against the suggestion that Canada was to be bound by the *Costs Recovery Act*".[35]

36. Further, since the *Interpretation Act* is provincial legislation, it is not capable of altering, whether by positive enactment or repeal of an existing provision, the liabilities of the federal Crown, for the reasons outlined below.

(ii) Contextual Factors in the Interpretation of the *Act*

37. It was entirely appropriate for the Court of Appeal to consider the basis upon which Canada assumes responsibility for a portion of B.C.'s health care costs as part of a contextual interpretation of the *Act*. There are strong policy reasons to avoid an interpretation of the *Act*

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[31] A.S.B.A., Tab. 42.
[32](1988), 26 B.C.L.R. (2d) 379 (C.A.); affirming: (1986), 6 B.C.L.R. (2d) 223 (B.C.S.C.).
[33] R.S.B.C. c. 440, B.A.T. B.A., Tab 50, p. 444.
[34] *Knight v. Imperial Tobacco Canada Limited, supra*, para 32, A.R., Vol. I, pp. 93-94.
[35] *British Columbia v. Imperial Tobacco Ltd., supra* at para. 32, A.R., Vol. I, p. 55.

permitting recovery against the federal Crown. Such a result would fly in the face of the detailed arrangement by which Canada contributes funding to the provinces for health care costs, among other expenses, pursuant to the *Federal-Provincial Fiscal Arrangements Act*[36] (the "*FPFAA*") and the *Canada Health Act*[37] (the "*CHA*").

38. The total amount of the Canada Health Transfer available to all the provinces is quantified in section 24.1 of the *FPFAA*, and the formula determining how much of the total Canada Health Transfer cash contribution may be given to each province in each fiscal year is set out in section 24.2. Section 5 of the *CHA* provides that, subject to the terms of that *Act*, a full cash contribution in respect of the Canada Health Transfer is payable by Canada to each province in each fiscal year. Sections 7 to 12 of the *CHA* set out program criteria that must be met by a province to qualify for a full cash contribution. The contribution may be reduced or eliminated according to statutory criteria. This legislation comprehensively defines the arrangements by which the federal government contributes to the health care expenses incurred by provinces.

39. If the *Act* applied to the federal Crown, the effect would be to enable the province to sue the government of Canada to recover additional amounts to offset health care costs. Such recovery would be beyond the amounts provided for in the *FPFAA*, without any inquiry into whether the province had complied with conditions set out in the *CHA*, and without inquiry as to whether and to what extent federal contributions had already assisted the province to pay the health care costs claimed in the action.

40. Such an interpretation would in effect permit the province to determine when funds should flow from the Consolidated Revenue Fund, a matter exclusively within the jurisdiction of the federal Crown. Just as Parliament cannot unilaterally oblige a provincial government to defray the costs of federal activities, so too the British Columbia legislature cannot impose financial responsibility on the federal government with regard to provincial health care costs.[38]

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[36] R.S.C. 1985, c. F-8, A.S.B.A., Tab 41.
[37] R.S.C. 1985, c. C-6, A.S.B.A., Tab 36.
[38] See: *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5, ss. 102, 106, A.S.B.A., Tab 37; *Reference re Troops in Cape Breton*, [1930] S.C.R. 554, A.S.B.A., 24; *Reference re Goods and Services Tax*, [1992] 2 S.C.R. 445, A.S.B.A., Tab 25.

(iii) The Federal Crown is Not a Manufacturer under the *Act*

41. Canada is not liable for contribution and indemnity as a "manufacturer" under the *Act*.[39] Liability under the *Act* is limited to entities that meet the definition of "manufacturer" in subsections 1(1) and 1(2) of the *Act*. Subsection 1(2)(a) provides an important restriction: the definition of "manufacturer" specifically excludes individuals.[40]

42. Canada's liability under the *Crown Liability and Proceedings Act*[41] ("*CLPA*") can only flow from the allegedly tortious acts of individuals,[42] and individuals are incapable of attracting liability under the *Act*. It is this clear distinction between the two statutes that makes it plain and obvious that Canada cannot be liable as a manufacturer. The *CLPA* provides for Crown liability only through the acts of an individual crown servant; the *Act* specifically excludes that possibility.

43. Contrary to the assertion of Imperial that Hall J.A. erred by concluding that Canada must meet a revenue threshold to be a "manufacturer" [43], he in fact made no such finding. At paragraph 30 of his reasons, Hall J.A. simply considered that such criteria made it less likely that the province intended to include Canada within the definition of "manufacturer". Hall J.A. also did not substitute the criteria of "less likely" for "plain and obvious" in reaching his decision on this issue. Having considered the above point and having reviewed certain excerpts from Hansard with regard to the responsible Minister's introduction of the legislation, which he properly noted were to be used with caution,[44] Hall J.A. concluded that "apart from any reliance on Hansard, a plain reading of the words in the context of the statute as a whole reveals the legislature did not intend to capture Canada within the definition of 'manufacturer'."[45] This conclusion is entirely consistent with the modern approach to statutory interpretation, cited by Hall J.A., to the effect that "the words of an Act are to be read in their entire context and in their

[39] As alleged in Imperial TPN, at paras. 131, 166, and 186, A.R., Vol. II, pp. 97, 106, and 112; RBH TPN, at paras. 131, 166, and 186, A.R., Vol. II pp. 151, 160, and 166; JTI TPN, at paras. 3, 163, and 165, A.R., Vol. III pp. 5, 45, and 46; Third B.A.T. TPN, at paras. 21, 22, 28, and 72, A.R., Vol. III, pp. 161, 163, and 176.; Third Party Notice of R.J. Reynolds Tobacco International, Inc. ("RJRTI TPN"), at paras. 3, 160, and 162, A.R., Vol. III, pp. 105, 144, and 145.
[40] *Costs Recovery Act*, s.1, A.B.A., Vol. V, Tab 76.
[41] R.S.C. 1985, c. C-50.
[42] *CLPA*, *supra*, sections 3 and 10, Imperial Cross-Appeal Factum, Part VII, p. 69.
[43] Imperial Cross-Appeal Factum, para 32.
[44] *British Columbia v. Imperial Tobacco Ltd.*, *supra* at para. 31, A.R., Vol. I, pp. 54-55.
[45] *Ibid.*, at paras 32, A.R., Vol. I, p. 55.

grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of" the legislature.[46]

44. In its factum on the cross-appeal at paragraph 70, RBH for the first time asserts a new proposition to the effect that, if Canada is not a manufacturer, then it must necessarily be liable to British Columbia under the *Health Care Costs Recovery Act*[47] (the "*HCCR*"), a statute which came into force in April of 2009. RBH argues that the *HCCR* permits British Columbia to recover health care costs from everyone but manufacturers.[48] This is not, however, the true ambit of the *HCCR*. Indeed, RBH notes that subparagraph 24(3)(b) of the *HCCR* provides that "this Act does not apply to health care services that are provided or are to be provided to a beneficiary in relation to …personal injury or death arising out of a tobacco related wrong as defined in the *Tobacco Damages and Health Care Cost Recovery Act*…".[49]

45. While RBH asserts that the effect of subparagraph 24(3)(b) is to give rise to only two possible scenarios, being that Canada is either a manufacturer and is caught by the *Act*, or is not and is caught by the *HCCR*, a plain reading of the section makes it clear that the *HCCR* is not intended to apply to the health care services for which British Columbia seeks recovery in this action. Those services quite clearly come within the ambit of section 24(3)(b) and cannot lose that character simply because Canada is not a manufacturer under the *Act*.

46. The *HCCR* cannot, in any event, assist the defendants as pursuant to section 8(5) of that *Act*, British Columbia must not commence a legal proceeding under the *Act* after:

> (a) the date that is 6 months after the expiration of the limitation period that applies to the beneficiary's right to commence a legal proceeding against the alleged wrongdoer for damages in respect of the personal injury referred to in section 2.

47. Since the limitation period which applies to any such action by a beneficiary against Canada has long since expired, there is no prospect of Canada becoming liable to British Columbia under the *HCCR*.[50]

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[46] *Ibid.*, at para. 28, citing *Driedger on the Construction of Statutes* (4th ed.) at p.1, as referred to in *Bell Expressvu Limited Partnership v. R.*, 2002 SCC 42 at para. 26 and *Re Rizzo*, [1998] 1 S.C.R.27 at para 21.
[47] S.B.C. 2008, c. 27, B.A.T. Factum, Part VII, p. 54.
[48] RBH Cross-Appeal Factum, at para 70.
[49] *Ibid.*, at para 74.
[50] See: *Gosselin v. Shepherd*, 2010 BCSC 755 at para 19, A.S.B.A., Tab 13.

48. Further, it has been held that the *HCCR* is not in fact intended to apply to actions commenced prior to the point at which it came into force.[51]

B. The *Negligence Act*

49. As Canada cannot be liable to British Columbia, the defendants cannot seek contribution and indemnity from Canada under the *Negligence Act.* The Court of Appeal correctly reached this conclusion by reference to its earlier decision in *Orange Julius,*[52] and the decision of this Court in *Giffels v. Eastern Construction.*[53] The latter held that a defendant can only rely on the contribution and indemnity provisions of the *Negligence Act* against a third party where the third party is liable to the plaintiff.[54] As Tysoe J.A. stated for the majority:

> [I]t is a precondition of the right to resort to contribution under the *Negligence Act*, R.S.B.C. 1996, c. 333, that the third party be liable to the plaintiff. As Canada is not a "manufacturer" under the *Costs Recovery Act*, British Columbia does not have a claim against it, and the appellants are not in a position to avail themselves of the provisions of the *Negligence Act*.[55]

50. B.A.T. asserts that in *Ukrainian (Fort William) Credit Union Ltd. v. Nesbitt Burns Ltd*[56], the Ontario Court of Appeal departed from the principle established in *Giffels*, though without referring to it[57]. That case, however, involved a determination as to whether section 235 of the *Credit Unions and Caisses Populaires Act*[58], which barred actions for damages, was broad enough to also bar a claim for contribution and indemnity. The portion of the reasons excerpted by the defendant B.A.T. at paragraph 96 of their argument on cross-appeal, which make reference to the need to remedy an unjust enrichment, are clearly *obiter dicta*. Its conclusion on that issue is not germane to the present case. To the extent, however, that the Court went on to conclude that even though the third party could not in law be held liable to the plaintiff, the defendants were entitled to assert an equitable claim for contribution to prevent an unjust

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[51] See: *Ibid.*, at para. 37, A.S.B.A., Tab 13 and *Jack v. Tekavec*, 2010 BCSC 1773 at para 105, A.S.B.A, Tab 14.
[52] *Orange Julius Canada Ltd. v. Surrey (City of)*, 2000 BCCA 467 at para. 53, emphasis in original, A.S.B.A, Tab 16.
[53] *Giffels v. Eastern Construction*, [1978] 2 S.C.R. 1346, B.A.T. B.A., Tab 6, p. 45.
[54] *Orange Julius, supra,* at para. 53, A.S.B.A. Tab 16.
[55] *British Columbia v. Imperial Tobacco Ltd., supra,* at para. 66, A.R., Vol. I, p. 71; see also: Hall J.A. for the minority at para. 33, A.R., Vol. I, p. 56.
[56] (1997), 152 D.L.R (4th) 640, B.A.T. B.A., Tab 24, p. 171.
[57] B.A.T. Factum at para. 96.
[58] 1994, S.O., c. 11, A.S.B.A., Tab 38.

enrichment, it is submitted that the Ontario Court of Appeal erred.[59] Contribution statutes may properly be viewed as intended to prevent unjust enrichment of a third party whose liability to the plaintiff has been discharged by the defendant's payment of 100% of the damages. However, where the third party is not liable to the plaintiff at all, the defendant's payment of the plaintiff's damages simply does not enrich the third party. In the absence of any enrichment, let alone an enrichment that is "unjust", the equitable claim cannot succeed.

51. The argument made by RBH at paragraph 90 of their cross-appeal factum as to the need to modify the *Giffels* principle incorrectly assumes that the main action and contribution claim here are based upon duties owed to consumers. In fact, the main claim is not based on duties owed to consumers, but provides for a direct action by the province.

52. As noted in Canada's factum on appeal, in *Imperial v. B.C.*, this Court held that:

> [T]he driving force of the Act's cause of action is compensation for the government of British Columbia's health care costs, not remediation of tobacco manufacturers' breaches of duty. While the Act makes the existence of a breach of duty one of several necessary conditions to a manufacturer's liability to the government, it is not the mischief at which the cause of action created by the Act is aimed. The Act leaves breaches of duty to be remedied by the law that gives rise to the duty. Thus, the breaches of duty to which the Act refers are of subsidiary significance to the cause of action created by it.[60]

53. Section 2 provides that an action under the *Act* is a direct and distinct one, and not a subrogated claim in respect of the damages suffered by any individual(s). It is not necessary that any particular insured persons be identified and the government may recover whether or not there has been recovery by other persons in relation to the tobacco related wrong committed by the defendant.

54. Sections 4(1) and (2) of the *Negligence Act* clearly include a requirement that in order for a claim of contribution to arise, the fault or breach of duty must cause the damage or loss which is the subject of the *plaintiff's* claim. The section provides that "(1) If damage or loss has been

[59] *British Columbia v. Imperial Tobacco Ltd.*, *supra*, at para. 55, Hall J.A. held that *Ukrainian (Fort William) Credit Union Ltd. v. Nesbitt Burns Ltd.* was a case "that ought not to be followed" A.R., Vol. I, p. 65.
[60] *Imperial v. BC, supra*, at para. 40, A.B.A., Vol. I, Tab 8.

caused by the fault of 2 or more persons … (2) . . . (a) they are jointly and severally liable *to the person suffering the damage or loss*". [emphasis added]

55. As Laskin J. put it in the *Giffels* case: "I am unable to appreciate how a claim for contribution can be made under section 2(1)[61] by one person against another in respect of loss resulting to a third person unless each of the former two came under a liability to the third person to answer for his loss."[62]

56. The argument of RBH,[63] that nothing in subsections 4(1) and (2) of the *Negligence Act* requires that the plaintiff have a viable cause of action against each party, ignores the fact that section 4 speaks to both fault and liability. The effect of a finding of fault under subsection 4(1) is that the parties are, under subsection 4(2), jointly and severally liable to the person suffering the damage or loss, (the plaintiff). This result is clearly predicated upon the plaintiff having a viable cause of action against each of the parties.

57. In the same way, subsection 1(1) of the *Negligence Act* makes a plaintiff who is partially at fault liable himself to make good the damages he suffered as a result of that fault.[64] Rather than being exclusively focused upon fault as is suggested by the defendants, both provisions are concerned equally with fault and liability.

58. RBH's attempt to distinguish the decision in *Giffels* as inapplicable in cases in which the immunity arose from some independent transaction or settlement made *after* the actionable breach cannot assist it. There is no suggestion in this case that Canada's immunity from suit by the plaintiff arose after the breach alleged by the plaintiff.

59. It is therefore plain and obvious that the defendants cannot avail themselves of a right of contribution under the provisions of section 4 of the *Negligence Act* in the circumstances of this case.

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[61] Which provided "Where damages have been caused or contributed to by the fault or neglect of two or more persons, … they are jointly and severally liable to the person suffering loss or damage".
[62] *Giffels, supra* at p. 1354, B.A.T. B.A., Tab 6, p. 45.
[63] Cross-Appeal Factum, para. 83.
[64] R.S.B.C. 1996, c. 333, s. 1(1) provides: "If by the fault of 2 or more persons damage or loss is caused to one of more of the, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.

60. Whether under a contributory negligence statute or at common law, contribution is only justified where the defendant is being called upon to pay a liability of the third party to the plaintiff. At paragraph 99, RBH cites *Bow Valley*,[65] arguing that in that case this Court held that the common law bar against contribution was anachronistic and on that basis afforded a contribution remedy in the area of maritime torts where no statutory right existed. However, the common law right of contribution affirmed in *Bow Valley* is based on the same underlying principles as statutory contribution. In *Bow Valley*, contribution was appropriate because the third party was also liable to the plaintiff. The defendants' argument in regard to the decision in *Blackwater v. Plint*[66] fails for the same reason. In that case, this Court considered whether the provisions of the *Negligence Act* applied to a claim of vicarious liability, and held that if it did not, then contribution would be available at common law. Again, both parties were liable to the plaintiff. Further, in both cases the Court was called upon to consider whether, in a situation where no statutory right applied, contribution at common law should be available. That is not the case here. The *Negligence Act* provides a statutory regime for contribution, but by its terms, it does not provide for the relief sought.

C. The *Crown Liability and Proceedings Act*

61. The *Act* is not made applicable to Canada by virtue of the *CLPA.* Section 3 of the *CLPA* makes the federal Crown liable "for the damages for which, if it were a person, it would be liable … in respect of … *a tort* committed by a servant of the Crown."[67]

62. The *Costs Recovery Act* does not create a cause of action in the nature of a tort; nor does it create or modify tortious or delictual liability. What is created is a stand-alone statutory cause of action. The elements of the statutory cause of action created by the *Act* identified by this Court, make it clear that the liability created by the *Act* is not "tort" liability. The Court signalled that the cause of action created by the *Act* is not akin to an action in tort, in which the breach of

[65] *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.,* [1997] 3 S.C.R. 10. Consolidated Book of Authorities of Rothmans, Benson & Hedges Inc., Rothmans Inc., Philip Morris USA Inc., and Philip Morris International Inc.'s ("RBH B.A."), Vol. I, Tab 9, p. 127.
[66] *Blackwater v. Plint,* [2005] 3 S.C.R. 3. RBH B.A., Vol. I, Tab 8, p. 115.
[67] *CLPA, supra,* s. 3, *Costs Recovery Act*, supra, A.B.A., Vol. V, Tab 26, emphasis added.

duty is the central element, but rather is a distinct statutory cause in which the question of breach of duty is of only subsidiary significance.[68]

63. The structure of the *Act* clearly supports such a conclusion. Subsection 2(2) of the *Costs Recovery Act* makes it clear that the right of action created belongs to the government in its own right and is not in the nature of a subrogated claim on behalf of injured individuals. The government is not "injured" or "harmed" by the conduct of the defendants, even if that conduct could be characterized as tortious vis-à-vis smokers. There is no requirement that the government prove that any particular individual has been injured by the activities of the defendants.

64. Subsection 2(3) of the *Costs Recovery Act* specifies that the government's claim can succeed whether or not there has been recovery by other persons who have suffered damage in relation to the tobacco related wrong committed by the defendant. The damages capable of recovery under the *Act* are purely economic and have no relation to amounts spent or damages suffered by consumers, or profits earned by manufacturers.

65. Even if a claim by "other persons" for damages in regard to a tobacco related wrong is based in tort, the claim of the provincial government, which arises from the policy decision of the government of British Columbia to provide health care services to the British Columbia public, and its subsequent policy decision to pass legislation to permit it to recover its costs of doing so from the defendants, is a wholly statutory creation and does not involve the creation or modification of tortious liability. Thus, the *CLPA* does not make the *Act* applicable to the federal Crown.

D. Constitutional Immunity from Provincial Legislation

66. Unless the British Columbia legislature intended to bind the federal Crown, it is unnecessary for the Court to pronounce on its constitutional capacity to do so. This Court refrains from engaging in constitutional pronouncements where it is unnecessary to do so.[69]

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[68] *Imperial v. B.C., supra,* at para. 40, A.B.A., Vol. I, Tab 8.
[69] See: *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97, at para 7, A.S.B.A., Tab 19.

67. Both Canada and British Columbia have denied that the British Columbia legislature intended the *Cost Recovery Act* to bind the federal Crown, or that Canada is a "manufacturer" under the *Act*.[70] Should this Court find to the contrary, however, then the following question must be answered:

> Is the *Tobacco Damages and Health Care Costs Recovery Act*, S.B.C. 2000, c. 30, constitutionally inapplicable to the federal Crown because the latter is constitutionally immune from liability under the *Act*?

68. Canada submits that the answer to this question should be "yes".

69. What is at issue is the authority of Parliament to itself determine when, and under what circumstances, the federal Crown may incur civil liability. Questions as to the liability of the federal Crown cannot be determined, and its common law immunity from suit cannot be unilaterally displaced, by provincial legislation. It is federal legislation alone which can have such an effect.

70. Canada is not bound by provincial legislation. Courts have long recognized the principle that provinces do not have legislative competence to bind the federal Crown and, accordingly, British Columbia's legislation does not bind the federal Crown.[71] In *Quebec North Shore Paper v. C.P. Ltd.*, Laskin C.J. wrote:

> ... It should be recalled that the law respecting the Crown came into Canada as part of the public or constitutional law of Great Britain, and there can be no pretence that that law is provincial law. In so far as there is a common law associated with the Crown's position as a litigant it is federal law in relation to the Crown in right of Canada, just as it is provincial law in relation to the Crown in right of a Province, and is subject to modification in each case by the competent Parliament or Legislature...[72]

71. The British Columbia courts have recognized the inability of their legislature to bind the federal Crown. In *Hillcrest Motor*, Low, L.J.S.C. (as he then was) held that:

> The federal Crown prerogative is succinctly stated in *Re Adams Shoe Co. et al* [1923] 4 D.L.R. 927 (Ont. S.C.) at p. 931:

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[70] *British Columbia v. Imperial Tobacco Ltd., supra,* at para. 11, A.R., Vol. I, p. 43.
[71] See: *Attorney General (Quebec) and Keable v. Attorney General (Canada)*, [1979] 1 S.C.R. 218 at 242-245, A.S.B.A., Tab 3; *Alberta v. Canadian Transport Commission*, [1978] 1 S.C.R. 61 at p. 72, A.S.B.A., Tab 1; and *Hillcrest* (B.C. C.A.), *supra.* A.S.B.A., Tab 12.
[72] [1977] 2 S.C.R. 1054, at p. 1063, A.S.B.A., Tab 21.

> The law has been well settled that no provincial legislation can either bind or affect the prerogative right of the Crown in right of the Dominion or take away its common law rights.[73]

72. Thus, while Low, L.J.S.C. found that the legislature no doubt intended to bind the federal Crown, as noted at paragraph 126 of the B.A.T. factum, both he and the British Columbia Court of Appeal held that it had no ability to do so.[74] In *Rudolph Wolff & Co.* v. *Canada*, this Court made the proposition clear: "it is beyond question that only the Parliament of Canada could enact statutes to provide that actions could be brought against the Crown in right of Canada".[75]

73. This observation echoes prior statements of the law:

> It is a well established principle that it is beyond the competence of any provincial legislature to impose an obligation on the Crown in right of Canada *or confer a cause of action against it.*[76]

74. The original rule, inherited from the common law of England, was that the Crown could not be sued in it own courts. The petition of right developed as an exercise of the Crown's prerogative, creating a device through which subjects could seek access to the courts to resolve disputes with the Crown concerning property and, eventually, contracts. The device did not extend to claims in tort. Although Crown servants could be sued in person for torts committed while discharging their official functions, the Crown itself could not be held vicariously liable. It was against this backdrop that Parliament began to exercise its exclusive jurisdiction over the federal Crown's liability by enacting the *Petition of Right Act*[77] and other such legislation. The federal Crown's immunity from tort law was modified first with respect to negligence by the *Exchequer Court Act*[78] and subsequently with respect to other torts with the enactment of the *Crown Liability Act*[79] in 1953. The rules of tortious liability between private parties and the provincial Crown's liability in tort fell within provincial jurisdiction, but the statutory imposition

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[73] *Hillcrest* (B.C. S.C.), *supra,* at para 28, A.S.B.A., Tab 12.
[74] *Hillcrest* (B.C. C.A.), *supra,* A.S.B.A., Tab 12.
[75] [1990] 1 S.C.R. 695, at para. 10; See also *Quebec North Shore Paper, supra,* at p. 1063, A.S.B.A., Tab 21.
[76] *Palmer v. R.,* [1951] Ex. C.R. 348, aff'd [1959] S.C.R. 401, at para. 17, per Thorson P. (emphasis added), A.S.B.A., Tab 17.
[77] S.C. 1875, c. 12, A.S.B.A., Tab 44.
[78] *Exchequer Court Act,* S.C. 1887, c. 16, A.S.B.A., Tab 40.
[79] *Crown Liability Act,* S.C. 1952-53, c. 30, A.S.B.A., Tab 39.

of liability on the federal Crown resulted, and *could only have resulted,* from federal legislation. The federal Crown's tortious liability is wholly a creation of federal statute.[80]

75. The key reference point from which issues of the application of provincial statutes to the liability of the federal Crown fall to be determined is that of the applicable federal rule. Where there is a federal rule prescribing that provincial statutes be taken into account in determining federal Crown rights or liabilities, then relevant provincial statutes will apply, not because they can bind the federal Crown, but because there is an applicable federal rule that calls for their application.

76. In *The Queen v. Breton*[81], this Court considered the rule in the former *Crown Liability Act* that subjected the federal Crown to occupier's liability. The Court found that the federal rule did not contemplate the application of a provincial statute that obliged property owners in the City of Quebec to maintain and repair sections of municipal sidewalks adjacent to their property. The Court held that the provincial statute could supply no basis for establishing the federal Crown's liability to a passer-by who fell on the sidewalk, because provincial legislation could not of its own force impose obligations on the federal Crown.

77. The rules governing liability of the federal Crown are not dependent upon the operation of the doctrine of inter-jurisdictional immunity as articulated in cases such as *Canadian Western Bank* v. *Alberta*[82] ("*CWB*"), but rather form a distinct category of federal Crown immunity. The former doctrine precludes provincial legislation from impairing the specifically federal attributes of certain persons and things that are in other aspects amenable to provincial regulation. In contrast, the imposition of new forms of liability on the federal Crown lies beyond – not within – the boundaries of provincial jurisdiction. There is no provincial head of power that can supply a basis for imposing civil liability on the federal Crown.

[80] See: David Sgayias, et al, *Annotated Crown Liability and Proceedings Act 1995* (Scarborough: Carswell, 1994) at pp. 1-7, A.S.B.A., Tab 32.
[81] [1967] S.C.R. 503, A.S.B.A., Tab 22.
[82] 2007 SCC 22, A.S.B.A., Tab 6.

78. Alternatively, if this Court considers that the doctrine is engaged, its application is eminently justified. *CWB* holds that the doctrine, albeit of limited application, is supported both textually and by the principles of federalism.[83]

79. This Court concluded in *CWB* that "the text and logic of our federal structure justifies the application of interjurisdictional immunity to certain federal 'activities'"[84]. Where there is a vital and essential federal interest in question, or an absolutely indispensable and necessary element of federal jurisdiction, the doctrine will apply.[85]

80. The Court also recently upheld the principles of inter-jurisdictional immunity in *Canadian Owners and Pilots Association*,[86] where the process to determine if inter-jurisdictional immunity applies was set out as follows:

> The first step is to determine whether the provincial law … *trenches on the protected "core" of a federal competence.* If it does, the second step is to determine whether the provincial law's effect on the exercise of the protected federal power is *sufficiently serious* to invoke the doctrine of interjurisdictional immunity.[87]

81. The "protected core of federal competence" was further defined by the Court as, "…the authority that is absolutely necessary to enable Parliament 'to achieve the purpose for which exclusive legislative jurisdiction was conferred': *Canadian Western Bank*, at para. 77."[88]

82. In determining if the effect is "sufficiently serious", this Court has adopted an approach that does not require the federal power to be sterilized but does require a significant impairment:

> Impairment is a higher standard than "affects". It suggests an impact that not only affects the core federal power, but does so in a way that seriously or significantly trammels the federal power. In an era of cooperative, flexible federalism, application of the doctrine of interjurisdictional immunity requires a significant or serious intrusion on the exercise of the federal power. It need not paralyze it, but it must be serious.[89]

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[83] *Ibid.*, at para. 33, A.S.B.A., Tab 6.
[84] *Ibid.*, at para. 42, A.S.B.A., Tab 6.
[85] *Ibid.*, at paras. 42, 55, 61, and 62, A.S.B.A., Tab 6.
[86] *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, A.S.B.A., Tab 20.
[87] *Ibid.*, at para. 27, A.S.B.A., Tab 20, emphasis in original.
[88] *Ibid.*, at para. 35, A.S.B.A., Tab 20.
[89] *Ibid.*, at para. 45, A.S.B.A., Tab 20.

83. The ability to determine when, and under what circumstances the federal Crown may incur civil liability goes to the core of federal competence. The intrusion which would result from a holding that a province may unilaterally impose liability upon the federal Crown cannot be described as anything other than serious and a significant impairment upon that core federal power.

E. No Error In Respect of Duty of Care in Negligence Between Canada and Imperial

(a) The Majority Did not Err in Striking out the Claim for "Negligent Design"

84. Tysoe J.A. committed no error is striking out the third party notices in this respect. The defendant's claim against Canada is for pure economic loss. Policy concerns for indeterminate liability, as Tysoe J.A. held, negate any *prima facie* duty found to exist.[90] In the alternative, his finding can be supported on the ground that no proximity arises between Canada and tobacco manufacturers. Canada's actions involved developing programmes, pursuant to broad statutory discretion to act in the public interest, and to respond to the health risks of tobacco products. A duty of care would conflict with the balancing of a myriad of interests required for the development of such programmes. Finally, a claim for negligent design is in any case not made ou,t given that there is no allegation that Canada supplied a defective product or an identifiable component of a product.

Tysoe J.A. Correctly Held that Indeterminate Liability Concerns Negate any Duty

85. Tysoe J.A. adopted his reasoning in *Knight* for concluding "it is plain and obvious that the policy consideration involving indeterminate liability is sufficient to negate the *prima facie* duty of care owed by Canada in connection with the claim of negligent design".[91] He characterized the claim in this respect as involving "the relationship between the designer of a product and a manufacturer who uses the product in goods sold to the public".[92] For the reasons stated in Canada's appeal factum and discussed further below, that characterization is not accurate.[93] The third party notices do not allege that Canada was acting as a commercial component supplier. However, even if Tysoe J.A.'s characterization of the relationship between

[90] *British Columbia v. Imperial Tobacco Ltd., supra,* at para. 86, A.R., Vol. I, pp. 77.
[91] *Ibid.*, A.R., Vol. I, pp. 77.
[92] *Knight v. Imperial Tobacco Canada Limited, supra*, at para. 67, A.R., Vol. I, p. 106.
[93] See; Appellant's Factum, paras. 64-70.

Imperial and Canada is accepted, it is submitted that he correctly held that any *prima facie* duty arising from such relationship was negated by policy concerns related to the creation of indeterminate liability.

86. The third party claim in this respect seeks the recovery of pure economic loss. As Tysoe J.A. held in *Knight:*

> ITCAN is not alleging that Canada caused loss or damage in relation to any of its property and, as ITCAN is a corporation, it cannot sustain physical damage. The loss claimed by ITCAN is its potential financial liability to the class members (which ITCAN denies).[94]

87. Similarly, in this case, the defendant tobacco companies are not seeking to recover damages for property loss or injury that they themselves have sustained, but are seeking to recover monies which they may have to pay to the province for its health care costs. The cross-appellants do not contest that this is a claim for pure economic loss. It is also not contested that Tysoe J.A. used the correct approach, in considering whether the claim fell within one of the five categories of claims for pure economic loss for which a duty of care has been found to exist.[95]

88. The cross-appellant Imperial does take issue with Tysoe J.A.'s characterization of the claim as involving relational economic loss.[96] However, nothing turns on that finding, because it is clear that this case does not fall within the limited categories for recovery of relational economic loss recognized by this Court in *Bow Valley*.[97] This case involves neither a possessory or proprietary interest in damaged property, a "general average" situation, nor a joint venture.

89. The claim thus does not fall within any of the five categories of claims for the recovery of economic loss. Imperial suggests that the case falls within "the category of defective products".[98] However, that category is inapplicable. It involves "claims to recover the cost of repairing or replacing defective products or structures".[99] The tobacco companies are not seeking to recover repair or replacement costs.

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[94] *Knight v. Imperial Tobacco Canada Limited, supra,* at para. 68, A.R., Vol. I, p. 106.
[95] *Ibid.*, paras. 69-71, A.R., Vol. I, pp. 106-107.
[96] Imperial Cross-Appeal Factum, paras. 116-126.
[97] *Bow Valley, supra,* para. 48, RBH B.A., Vol. I, Tab 9, p. 160.
[98] Imperial Cross-Appeal Factum, para. 127.
[99] Linden and Feldthusen, *Canadian Tort Law* (8th ed., 2006) at p. 471, A.S.B.A., Tab 33.

90. Because the claim does not fall within any of the five categories, the issue becomes whether a new category should be recognized under the *Cooper/Anns* analysis.[100] Tysoe J.A. correctly held that policy concerns for indeterminate liability indicate that the creation of a new category is not justified in this case. As he noted:

> The concern is that there may be innumerable other persons who suffer economic loss as a result of the injury to the third party in question (here, the class members) or damage to or loss of property of the third party. For example, employers of key employees who became incapacitated as a result of smoking light and mild cigarettes could claim for lost profits. Suppliers of the employer may suffer a financial loss. Persons having contracts with smokers of light and mild cigarettes could claim for economic loss occasioned by the incapacity of the smokers. Family members of a smoker of light and mild cigarettes could suffer financial loss.[101]

91. The cross-appellants argue that the "the specific pleaded relationship … places definable limits on the ultimate extent of liability so that concerns of indeterminate liability are not determinative".[102] That is not the case. The fact that tobacco companies form a more limited group with a particular relationship with Canada does not eliminate concern for the creation of indeterminate liability, because their claims are of a flow-through character, and would open Canada to a potential boundless form of liability for the economic losses of persons who are touched by the impacts of tobacco-related disease.

92. As Tysoe J.A. held, the concern regarding indeterminate liability is not limited to liability toward those persons in the same position as the claimant tobacco manufacturers. If the tobacco manufacturers' third party claims founded on liability to the province are actionable, so too are claims by such manufacturers for economic losses arising from liability toward the spouse of the harmed smoker, or a claim by an employer of the smoker, for economic losses visited on them from the smoker's consumption of tobacco products.[103]

93. The defendants' claims are founded upon their liability toward the plaintiff, not on determinable costs or losses they have incurred themselves. The claims therefore have the character of indeterminacy described by Tysoe J.A., in terms of the potential for ever-expanding

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[100] See, for example, the approach taken in *Design Services Ltd. v. Canada* [2008] 1 S.C.R. 737, beginning at para. 28, A.S.B.A., Tab 10.
[101] *Knight, supra*, at para. 82, A.R., Vol. I, p. 111.
[102] Imperial Cross-Appeal Factum, at para. 136; see also RBH Cross-Appeal Factum, paras. 115-116.
[103] *Knight v. Imperial Tobacco Canada Limited, supra*, at para 82, A.R., Vol. I, p. 111.

sources of recoverable loss. Tysoe J.A. was correct to find that the creation of such a widening sphere of indeterminate liability is a significant policy concern which negates any *prima facie* duty of care found to exist.

94. Another source of indeterminate liability is that Canada does not control the distribution of the product in question, and hence has no control over the number of consumers, second-hand smokers or others who may potentially make claims against the defendants and increase their economic losses.[104] This concern is heightened because Canada is not alleged, as would be the case in a conventional products liability case, to have supplied a particular or identifiable component of the final product. If Canada were indeed a component supplier, it would have some control over the overall scale of its liability through the number of units of the component it sent into the chain of supply. Canada is alleged to have researched and developed tobacco varieties, which were licenced to growers. It is not alleged to have supplied any product, or component of any particular product to growers, let alone to the manufacturer. It thus lacks any control at all over the scale of potential indeterminate liability.

95. Imperial argues that this case is analogous to *Heaslip*[105], in which the Ontario Court of Appeal refused to strike a negligence claim against Ontario relating to the provision of air ambulance services. *Heaslip* is clearly distinguishable. It involved allegations of "acts of negligence in responding to a specific request for urgently required medical services and the negligent failure to comply with an established government policy".[106] Sharpe J.A. rejected indeterminate liability concerns due to the "very specific nature of the claim",[107] which related to how Ontario responded to a specific physician's request for an air ambulance with respect to a specific patient on a specific afternoon in 2005. In contrast, the third party claims here allege duties of care spanning several decades and founded on Canada's dealings with respect to tobacco varieties over that entire period. The allegations are not specific to Canada's dealings with a particular tobacco manufacturer or industry participant. The non-specific nature of the third party claims contributes to the concerns for indeterminate liability and distinguishes cases such as *Heaslip*.

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[104] See: Appellant's Factum, paras. 75-81.
[105] *Heaslip v. Mansfield Ski Club Inc.* (2009), 96 O.R. (3d) 401, Imperial Tobacco Canada Limited Joint Book of Authorities ("Imperial B.A.") Vol. II, Tab 30, page 147.
[106] *Ibid.*, at para. 21, Imperial B.A., Vol. II, Tab 30, page 155.
[107] *Ibid.*, at para. 33, Imperial B.A., Vol. II, Tab 30, page 157.

96. Imperial argues that "[e]xtensive liability is not the same as indeterminate liability".[108] However, the concern is not just the extent of liability in this case, but Canada's exposure to liability in the other similar actions for tens of billions of dollars brought in all provinces, founded on tobacco costs recovery legislation.[109] Furthermore, it is the potentially boundless nature and, from Canada's perspective, uncontrollable scope of that liability which contributes to its indeterminacy. As described above, this derives both from the nature of the claimed loss by manufacturers, which opens up liability to an indeterminate group of additional claims, and from the lack of control by Canada over the scope of production and distribution by the tobacco industry.

No Proximity is Present

97. Tysoe J.A.'s striking of this aspect of the claim is also sustainable on the alternative ground that the relationship between Canada and the tobacco companies is not one of proximity. Canada adopts its submissions on the appeal in this respect. In the context of the allegations of "negligent design", the specific reasons for this are:

(a) As noted above, the case does not fall within an existing category for the recovery of pure economic loss. An assessment of proximity is necessary;

(b) Canada was acting at the relevant times pursuant to statutory schemes creating duties only to the general public, not to tobacco manufacturers;[110]

(c) Development of tobacco varieties was conducted pursuant to the *Experimental Farm Stations Act*[111], which provided for discretionary authority to conduct research into the strengths and merits of plant varieties;[112]

(d) Canada's action is alleged to have been an aspect of various other "programmes" developed in response to the policy decision to reduce tar and nicotine constituents in tobacco products;[113] and

[108] Imperial Cross-Appeal Factum, at para. 139.
[109] See: Appellant's Factum, at para. 16.
[110] Appellant's Factum, at paras. 46-52.
[111] R.S.C. 1985, c. E-16, A.B.A., Vol. V, Tab 74, p. 23.
[112] Appellant's Factum, at para. 23.
[113] *Ibid*., at para. 24.

(e) The creation of a duty of care toward tobacco manufacturers would conflict with statutory duties owed to the general public. It would undermine Canada's ability to pursue its various statutory mandates, whether this involves making impartial decisions on the direction of research into the health impacts of a particular plant variety, or the adoption of regulatory measures which may conflict with the tobacco industry's economic interests.[114]

98. For the foregoing reasons, it is plain and obvious that no duty of care arises between Canada and tobacco manufacturers in this respect.

No Actionable "Negligent Design" Claim is Made Out

99. The cross-appellants characterize this aspect to the claim as being founded on "products liability" or "negligent design". Such a claim must be founded on the alleged supply of a product which is defective or dangerous by a defendant:

> A manufacturer who designs and puts a product on the market is liable to the ultimate consumer to ensure that the goods so marketed *are free from defects which arise from negligence or lack of care on the part of the manufacturer*.[115]

100. The design and marketing of a defective product, tobacco varieties, is not, however, what is alleged in the third party notices. It is alleged that through its research and testing programmes directed toward addressing the risk of tobacco-related disease, Canada "created tobacco leaf"[116] or "created varieties of tobacco",[117] licenced them for use by growers[118] and made certain representations to tobacco manufacturers and the public about those varieties.[119]

101. The third party claim for damages and contribution is based, not upon Canada's alleged supply of a defective product, but on this "conduct" which is alleged to have contributed "to the Plaintiff incurring the cost of health care benefits".[120] The "conduct" takes the form of alleged

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[114] See: *ibid*., paras. 53-62.
[115] *Phillips v. Ford Motor Co*. (1970), 12 D.L.R. (3d) 28, at para. 44 (emphasis added), A.S.B.A., Tab 18 [new trial ordered for other reasons, Ont. C.A. [1971] 2 O.R. 637], A.S.B.A., Tab 18. See also, *Baker v. Suzuki Motor Co.*, [1993] 8 W.W.R. 1, 12 Alta. L.R. (3d) 193(Q.B.) at para. 28, A.S.B.A., Tab 5, relied upon by Tysoe J.A. in *Knight v. Imperial Tobacco Canada Limited*, *supra*, at para. 48, A.R., Vol. I, p. 99.
[116] JTI TPN at para. 152, A.R., Vol. III, p. 42.
[117] Imperial TPN at para. 127, A.R., Vol. II, p. 96.
[118] Imperial TPN at para. 127, A.R., Vol. II, p. 96; JTI TPN at para. 141, A.R., Vol. III, p. 39.
[119] Imperial TPN at para. 128, A.R., Vol. II, p. 97; JTI TPN at para. 142, A.R., Vol. III, p. 40.
[120] Imperial TPN at para. 147, A.R., Vol. II, p. 101; JTI TPN at para. 152, A.R., Vol. III, p. 42.

negligent misrepresentations (which are addressed in Canada's factum on appeal) and failure to warn (which is addressed below).

(b) The Majority Did not Err in Striking out the Claim for "Duty to Warn"

102. The cross-appellants seek to overturn Tysoe J.A.'s finding that it is plain and obvious that allegations of failure to warn in the third party notices disclose no reasonable cause of action. In doing so, two separate allegations of failure to warn are referred to in the cross-appellants' facta:

> (a) "that Canada directed the defendants not to provide warnings about the health hazards of cigarettes";[121] and
>
> (b) "that Canada failed to warn Imperial in respect of the tobacco strains Canada design and licenced".[122]

Allegations re Warnings of Health Hazards of Cigarettes are Negated by Policy Concerns

103. The characterization of the first claim is "that Canada directed the defendants not to provide warnings about the health hazards of cigarettes" highlights that it is really no more than another allegation of misrepresentation by Canada. Negligent misrepresentation is addressed in Canada's appeal factum, and Canada has argued there that those allegations should be struck. If this nonetheless can be seen as a distinct allegation for "failure to warn", Tysoe J.A. was correct to strike it out on the basis that the various policy considerations addressed by the minority applied to negate any *prima facie* duty of care arising. He held:

> This claim is against Canada in its role as regulator and, for the reasons given by Hall J.A. in *Knight*, I agree that the *prima facie* duty of care in this regard is negated by policy considerations.[123]

104. The cross-appellants' facta address only one of the policy considerations referred to by Hall J.A. in his *Knight* reasons: that the actions in question related to policy decisions which are not justiciable.[124] However, Justice Hall relied upon the following additional policy considerations which are not addressed by the cross-appellants: (a) indeterminate liability for

[121] RBH Cross-Appeal Factum at para. 122.
[122] Imperial Cross-Appeal Factum at para. 8; see also paras. 143-146.
[123] *British Columbia v. Imperial Tobacco Ltd., supra,* at para. 89, A.R., Vol. I, p. 78.
[124] *Knight v. Imperial Tobacco Canada Limited, supra,* at para. 100, A.R., Vol. I, p. 118.

claims involving economic loss;[125] (b) that Canada "is a regulator of the tobacco industry, not an insurer",[126] and "public health priorities should be based on the general public interest and the authorities should not be faced with the threat of lawsuits in deciding on such issues,"[127] and; (c) that "imposing a duty of care on Canada towards tobacco manufacturers … would conflict with measures designed to encourage and curtail smoking as deleterious to health."[128] These policy considerations, concurred in by all five judges of the Court of Appeal in this respect, are discussed more fully in Canada's factum on appeal.[129] Given that they are not addressed by the cross-appellants, they stand unchallenged as a basis to sustain the unanimous decision of the Court of Appeal in striking this aspect of the claim.

105. The one finding of the Court of Appeal attacked by the cross-appellants, that Canada's alleged actions in this respect constituted non-reviewable policy decisions, did not involve any error. Tysoe J.A. correctly relied on Hall J.A.'s conclusion that these allegations raised Canada's non-actionable policy decisions regarding the rules governing information disclosure to the public concerning the health risks, toxic constituents and other attributes of cigarettes. For example, the pleadings reference:

(a) the Minister of Health's statement in the late 1960's that the government intended to introduce legislation to require health warnings on cigarette packages;[130]

(b) draft legislation tabled thereafter, which would have required such warnings;[131]

(c) the enactment in 1988 of the *Tobacco Products Control Act*,[132] which required the display on packaging of the prescribed "messages pertaining to the health effects" of tobacco products ;[133] and

(d) the 1997 *Tobacco Act*,[134] which contained provisions addressing the same topic[135].

[125] *Ibid.*, at para. 103, A.R., Vol. I, p. 119.
[126] *Ibid.*, A.R., Vol. I, p. 119.
[127] *Ibid.*, at para. 105, A.R., Vol. I, p. 120.
[128] *Ibid.*, at para. 108, A.R., Vol. I, p. 121.
[129] Appellant's Factum at paras. 53-62 (conflicting duties); 73-85 (indeterminate liability); 98-101 (Canada not an insurer; distraction to public health protection).
[130] Imperial TPN, at paras. 55-57, A.R., Vol. II, pp. 79-80.
[131] Bill C-248, 3rd Sess., 28th Parl., 1970-71, s. 3(3)(c), 74, A.B.A., Vol. IV, Tab 63, p.180.
[132] *Tobacco Products Control Act*, S.C. 1988, c. 20, A.B.A., Vol. V, Tab 85, p. 163.
[133] *Ibid.*, ss. 9, 17, A.B.A., Vol. V, Tab 85, pp. 168-169, 173-174.
[134] *Tobacco Act*, S.C. 1997, c. 13, s. 4, A.B.A., Vol. V, Tab 75, p. 29.
[135] *Ibid.*, s. 4, for example, A.B.A., Vol. V, Tab 75, p. 33.

106. As described in greater length in the factum on the appeal, the passage or non-passage of legislation fall equally under the rubric of policy, and policy decisions captured in proposed regulations or legislation are as much in the nature of policy as the legislation or regulations as finally enacted. Neither should give rise to tort liability.[136] For these reasons, Tysoe J.A. committed no error in relying on Hall J.A.'s finding that the allegations surrounding Canada's failure to prescribe earlier or different warnings governing tobacco products are not actionable.

Alleged "Failure to Warn" re Tobacco Varieties

107. Imperial argues that Tysoe J.A. erred in finding that no allegations of "a failure to warn with respect to tobacco strains" were reflected in paragraphs 149 and 150 of its third party notice; that the pleadings should be read "broadly and generously", including "as amended"; and that the referenced paragraphs are not "the sole allegations of failure to warn in the TPN".[137] However, paragraphs 149 and 150[138] clearly make no reference at all to this issue, and Imperial does not refer to any other paragraphs in the third party notices which it suggests do so, or set out its "proposed amendment" which would. Imperial relies on two decisions in which allegations of failure to warn were raised before lower courts.[139] However, in each case, the claim was dismissed, and the court was not asked to, and did not, carry out any assessment of the sufficiency of the pleadings, or the required elements of a cause of action for "failure to warn".[140] The cases therefore provide no support for the suggested proposition that a duty to warn can be made out from general "elements of a negligence claim".

108. In any case, that proposition is objectively unsupportable. A cause of action founded on a duty to warn requires more than a general allegation of negligence to be sustainable. The pleadings must lay the foundation for a duty to take positive action. Duties to take action in tort only arise in certain limited and defined circumstances:

> Although there is no doubt that an omission may be negligent, as a general principle, the common law is a jealous guardian of individual autonomy. Duties to take positive action in the face of risk or danger are not free-standing. Generally, the mere fact that

[136] Appellant's Factum at paras. 94-97.
[137] Imperial Cross-Appeal Factum, paras. 143-156.
[138] Imperial TPN, A.R., Vol. II, pages 101-102.
[139] Imperial Cross-Appeal Factum, paras. 151-153.
[140] *Day v. Central Okanagan (Regional District)*, 2000 BCSC 1134, Imperial's B.A., Vol. II, Tab 20, p. 53; and *Elias v. Headache and Pain Management Clinic*, [2008] O.J. No. 4055, Imperial's B.A., Vol. II, Tab 23, p. 77.

> a person faces danger, or has become a danger to others, does not itself impose any kind of duty on those in a position to become involved.[141]

109. A general allegation of negligence is insufficient to impose a positive duty to take action. Imperial's reference to such general allegations thus provides no basis to find that there was any error by the Court of Appeal in its rejection of this aspect of the claim. In the alternative, if such an allegation of failure to warn can be recognized, any duty arising is negated by the policy considerations recognized as decisive by Hall J.A. and summarized above.[142]

F. No Duty of Care in Negligence Between Canada and Smokers

110. In the event that the Court were to accept the cross-appellant's submission that the *Negligence Act* permits a third party claim against Canada for contribution founded on a duty of care between Canada and smokers, the question of whether such a claim is sustainable arises. Canada's motion to strike included a challenge to this allegation on the alternative ground that no duty of care was made out. Neither the Court of Appeal, nor the motions judge, dealt with the issue in this case because this aspect was dismissed on other grounds. The Court of Appeal did address the issue of potential duties in negligent misrepresentation and "negligent design" between Canada and smokers in *Knight*. The cross-appellants do not address the merits of these alleged causes of action in their facta. It is submitted that it is plain and obvious that no such duty of care arises between Canada and smokers on the facts alleged.

(a) No Duty of Care Arises Based Upon Negligent Misrepresentation

111. Canada's factum on appeal in *Knight* addresses the claim for negligent misrepresentation based upon an alleged duty between Canada and smokers. For the reasons stated there,[143] it is submitted that no such duty arises.

(b) No Duty of Care Arises Based Upon "Negligent Design"

112. Canada adopts and repeats its submissions above with respect to the "negligent design" allegations raised in respect of a potential duty of care between Canada and manufacturers, and the submission on an alleged duty toward smokers in Canada's appeal factum in *Knight*.[144] The

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[141] *Childs v. Desormeaux*, 2006 SCC 18 at para. 31, A.S.B.A. Tab 9.
[142] *Supra*, paras. 107-109.
[143] Appellant's Factum in *Knight* (SCC File 33559) at paras. 29 -62.
[144] *Ibid.*, at paras. 31-86.

following points address the particular relationship between Canada and smokers in this respect and highlight that no proximity arises:

(a) Such an alleged duty of care is novel. The allegations in question involve the relationship between a statutory regulator and consumers of the regulated product, a relationship identified as involving novel duties in previous case law. Canada's conduct in conducting research into, and development of, tobacco varieties is alleged in the third party notices to have been part of its response to the health risks posed by tobacco products, not an act of commercial supply.[145]

(b) Tysoe J.A. viewed the relationship in question as being that "between a designer of a product and a purchaser of the product". If that were the nature of the relationship, proximity would indeed arise; however, it is not. This is not a conventional products liability situation in which Canada was acting as a commercial component supplier, but involves various regulatory actions and programmes carried out by Canada in furtherance of statutory duties to protect public health, as noted above.[146]

(c) Furthermore, the relationship is not "close and direct". Canada is not alleged to have supplied smokers any product. Canada is alleged to have licenced tobacco varieties to growers. Canada's alleged contact with smokers was through general public statements. Such statements are relevant to the allegations of misrepresentation, and addressed in the facta on appeal on that issue. Such general representations are insufficient to create proximity.[147]

113. For the foregoing reasons, it is submitted that Court of Appeal was correct to strike out the claims founded on alleged duties of care between Canada and smokers.

G. Canada Cannot be Liable Based on "Equitable Indemnity"

114. It is submitted that the Court of Appeal committed no error in striking out the claim of equitable indemnity. Canada's submissions on this issue are set out in its cross-appeal factum in *Knight*.[148]

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[145] *Ibid.*, at paras. 33-37.
[146] *Ibid.*, at paras. 29-30.
[147] *Ibid.*, at paras. 45-57.
[148] Factum in Response to the Cross-Appeal in Imperial, paras. 50-61.

H. Declaratory Relief

115. If the Court finds that it is plain and obvious that the claims for damages and contribution in the third party notices cannot succeed and they are struck out, the associated requests for declaratory relief should fall with them. If, as Canada submits, the third party notices disclose no monetary claims that have a reasonable basis in law, any remaining claim for declaratory relief should not be allowed to proceed for procedural purposes only. In the courts below, the defendants relied upon the B.C. Court of Appeal's decision in *B.C. Ferry*[149] to argue that this should be permitted.

116. As the chambers judge held, *B.C. Ferry* itself made clear that such claims for declaratory relief for purely procedural advantage ought to be the exception, rather than the rule.[150] Furthermore, as she concluded, *B.C. Ferry* was founded on the rationale that a party which was previously and properly party to an action may not, by settling its claim with the plaintiff, escape discovery in prejudice to the non-settling party.[151] In this case, Canada is not seeking to use a settlement to withdraw from a proceeding to which it was otherwise a co-defendant.

117. Further, both the B.C. Court of Appeal and courts in other provinces have emphasized that *B.C. Ferry* should be confined to its particular facts.[152]

118. The B.C. Rules[153] applying to the discovery of non-parties – such as R. 7-1(18) (documents), R. 7-5 (witnesses) and R. 7-8 (depositions) – have traditionally been interpreted broadly and generously and provide the defendants access to evidence to support their defences.[154] If, as Canada submits, the third party notices disclose no actionable monetary claims, Canada should not be required to participate in the litigation. This is not one of those

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[149] *B.C. Ferry Corporation v. T. & N. PLC* (1995), 16 B.C.L.R. (3d) 115 (C.A.), A.S.B.A., Tab 4.
[150] *British Columbia v. Imperial Tobacco Canada Limited, et. al.*, 2008 BCSC 419, at para. 93, A.R., Vol. I, p. 34, citing *BC Ferry*, *supra*, at para. 29, A.S.B.A., Tab 4.
[151] *Ibid.*, para. 94, A.R., Vol. I, pp. 34-35,
[152] *Kitimat (District) v. Alcan Inc.*, 2006 BCCA 75, at para. 83 A.S.B.A., Tab 15; and *Cheslatta Carrier Nation v. British Columbia*, 2000 BCCA 539 at para. 11 A.S.B.A., Tab 8. See also: *T.E.A.M v. Manitoba Telecom Services Inc.*, 2007 MBCA 85 at paras. 72-3, A.S.B.A., Tab 27; *Wright (Next Friend of) v. VIA Rail Canada Inc.*, [2000] 4 W.W.R. 232 (Alta QB), at para. 46, A.S.B.A., Tab 28.
[153] *Supreme Court Civil Rules*, B.C. Reg 168/2009, A.S.B.A., Tab 46.
[154] The current *Supreme Court Civil Rules* came into force July 1, 2010. They are not substantially different from the former *Supreme Court Rules*, B.C. Reg. 221/90, which were interpreted so as to allow liberal access to non-parties, e.g.: *Dufault v. Stevens* (1978), 6 B.C.L.R. 199 (C.A.) at p. 204, A.S.B.A., Tab 11; *Yemen Salt Mining Corporation v. Rhodes-Vaughan* S*treet Ltd.* (1977), 3 B.C.L.R. 98 (S.C.) at 100, A.S.B.A., Tab 30.

"rare" cases where a claim for declaratory relief should be allowed to proceed for procedural purposes only.

119. As Hall J.A. for the minority held on this issue (which was not dealt with the by the majority):

> I also note, as did the chambers judge, that Canada has agreed to submit to the *Rules of Court* which ought to permit the appellants proper access to any additional information they may think requisite to assist in their defence. It seems to me, having regard to this stance of Canada and the obvious knowledgeability of the appellants concerning the activities of representatives of Canada, quite unnecessary to order that Canada be required to be party to this complicated and expensive litigation when I see no utility to be gained from such.[155]

120. Finally, as the chambers judge correctly held, there is nothing in the *Act* to suggest that Canada must be a party in order to allow the court to "reduce" the defendants' damages. As she stated: "It is settled law that a trial judge may make an assessment of fault against a non-party in order to reduce the defendant's proportionate liability."[156] For all the foregoing reasons, the claims for declaratory relief should fall if the monetary claims are struck out.

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[155] *B.C. v. Imperial, supra*, at para. 61, A.R. at p. 68.
[156] *B.C. v. Imperial Tobacco, supra*, at para. 90, A.R., p. 33.

PART IV – COSTS

121. The appellant seeks its costs of this appeal and in the courts below.

PART V – ORDER SOUGHT

122. The appellant seeks an order striking out the third party notices in their entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Dated at Ottawa, this 28th day of January, 2011.

Paul Vickery **John S. Tyhurst**

Of Counsel for the Appellant/Respondent on Cross-Appeal

PART VI – ALPHABETICAL TABLE OF AUTHORITIES

Cases ***Paragraph(s)***

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Blackwater v. Plint, [2005] 3 S.C.R. 3 60

Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd., [1997] 3 S.C.R. 1210 .....60, 88

Canadian Western Bank v. *Alberta*, 2007 SCC 22 .....77, 78, 79

Cheslatta Carrier Nation v. British Columbia, 2000 BCCA 539 117

Childs v. Desormeaux, 2006 SCC 18 .....108, 109

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Heaslip v. Mansfield Ski Club Inc. (2009), 96 O.R. (3d) 401 95

Hunt v Carey Canada Inc., [1990] 2 S.C.R. 959 29

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Quebec (Attorney General) v. Canadian Owners and Pilots Association, 2010 SCC 39 .....80, 81, 82

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Ukrainian (Fort William) Credit Union Ltd. v Nesbitt Burns Ltd. (1997), 152 D.L.R (4th) 640 50

Vaughan v. Canada, 2005 SCC 11 29

Wright (Next Friend of) v. VIA Rail Canada Inc., [2000] 4 W.W.R. 232 (Alta. Q.B.) 117

Yemen Salt Mining Corporation v. Rhodes-Vaughan Street Ltd. (1977), 3 B.C.L.R. 98 (S.C.) 118

Texts

D. Sgayias, et al, *Annotated 1995 Crown Liability and proceedings Act* (Scarborough: Carswell, 1994) 74

A. Linden and B. Feldthusen, *Canadian Tort Law*, 8th ed. (Markham, Ont.: LexisNexis Butterworths, 2006) 89

Behie, "Determination of an Issue Before Trial", (2005) 63 *The Advocate* 81 29

Statutes and Regulations

Cigarette Products Act, Bill C-248, 3rd Sess., 28th Parl., 1970-71 105

Canada Health Act, R.S.C. 1985, c. C-6 37

Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5 40

Credit Unions and Caisses Populaires Act, 1994, S.O., c. 11 50

Crown Liability Act, S.C.1952-53, c. 30 74

Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50 ..... 42, 61-64

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Tobacco Products Control Act, S.C. 1988, c. 20, ss. 9, 17 105

Tobacco Damages and Health Care Costs Recovery Act, S.B.C. 2000, c. 30 .....11-13, 32-6, 41, 62-4

PART VII

STATUTES AND REGULATIONS *(extracts)*

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IMPORTANT INFORMATION

This Act is Current to January 30, 2008

This Act has "Not in Force" sections. *See* the Table of Legislative Changes.

INTERPRETATION ACT

[RSBC 1996] CHAPTER 238

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28 Use of forms and words
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30 Metric expressions
31 Common names

10 The enacting clause of an Act of the Legislature may be in the following form: "Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:".

Reference aids and clarifications

11 (1) In an enactment, a head note to a provision or a reference after the end of a section or other division

(a) is not part of the enactment, and

(b) must be considered to have been added editorially for convenience of reference only.

(2) In an enactment, if a reference to a provision of the enactment or any other enactment is followed by italicized text in square brackets that is or purports to be descriptive of the subject matter of the provision, subsection (1) (a) and (b) applies to the text in square brackets.

(3) The Lieutenant Governor in Council may make regulations amending an enactment for the purpose of changing a reference to a specific minister or ministry in a provision of the enactment to the minister or ministry, as applicable, currently assigned responsibility in relation to the matter.

Definitions and interpretation provisions

12 Definitions or interpretation provisions in an enactment, unless the contrary intention appears in the enactment, apply to the whole enactment including the section containing a definition or interpretation provision.

Application of expressions in enactments to regulations

13 An expression used in a regulation has the same meaning as in the enactment authorizing the regulation.

Government bound by enactments; exception

14 (1) Unless it specifically provides otherwise, an enactment is binding on the government.

(2) Despite subsection (1), an enactment that would bind or affect the government in the use or development of land, or in the planning, construction, alteration, servicing, maintenance or use of improvements, as defined in the *Assessment Act*, does not bind or affect the government.

corporations.

(3) In an enactment words in the singular include the plural, and words in the plural include the singular.

(4) If a word or expression is defined in an enactment, other parts of speech and grammatical forms of the same word or expression have corresponding meanings.

Expressions defined

29 In an enactment:

"acquire" means to obtain by any method and includes accept, receive, purchase, be vested with, lease, take possession, control or occupation of, and agree to do any of those things, but does not include expropriate;

"affidavit" or **"oath"** includes an affirmation, a statutory declaration, or a solemn declaration made under the *Evidence Act*, or under the *Canada Evidence Act*; and the word "swear" includes solemnly declare or affirm;

"bank" or **"chartered bank"** means a bank to which the *Bank Act* (Canada) applies;

"barrister" or **"solicitor"** or **"barrister and solicitor"** means a practising lawyer as defined in section 1 (1) of the *Legal Profession Act*;

"British Columbia land surveyor" means a person entitled to practise as a land surveyor under the *Land Surveyors Act*;

["calendar year", see "year"]

["Canada", see "government of Canada"]

"Cascade Mountains" means the line described in the Schedule to this Act;

["chartered bank", see "bank"]

["civil engineer", see "professional engineer"]

"commencement", with reference to an enactment, means the date on which the enactment comes into force;

"commercial paper" includes a bill of exchange, cheque, promissory note, negotiable instrument, conditional sale agreement, lien note, hire purchase agreement, chattel mortgage, bill of lading, bill of sale, warehouse receipt, guarantee, instrument of assignment, things in action and any document of title that passes

ownership or possession and on which credit can be raised;

"consolidated revenue fund", "consolidated revenue" or **"consolidated revenue fund of the Province"** means the consolidated revenue fund of British Columbia;

"corporation" means an incorporated association, company, society, municipality or other incorporated body, where and however incorporated, and includes a corporation sole other than Her Majesty or the Lieutenant Governor;

"correctional centre" means a correctional centre under the *Correction Act*;

"county" means a county constituted and defined in the *County Boundary Act*;

"Court of Appeal" means the court continued by the *Court of Appeal Act*;

"credit union" means a credit union or extraprovincial credit union authorized to carry on business under the *Financial Institutions Act*;

"*Criminal Code*" means the *Criminal Code* (Canada);

["Crown, the", see "Her Majesty"]

"deliver", with reference to a notice or other document, includes mail to or leave with a person, or deposit in a person's mail box or receptacle at the person's residence or place of business;

"Deputy Provincial Secretary" includes the Deputy Provincial Secretary and Deputy Minister of Government Services;

"dispose" means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things;

"electoral district" means an electoral district referred to in section 18 of the *Constitution Act*;

"Executive Council" means the Executive Council appointed under the *Constitution Act*;

"Gazette" means The British Columbia Gazette published by the Queen's Printer of British Columbia;

"government" or **"government of British Columbia"** means Her Majesty in right of British Columbia;

"government agent" means a person appointed under the *Public*

Service Act as a government agent;

"government of Canada" or **"Canada"** means Her Majesty in right of Canada or Canada, as the context requires;

"Governor", **"Governor of Canada"** or **"Governor General"** means the Governor General of Canada and includes the Administrator of Canada;

"Governor in Council" or **"Governor General in Council"** means the Governor General acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Queen's Privy Council for Canada;

"Great Seal" means the Great Seal of the Province;

"herein" used in a section or part of an enactment must be construed as referring to the whole enactment and not to that section or part only;

"Her Majesty", **"His Majesty"**, **"the Queen"**, **"the King"**, **"the Crown"** or **"the Sovereign"** means the Sovereign of the United Kingdom, Canada, and Her other realms and territories, and Head of the Commonwealth;

"holiday" includes

(a) Sunday, Christmas Day, Good Friday and Easter Monday,

(b) Canada Day, Victoria Day, British Columbia Day, Labour Day, Remembrance Day and New Year's Day,

(c) December 26, and

(d) a day set by the Parliament of Canada or by the Legislature, or appointed by proclamation of the Governor General or the Lieutenant Governor, to be observed as a day of general prayer or mourning, a day of public rejoicing or thanksgiving, a day for celebrating the birthday of the reigning Sovereign, or as a public holiday;

"insurance company" means

(a) an insurance company, or

(b) an extraprovincial insurance corporation

authorized to carry on insurance business under the *Financial Institutions Act*;

"judicial district" means a judicial district defined in the *Supreme Court Act*;

"justice" means a justice of the peace and includes a judge of the Provincial Court;

["King, the", see "Her Majesty"]

"land" includes any interest in land, including any right, title or estate in it of any tenure, with all buildings and houses, unless there are words to exclude buildings and houses, or to restrict the meaning;

"land title legislation", prior to October 31, 1979 means the *Land Registry Act* and after October 30, 1979 means the *Land Title Act*;

"lawyer" means a practising lawyer as defined in section 1 (1) of the *Legal Profession Act*;

"Legislative Assembly" means the Legislative Assembly of British Columbia constituted under the *Constitution Act*;

"Legislature" means the Lieutenant Governor acting by and with the advice and consent of the Legislative Assembly;

"Lieutenant Governor" means the Lieutenant Governor of British Columbia and includes the Administrator of British Columbia;

"Lieutenant Governor in Council" means the Lieutenant Governor acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Executive Council;

"mail" refers to the deposit of the matter to which the context applies in the Canada Post Office at any place in Canada, postage prepaid, for transmission by post, and includes deliver;

"may" is to be construed as permissive and empowering;

"medical practitioner" means a person entitled to practise under the *Medical Practitioners Act*;

"mentally disordered person", **"mentally incompetent person"**, **"mentally ill person"**, or **"person with a mental disorder"** means a person with a mental disorder as defined in section 1 of the *Mental Health Act*;

["mining engineer", see "professional engineer"]

"minister" means that member of the Executive Council charged by order of the Lieutenant Governor in Council with the administration of the enactment;

"minor" means a person under the age of majority;

"month" means a period calculated from a day in one month to a day

numerically corresponding to that day in the following month, less one day;

"municipality" means, as applicable,

(a) the corporation into which the residents of an area are incorporated as a municipality under the *Local Government Act*, the *Vancouver Charter* or any other Act, or

(b) the geographic area of the municipal corporation;

"must" is to be construed as imperative;

"newspaper", in a provision requiring publication in a newspaper, means a printed publication in sheet form, intended for general circulation, published regularly at intervals of not longer than a week, consisting in great part of news of current events of general interest;

"now" must be construed as referring to the time of commencement of the enactment containing the word;

["oath", see "affidavit"]

"obligation" includes a duty and a liability;

"peace officer" includes

(a) a mayor, sheriff and sheriff's officer,

(b) a warden, correctional officer, and any other officer or permanent employee of a penitentiary, prison, correctional centre or youth custody centre, and

(c) a police officer, police constable, constable or other person employed for the preservation and maintenance of the public peace;

"person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;

"personal representative" includes an executor of a will and an administrator with or without will annexed of an estate, and, if a personal representative is also a trustee of part or all of the estate, includes the personal representative and trustee;

"prescribed" means prescribed by regulation;

"proclamation" means a proclamation of the Lieutenant Governor under the Great Seal issued under an order of the Lieutenant Governor in Council;

"professional engineer", "civil engineer" or **"mining engineer"** or words implying recognition of any person as a professional engineer or member of the engineering profession means a person registered or licensed under the *Engineers and Geoscientists Act*;

"property" includes any right, title, interest, estate or claim to or in property;

"Province" means the Province of British Columbia or Her Majesty in right of British Columbia as the context requires;

"province", when used as meaning a part of Canada, includes the Northwest Territories, the Yukon Territory and Nunavut;

"Provincial Court" means the Provincial Court of British Columbia;

"Provincial Treasurer" or **"Treasurer"** means the Minister of Finance and includes the Deputy Minister of Finance;

"Provincial Treasury" or **"Treasury"** means the Ministry of Finance constituted under the *Financial Administration Act*;

["Queen, the", see "Her Majesty"]

"Railway Belt" means the land on the mainland of British Columbia expressed to be granted to Canada by section 2 of chapter 14 of the Statutes of British Columbia, 1884;

"record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

"regional district" means a regional district as defined in the *Local Government Act*;

"registered mail" includes certified mail;

"registrar" of a court includes the clerk of the court;

"Registrar of Companies" means the person appointed to that office under the *Business Corporations Act*;

"Registrar of Titles" or **"registrar"** means the registrar of a land title district appointed to that office under the *Land Title Act*;

"right" includes a power, authority, privilege and licence;

"Rules of Court", when used in relation to a court, means rules made under

(a) the *Court Rules Act*, or

(b) under any other enactment that empowers the making of rules governing practice and procedure in that court;

"rural area" means territory that is not in a municipality;

"savings institution" means

(a) a bank,

(b) a credit union,

(c) an extraprovincial trust corporation authorized to carry on deposit business under the *Financial Institutions Act*,

(d) a corporation that is a subsidiary of a bank and is a loan company to which the *Trust and Loan Companies Act* (Canada) applies, or

(e) the B.C. Community Financial Services Corporation established under the *Community Financial Services Act*;

"school district" means a school district as defined in the *School Act*;

"security" includes a security as defined in the *Securities Act*; [see also *"sureties"*]

"shall" is to be construed as imperative;

["solicitor", see "barrister"]

["Sovereign, the", see "Her Majesty"]

"Supreme Court" means the Supreme Court of British Columbia;

"sureties" means sufficient sureties, and **"security"** means sufficient security, and one person is sufficient for either unless otherwise expressly required;

["swear", see "affidavit"]

["Treasurer", see "Provincial Treasurer"]

["Treasury", see "Provincial Treasury"]

"Surveyor General" or **"Surveyor General of British Columbia"** means the Surveyor General appointed under the *Land Title and Survey Authority Act*;

"trust company" means

(a) a trust company authorized under the *Financial Institutions Act* to carry on trust business, or

(b) an extraprovincial trust corporation authorized under the

Financial Institutions Act to carry on trust business, deposit business or both;

"will" means a will as defined in the *Wills Act*;

"words" includes figures, punctuation marks, and typographical, monetary and mathematical symbols;

"writing", **"written"**, or a term of similar import includes words printed, typewritten, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in visible form;

"year" means any period of 12 consecutive months; but a reference to a **"calendar year"** means a period of 12 consecutive months beginning on January 1, and a reference by number to a dominical year means a period of 12 consecutive months beginning on January 1 of that dominical year;

"youth custody centre" means a youth custody centre as defined in the *Youth Justice Act*.

Metric expressions

30 In an enactment, metric expressions and symbols have the meaning given to them in the *Weights and Measures Act* (Canada) and if not mentioned there, have the meaning given to them in the International System of Units established by the General Conference of Weights and Measures.

Common names

31 In an enactment, the name commonly applied to a country, place, body, corporation, society, officer, functionary, person, party or thing means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, although the name is not the formal or extended designation of it.

Citation includes amendments

32 In an enactment a reference to another enactment of the Province or of Canada is a reference to the other enactment as amended, whether amended before or after the commencement of the enactment in which the reference occurs.

References in enactments

33 (1) A reference in an enactment to a series of numbers or letters by the first and last numbers or letters of the series includes the number or

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IMPORTANT INFORMATION

This Act is Current to January 30, 2008

NEGLIGENCE ACT

[RSBC 1996] CHAPTER 333

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Apportionment of liability for damages

1 (1) If by the fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.

(2) Despite subsection (1), if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally.

(3) Nothing in this section operates to make a person liable for damage or loss to which the person's fault has not contributed.

Awarding of damages

2 The awarding of damage or loss in every action to which section 1 applies is governed by the following rules:

(a) the damage or loss, if any, sustained by each person must be ascertained and expressed in dollars;

(b) the degree to which each person was at fault must be ascertained and expressed as a percentage of the total fault;

(c) as between each person who has sustained damage or loss and each other person who is liable to make good the damage

or loss, the person sustaining the damage or loss is entitled to recover from that other person the percentage of the damage or loss sustained that corresponds to the degree of fault of that other person;

(d) as between 2 persons each of whom has sustained damage or loss and is entitled to recover a percentage of it from the other, the amounts to which they are respectively entitled must be set off one against the other, and if either person is entitled to a greater amount than the other, the person is entitled to judgment against that other for the excess.

Apportionment of liability for costs

3 (1) Unless the court otherwise directs, the liability for costs of the parties to every action is in the same proportion as their respective liability to make good the damage or loss.

(2) Section 2 applies to the awarding of costs under this section.

(3) If, as between 2 persons, one is entitled to a judgment for an excess of damage or loss and the other to a judgment for an excess of costs there is a further set off of the respective amounts and judgment must be given accordingly.

Liability and right of contribution

4 (1) If damage or loss has been caused by the fault of 2 or more persons, the court must determine the degree to which each person was at fault.

(2) Except as provided in section 5 if 2 or more persons are found at fault

(a) they are jointly and severally liable to the person suffering the damage or loss, and

(b) as between themselves, in the absence of a contract express or implied, they are liable to contribute to and indemnify each other in the degree to which they are respectively found to have been at fault.

Negligence of spouse in cause of action that arose before April 17, 1985

5 (1) In an action founded on fault or negligence and brought for loss or damage resulting from bodily injury to or the death of a married person, if one of the persons found to be at fault or negligent is the spouse of the married person, no damages, contribution or indemnity are

CANADA

CONSOLIDATION

CODIFICATION

Crown Liability and Proceedings Act

Loi sur la responsabilité civile de l'État et le contentieux administratif

CHAPTER C-50

CHAPITRE C-50

Current to December 14, 2010

À jour au 14 décembre 2010

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l'adresse suivante :
http://lois-laws.justice.gc.ca

Crown Liability and Proceedings — December 14, 2010

PART I

LIABILITY

LIABILITY AND CIVIL SALVAGE

Liability

3. The Crown is liable for the damages for which, if it were a person, it would be liable

(*a*) in the Province of Quebec, in respect of

(i) the damage caused by the fault of a servant of the Crown, or

(ii) the damage resulting from the act of a thing in the custody of or owned by the Crown or by the fault of the Crown as custodian or owner; and

(*b*) in any other province, in respect of

(i) a tort committed by a servant of the Crown, or

(ii) a breach of duty attaching to the ownership, occupation, possession or control of property.

R.S., 1985, c. C-50, s. 3; 2001, c. 4, s. 36.

Motor vehicles

4. The Crown is liable for the damage sustained by anyone by reason of a motor vehicle, owned by the Crown, on a highway, for which the Crown would be liable if it were a person.

R.S., 1985, c. C-50, s. 4; 2001, c. 4, s. 37.

Civil salvage

5. (1) Subject to subsection (2), the law relating to civil salvage, whether of life or property, applies in relation to salvage services rendered in assisting any Crown ship or aircraft, or in saving life from a Crown ship or aircraft, or in saving any cargo or apparel belonging to the Crown, in the same manner as if the ship, aircraft, cargo or apparel belonged to a private person.

Claims in Federal Court

(2) All claims against the Crown under subsection (1) shall be heard and determined by a judge of the Federal Court.

R.S., 1985, c. C-50, s. 5; 2001, c. 4, s. 38, c. 26, s. 296.

6. [Repealed, 2001, c. 6, s. 113]

Limitation period for salvage proceedings

7. (1) Section 145 of the *Canada Shipping Act, 2001* applies in respect of salvage services rendered to Crown ships or aircraft as it applies in respect of salvage services rendered to other ships or aircraft.

PARTIE I

RESPONSABILITÉ CIVILE

RESPONSABILITÉ ET SAUVETAGES CIVILS

Responsabilité

3. En matière de responsabilité, l'État est assimilé à une personne pour :

a) dans la province de Québec :

(i) le dommage causé par la faute de ses préposés,

(ii) le dommage causé par le fait des biens qu'il a sous sa garde ou dont il est propriétaire ou par sa faute à l'un ou l'autre de ces titres;

b) dans les autres provinces :

(i) les délits civils commis par ses préposés,

(ii) les manquements aux obligations liées à la propriété, à l'occupation, à la possession ou à la garde de biens.

L.R. (1985), ch. C-50, art. 3; 2001, ch. 4, art. 36.

Véhicules automobiles

4. L'État est également assimilé à une personne pour ce qui est de sa responsabilité à l'égard du dommage que cause à autrui, sur une voie publique, un véhicule automobile lui appartenant.

L.R. (1985), ch. C-50, art. 4; 2001, ch. 4, art. 37.

Sauvetage civil

5. (1) Sous réserve du paragraphe (2), le droit régissant le sauvetage civil de personnes ou de biens s'applique aux services de sauvetage effectués pour prêter assistance à des navires ou aéronefs de l'État, ou aux personnes se trouvant à leur bord, ou pour sauver les cargaisons ou les accessoires de ces navires ou aéronefs, l'État étant assimilé à un particulier.

Juridiction compétente

(2) Les réclamations exercées contre l'État au titre du paragraphe (1) sont présentées à un juge de la Cour fédérale pour instruction et décision.

L.R. (1985), ch. C-50, art. 5; 2001, ch. 4, art. 38, ch. 26, art. 296.

6. [Abrogé, 2001, ch. 6, art. 113]

Prescription en matière de sauvetage

7. (1) L'article 145 de la *Loi de 2001 sur la marine marchande du Canada* s'applique à tous les services de sauvetage, qu'ils aient été rendus aux navires ou aéronefs de l'État ou à d'autres.

(2) [Repealed, 2001, c. 6, s. 114]

R.S., 1985, c. C-50, s. 7; 2001, c. 6, s. 114, c. 26, s. 298.

(2) [Abrogé, 2001, ch. 6, art. 114]

L.R. (1985), ch. C-50, art. 7; 2001, ch. 6, art. 114, ch. 26, art. 298.

Saving in respect of prerogative and statutory powers

8. Nothing in sections 3 to 7 makes the Crown liable in respect of anything done or omitted in the exercise of any power or authority that, if those sections had not been passed, would have been exercisable by virtue of the prerogative of the Crown, or any power or authority conferred on the Crown by any statute, and, in particular, but without restricting the generality of the foregoing, nothing in those sections makes the Crown liable in respect of anything done or omitted in the exercise of any power or authority exercisable by the Crown, whether in time of peace or of war, for the purpose of the defence of Canada or of training, or maintaining the efficiency of, the Canadian Forces.

R.S., c. C-38, s. 3.

Sauvegarde de la prérogative et des pouvoirs de l'État

8. Les articles 3 à 7 n'ont pas pour effet d'engager la responsabilité de l'État pour tout fait — acte ou omission — commis dans l'exercice d'un pouvoir qui, sans ces articles, s'exercerait au titre de la prérogative royale ou d'une disposition législative, et notamment pour les faits commis dans l'exercice d'un pouvoir dévolu à l'État, en temps de paix ou de guerre, pour la défense du Canada, l'instruction des Forces canadiennes ou le maintien de leur efficacité.

S.R., ch. C-38, art. 3.

SPECIAL PROVISIONS RESPECTING LIABILITY

DISPOSITIONS SPÉCIALES CONCERNANT LA RESPONSABILITÉ

No proceedings lie where pension payable

9. No proceedings lie against the Crown or a servant of the Crown in respect of a claim if a pension or compensation has been paid or is payable out of the Consolidated Revenue Fund or out of any funds administered by an agency of the Crown in respect of the death, injury, damage or loss in respect of which the claim is made.

R.S., 1985, c. C-50, s. 9; 2001, c. 4, s. 39(F).

Incompatibilité entre recours et droit à une pension ou indemnité

9. Ni l'État ni ses préposés ne sont susceptibles de poursuites pour toute perte — notamment décès, blessure ou dommage — ouvrant droit au paiement d'une pension ou indemnité sur le Trésor ou sur des fonds gérés par un organisme mandataire de l'État.

L.R. (1985), ch. C-50, art. 9; 2001, ch. 4, art. 39(F).

Liability for acts of servants

10. No proceedings lie against the Crown by virtue of subparagraph 3(*a*)(i) or (*b*)(i) in respect of any act or omission of a servant of the Crown unless the act or omission would, apart from the provisions of this Act, have given rise to a cause of action for liability against that servant or the servant's personal representative or succession.

R.S., 1985, c. C-50, s. 10; 2001, c. 4, s. 40.

Responsabilité quant aux actes de préposés

10. L'État ne peut être poursuivi, sur le fondement des sous-alinéas 3*a*)(i) ou *b*)(i), pour les actes ou omissions de ses préposés que lorsqu'il y a lieu en l'occurrence, compte non tenu de la présente loi, à une action en responsabilité contre leur auteur, ses représentants personnels ou sa succession.

L.R. (1985), ch. C-50, art. 10; 2001, ch. 4, art. 40.

Motor vehicles

11. No proceedings lie against the Crown by virtue of section 4 in respect of damage sustained by any person by reason of a motor vehicle on a highway unless the driver of the motor vehicle or the driver's personal representative or succession is liable for the damage so sustained.

R.S., 1985, c. C-50, s. 11; 2001, c. 4, s. 40.

Véhicules automobiles

11. L'article 4 ne permet aucun recours contre l'État à l'égard du dommage causé par un véhicule automobile sur une voie publique sauf si le conducteur, l'un de ses représentants personnels ou sa succession en est responsable.

L.R. (1985), ch. C-50, art. 11; 2001, ch. 4, art. 40.

12. [Repealed, 1999, c. 31, s. 70]

12. [Abrogé, 1999, ch. 31, art. 70]

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IMPORTANT INFORMATION

This Act is Current to December 29, 2010

TOBACCO DAMAGES AND HEALTH CARE COSTS RECOVERY ACT

[SBC 2000] CHAPTER 30

Assented to July 6, 2000

Contents

1 Definitions and interpretation
2 Direct action by government
3 Recovery of cost of health care benefits on aggregate basis
4 Joint and several liability in an action under section 2 (1)
5 Population based evidence to establish causation and quantify damages or cost
6 Limitation periods
7 Liability based on risk contribution
8 Apportionment of liability in tobacco related wrongs
9 Regulations
10 Retroactive effect
11 Spent
12 Commencement

Definitions and interpretation

1 (1) In this Act:

"cost of health care benefits" means the sum of

(a) the present value of the total expenditure by the government for health care benefits provided for insured persons resulting from tobacco related disease or the risk of tobacco related disease, and

(b) the present value of the estimated total expenditure by the government for health care benefits that could reasonably be expected will be provided for those insured persons resulting

from tobacco related disease or the risk of tobacco related disease;

"disease" includes general deterioration of health;

"exposure" means any contact with, or ingestion, inhalation or assimilation of, a tobacco product, including any smoke or other by-product of the use, consumption or combustion of a tobacco product;

"health care benefits" means

(a) benefits as defined under the *Hospital Insurance Act*,

(b) benefits as defined under the *Medicare Protection Act*,

(c) payments made by the government under the *Continuing Care Act*, and

(d) other expenditures, made directly or through one or more agents or other intermediate bodies, by the government for programs, services, benefits or similar matters associated with disease;

"insured person" means

(a) a person, including a deceased person, for whom health care benefits have been provided, or

(b) a person for whom health care benefits could reasonably be expected will be provided;

"joint venture" means an association of 2 or more persons, if

(a) the relationship among the persons does not constitute a corporation, a partnership or a trust, and

(b) the persons each have an undivided interest in assets of the association;

"manufacture" includes, for a tobacco product, the production, assembly or packaging of the tobacco product;

"manufacturer" means a person who manufactures or has manufactured a tobacco product and includes a person who currently or in the past

(a) causes, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of a tobacco product,

(b) for any fiscal year of the person, derives at least 10% of revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of tobacco products by that person or by other persons,

(c) engages in, or causes, directly or indirectly, other persons to engage in the promotion of a tobacco product, or

(d) is a trade association primarily engaged in

(i) the advancement of the interests of manufacturers,

(ii) the promotion of a tobacco product, or

(iii) causing, directly or indirectly, other persons to engage in the promotion of a tobacco product;

"person" includes a trust, joint venture or trade association;

"promote" or **"promotion"** includes, for a tobacco product, the marketing, distribution or sale of the tobacco product and research with respect to the tobacco product;

"tobacco product" means tobacco and any product that includes tobacco;

"tobacco related disease" means disease caused or contributed to by exposure to a tobacco product;

"tobacco related wrong" means,

(a) a tort committed in British Columbia by a manufacturer which causes or contributes to tobacco related disease, or

(b) in an action under section 2 (1), a breach of a common law, equitable or statutory duty or obligation owed by a manufacturer to persons in British Columbia who have been exposed or might become exposed to a tobacco product;

"type of tobacco product" means one or a combination of the following tobacco products:

(a) cigarettes;

(b) loose tobacco intended for incorporation into cigarettes;

(c) cigars;

(d) cigarillos;

(e) pipe tobacco;

(f) chewing tobacco;

(g) nasal snuff;

(h) oral snuff;

(i) a prescribed form of tobacco.

(2) The definition of "manufacturer" in subsection (1) does not include

(a) an individual,

(b) a person who

(i) is a manufacturer only because they are a wholesaler or retailer of tobacco products, and

(ii) is not related to

(A) a person who manufactures a tobacco product, or

(B) a person described in paragraph (a) of the definition of "manufacturer", or

(c) a person who

(i) is a manufacturer only because paragraph (b) or (c) of the definition of "manufacturer" applies to the person, and

(ii) is not related to

(A) a person who manufactures a tobacco product, or

(B) a person described in paragraphs (a) or (d) of the definition of "manufacturer".

(3) For the purposes of subsection (2), a person is related to another person if, directly or indirectly, the person is

(a) an affiliate, as defined in section 1 of the *Business Corporations Act*, of the other person, or

(b) an affiliate of the other person or an affiliate of an affiliate of the other person.

(4) For the purposes of subsection (3) (b), a person is deemed to be an affiliate of another person if the person

(a) is a corporation and the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, owns a beneficial interest in shares of the corporation

(i) carrying at least 50% of the votes for the election of directors of the corporation and the votes carried by the shares are sufficient, if exercised, to elect a director of the corporation, or

(ii) having a fair market value, including a premium for control if applicable, of at least 50% of the fair market value of all the issued and outstanding shares of the corporation, or

(b) is a partnership, trust or joint venture and the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has an ownership interest in the assets of that person that entitles the other person or group to receive at least 50% of the profits or at least 50% of the assets on dissolution, winding up or termination of the partnership, trust or joint venture.

(5) For the purposes of subsection (3) (b), a person is deemed to be an affiliate of another person if the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has any direct or indirect influence that, if exercised, would result in control in fact of that person except if the other person deals at arm's length with that person and derives influence solely as a lender.

(6) For the purposes of determining the market share of a defendant for a type of tobacco product sold in British Columbia, the court must calculate the defendant's market share for the type of tobacco product by the following formula:

$$dms = \frac{dm}{MM} \times 100\%$$

where

dms = the defendant's market share for the type of tobacco product from the date of the earliest tobacco related wrong committed by that defendant to the date of trial;

dm = the quantity of the type of tobacco product manufactured or promoted by the defendant that is sold within British Columbia from the date of the earliest tobacco related wrong committed by that defendant to the date of trial;

MM = the quantity of the type of tobacco product manufactured or promoted by all manufacturers that is sold within British Columbia from the date of the earliest tobacco related wrong committed by the defendant to the date of trial.

Direct action by government

2 (1) The government has a direct and distinct action against a manufacturer to recover the cost of health care benefits caused or contributed to by a tobacco related wrong.

(2) An action under subsection (1) is brought by the government in its own right and not on the basis of a subrogated claim.

(3) In an action under subsection (1), the government may recover the cost of health care benefits whether or not there has been any recovery by other persons who have suffered damage caused or contributed to by the tobacco related wrong committed by the defendant.

(4) In an action under subsection (1), the government may recover the cost of health care benefits

(a) for particular individual insured persons, or

(b) on an aggregate basis, for a population of insured persons as a result of exposure to a type of tobacco product.

(5) If the government seeks in an action under subsection (1) to recover the cost of health care benefits on an aggregate basis,

(a) it is not necessary

(i) to identify particular individual insured persons,

(ii) to prove the cause of tobacco related disease in any particular individual insured person, or

(iii) to prove the cost of health care benefits for any particular individual insured person,

(b) the health care records and documents of particular individual insured persons or the documents relating to the provision of health care benefits for particular individual insured persons are not compellable except as provided under a rule of law, practice or procedure that requires the production of documents relied on by an expert witness,

(c) a person is not compellable to answer questions with respect to the health of, or the provision of health care benefits for, particular individual insured persons,

(d) despite paragraphs (b) and (c), on application by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in paragraph (b) and the order must include directions concerning the nature, level of detail and type of information to be disclosed, and

(e) if an order is made under paragraph (d), the identity of particular individual insured persons must not be disclosed and all identifiers that disclose or may be used to trace the names or identities of any particular individual insured persons must be

deleted from any documents before the documents are disclosed.

Recovery of cost of health care benefits on aggregate basis

3 (1) In an action under section 2 (1) for the recovery of the cost of health care benefits on an aggregate basis, subsection (2) applies if the government proves, on a balance of probabilities, that, in respect of a type of tobacco product,

(a) the defendant breached a common law, equitable or statutory duty or obligation owed to persons in British Columbia who have been exposed or might become exposed to the type of tobacco product,

(b) exposure to the type of tobacco product can cause or contribute to disease, and

(c) during all or part of the period of the breach referred to in paragraph (a), the type of tobacco product, manufactured or promoted by the defendant, was offered for sale in British Columbia.

(2) Subject to subsections (1) and (4), the court must presume that

(a) the population of insured persons who were exposed to the type of tobacco product, manufactured or promoted by the defendant, would not have been exposed to the product but for the breach referred to in subsection (1) (a), and

(b) the exposure described in paragraph (a) caused or contributed to disease or the risk of disease in a portion of the population described in paragraph (a).

(3) If the presumptions under subsection (2) (a) and (b) apply,

(a) the court must determine on an aggregate basis the cost of health care benefits provided after the date of the breach referred to in subsection (1) (a) resulting from exposure to the type of tobacco product, and

(b) each defendant to which the presumptions apply is liable for the proportion of the aggregate cost referred to in paragraph (a) equal to its market share in the type of tobacco product.

(4) The amount of a defendant's liability assessed under subsection (3) (b) may be reduced, or the proportions of liability assessed under subsection (3) (b) readjusted amongst the defendants, to the extent that a defendant proves, on a balance of probabilities, that the breach referred

to in subsection (1) (a) did not cause or contribute to the exposure referred to in subsection (2) (a) or to the disease or risk of disease referred to in subsection (2) (b).

Joint and several liability in an action under section 2 (1)

4 (1) Two or more defendants in an action under section 2 (1) are jointly and severally liable for the cost of health care benefits if

(a) those defendants jointly breached a duty or obligation described in the definition of "tobacco related wrong" in section 1 (1), and

(b) as a consequence of the breach described in paragraph (a), at least one of those defendants is held liable in the action under section 2 (1) for the cost of those health care benefits.

(2) For purposes of an action under section 2 (1), 2 or more manufacturers, whether or not they are defendants in the action, are deemed to have jointly breached a duty or obligation described in the definition of "tobacco related wrong" in section 1 (1) if

(a) one or more of those manufacturers are held to have breached the duty or obligation, and

(b) at common law, in equity or under an enactment those manufacturers would be held

(i) to have conspired or acted in concert with respect to the breach,

(ii) to have acted in a principal and agent relationship with each other with respect to the breach, or

(iii) to be jointly or vicariously liable for the breach if damages would have been awarded to a person who suffered as a consequence of the breach.

Population based evidence to establish causation and quantify damages or cost

5 Statistical information and information derived from epidemiological, sociological and other relevant studies, including information derived from sampling, is admissible as evidence for the purposes of establishing causation and quantifying damages or the cost of health care benefits respecting a tobacco related wrong in an action brought

(a) by or on behalf of a person in the person's own name or as a member of a class of persons under the *Class Proceedings Act*, or

(b) by the government under section 2 (1).

Limitation periods

6 (1) No action that is commenced within 2 years after the coming into force of this section by

(a) the government,

(b) a person, on his or her own behalf or on behalf of a class of persons, or

(c) a personal representative of a deceased person on behalf of the spouse, parent or child, as defined in the *Family Compensation Act*, of the deceased person,

for damages, or the cost of health care benefits, alleged to have been caused or contributed to by a tobacco related wrong is barred under the *Limitation Act*.

(2) Any action described in subsection (1) for damages alleged to have been caused or contributed to by a tobacco related wrong is revived if the action was dismissed before the coming into force of this section merely because it was held by a court to be barred or extinguished by the *Limitation Act*.

Liability based on risk contribution

7 (1) This section applies to an action for damages, or the cost of health care benefits, alleged to have been caused or contributed to by a tobacco related wrong other than an action for the recovery of the cost of health care benefits on an aggregate basis.

(2) If a plaintiff is unable to establish which defendant caused or contributed to the exposure described in paragraph (b) and, as a result of a breach of a common law, equitable or statutory duty or obligation,

(a) one or more defendants causes or contributes to a risk of disease by exposing persons to a type of tobacco product, and

(b) the plaintiff has been exposed to the type of tobacco product referred to in paragraph (a) and suffers disease as a result of the exposure,

the court may find each defendant that caused or contributed to the risk of disease liable for a proportion of the damages or cost of health care benefits incurred equal to the proportion of its contribution to that risk of disease.

(3) The court may consider the following in apportioning liability under subsection (2):

(a) the length of time a defendant engaged in the conduct that caused or contributed to the risk of disease;

(b) the market share the defendant had in the type of tobacco product that caused or contributed to the risk of disease;

(c) the degree of toxicity of any toxic substance in the type of tobacco product manufactured or promoted by a defendant;

(d) the amount spent by a defendant on promoting the type of tobacco product that caused or contributed to the risk of disease;

(e) the degree to which a defendant collaborated or acted in concert with other manufacturers in any conduct that caused, contributed to or aggravated the risk of disease;

(f) the extent to which a defendant conducted tests and studies to determine the risk of disease resulting from exposure to the type of tobacco product;

(g) the extent to which a defendant assumed a leadership role in manufacturing the type of tobacco product;

(h) the efforts a defendant made to warn the public about the risk of disease resulting from exposure to the type of tobacco product;

(i) the extent to which a defendant continued manufacture or promotion of the type of tobacco product after it knew or ought to have known of the risk of disease resulting from exposure to the type of tobacco product;

(j) affirmative steps that a defendant took to reduce the risk of disease to the public;

(k) other considerations considered relevant by the court.

Apportionment of liability in tobacco related wrongs

8 (1) This section does not apply to a defendant in respect of whom the court has made a finding of liability under section 7.

(2) A defendant who is found liable for a tobacco related wrong may commence, against one or more of the defendants found liable for that wrong in the same action, an action or proceeding for contribution toward payment of the damages or the cost of health care benefits caused or contributed to by that wrong.

(3) Subsection (2) applies whether or not the defendant commencing an action or proceeding under that subsection has paid all or any of the damages or the cost of health care benefits caused or contributed to by the tobacco related wrong.

(4) In an action or proceeding described in subsection (2), the court may apportion liability and order contribution among each of the defendants in accordance with the considerations listed in section 7 (3) (a) to (k).

Regulations

9 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations prescribing a form of tobacco for the purposes of paragraph (i) of the definition of "type of tobacco product" in section 1 (1).

Retroactive effect

10 When brought into force under section 12, a provision of this Act has the retroactive effect necessary to give the provision full effect for all purposes including allowing an action to be brought under section 2 (1) arising from a tobacco related wrong, whenever the tobacco related wrong occurred.

Spent

11 *[Repeal. Spent. 2000-30-11.]*

Commencement

12 This Act comes into force by regulation of the Lieutenant Governor in Council.

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IMPORTANT INFORMATION

This Act is Current to December 29, 2010

STATUTE REVISION ACT

[RSBC 1996] CHAPTER 440

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6 Title and publication of revision
7 Repeal of previous version of statutes
8 Legal effect of revision
9 How references are to be interpreted
10 Interim corrections to revision
11 *Interpretation Act* applies
12 Statute corrections generally

Preparation of revision

1 The Chief Legislative Counsel may prepare

(a) a general revision consisting of the public Acts enacted before a date chosen by the Chief Legislative Counsel together with those other Acts considered advisable, or

(b) a limited revision consisting of an Act or a portion of an Act.

Revision powers

2 (1) In preparing a revision, the Chief Legislative Counsel may do any or all of the following:

(a) combine Acts or provisions of them;

(a.1) separate an Act or a provision of an Act into 2 or more Acts or provisions;

(b) alter the numbering and the arrangement of Acts or provisions;

(c) rename an Act or portion of an Act;

(d) alter language and punctuation to achieve a clear, consistent and gender neutral style;

(e) make minor amendments to clarify the intent of the Legislature, to reconcile inconsistent provisions or to correct grammatical or typographical errors;

(f) for a limited revision, make minor amendments to other Acts required to reconcile them with a revised Act as if the minor amendments were consequential amendments to the revised Act;

(g) include in the revision those Acts or provisions that, although enacted, have not been brought into force, and indicate how they are to come into force;

(h) omit Acts or provisions that are spent, are repealed or have no legal effect;

(i) omit Acts or provisions that do not apply throughout British Columbia;

(j) omit forms or schedules from an Act.

(2) If a form or schedule is omitted under subsection (1) (j), a power to prescribe the form or schedule by regulation may be added to the appropriate Act.

(3) A form or schedule omitted from a revision is repealed on the coming into force of the revision.

(4) A regulation prescribing a form or schedule may be enacted before a revision comes into force but the regulation has no effect until the revision comes into force.

Revision to be submitted to committee of Legislative Assembly

3 The Chief Legislative Counsel must give a revision to the Clerk of the Legislative Assembly for presentation to a select standing committee of the Legislative Assembly designated by the Legislative Assembly to examine the revision.

Approved revision to be deposited as official copy

4 (1) If the select standing committee approves a revision and recommends that it be brought into force, the Lieutenant Governor may direct that a

copy of the revision be deposited with the Clerk of the Legislative Assembly as the official copy of the revision.

(2) The official copy must be signed by the Lieutenant Governor and countersigned by the Clerk of the Legislative Assembly.

How revision comes into force

5 (1) The Lieutenant Governor in Council may specify by regulation when a revision deposited under section 4 (1) comes into force.

(2) A revision comes into force for all purposes as if it were expressly included in and enacted by an Act.

(3) A provision in a supplement to a revision comes into force as provided in the supplement.

(3.1) If an Act or a provision is included in a revision under section 2 (1) (g), the Act or provision

(a) comes into force for the purposes of the revision in accordance with the regulation under subsection (1) of this section, and

(b) comes into force as law as indicated in the revision.

(4) From the time a revision comes into force, the official copy deposited with the Clerk of the Legislative Assembly must be considered to be the original of the statutes of British Columbia replaced by the revision.

(5) The Clerk of the Legislative Assembly must keep the official copy of the most recent Revised Statutes of British Columbia until the next general revision comes into force.

Title and publication of revision

6 (1) A general revision may be published with the title Revised Statutes of British Columbia and may include in the title the year of its publication.

(2) A limited revision may be given a chapter number as if it were enacted in the current session of the Legislative Assembly or, if the Legislative Assembly is not then in session, in the next session, and the limited revision may be published in the volume of Acts enacted in that session.

Repeal of previous version of statutes

7 (1) When a general revision comes into force,

(a) the existing Revised Statutes of British Columbia, and

(b) all other Acts and provisions that are included in the general revision but were not included in the existing Revised Statutes of British Columbia

are repealed to the extent that they are incorporated in the general revision.

(2) When a limited revision comes into force, the Acts or provisions it replaces are repealed to the extent that they are incorporated in the limited revision.

Legal effect of revision

8 (1) A revision does not operate as new law but has effect and must be interpreted as a consolidation of the law contained in the Acts and provisions replaced by the revision.

(2) If a revised provision has the same effect as a provision replaced by the revision, the revised provision

(a) operates retrospectively as well as prospectively, and

(b) is deemed to have been enacted and to have come into force on the day on which the provision replaced by the revision came into force.

(3) If a revised provision does not have the same effect as a provision replaced by the revision,

(a) the provision replaced by the revision governs all transactions, matters and things before the revision comes into force, and

(b) the revised provision governs all transactions, matters and things after the revision comes into force.

How references are to be interpreted

9 (1) A reference in any of the following to an Act or provision included in a revision must be interpreted, in relation to any transaction, matter or thing after the coming into force of the revision, as a reference to the revised Act or provision having the same effect as the Act or provision replaced by the revision:

(a) an Act or provision that was enacted before the coming into force of the revision and that is not included in the revision;

(b) a regulation or other instrument enacted before the coming into force of the revision;

(c) a document existing before the coming into force of the revision.

(2) A reference in any of the enactments or documents referred to in subsection (1) (a) to (c) to the Revised Statutes of British Columbia must be interpreted, in relation to any transaction, matter or thing after the coming into force of a general revision, as a reference to the new Revised Statutes of British Columbia.

Interim corrections to revision

10 (1) The Lieutenant Governor in Council may make regulations to correct, in a manner consistent with the powers of revision in this Act, any error in a revision.

(2) A regulation under this section may be made retroactive to the coming into force of the revision.

(3) Unless confirmed by the Legislature, corrections made by a regulation under this section cease to have effect after the last day of the next session of the Legislative Assembly after the regulation is made.

***Interpretation Act* applies**

11 The *Interpretation Act* applies to a revision as it applies to other enactments.

Statute corrections generally

12 (1) The Lieutenant Governor in Council may make regulations to correct the following in any Act:

(a) errors of form;

(b) errors of style;

(c) numbering errors;

(d) typographical errors;

(e) reference errors.

(2) Unless confirmed by the Legislature, corrections made by a regulation under this section cease to have effect after the last day of the next session of the Legislative Assembly after the regulation is made.

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CANADA

CONSOLIDATION

CODIFICATION

Federal-Provincial Fiscal Arrangements Act

Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces

CHAPTER F-8

CHAPITRE F-8

Current to December 14, 2010

À jour au 14 décembre 2010

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l'adresse suivante :
http://lois-laws.justice.gc.ca

ment under which the federal payment is made, a cash contribution to that province for that fiscal year for the purpose of a reduction by, or a withholding of, the excess amount under either of those subsections, under section 16 or 17 of the *Canada Health Act* or under section 22 or 23 of this Act.

pécuniaire à la province pour cet exercice et ce afin de déduire ou de retenir l'excédent en vertu de l'un de ces paragraphes, des articles 16 ou 17 de la *Loi canadienne sur la santé* ou des articles 22 ou 23 de la présente loi.

Additional deduction

(3) Where the amount to be deducted under subsection 20(1) or (2) of the *Canada Health Act* for a fiscal year exceeds the amount from which it is to be deducted, the Governor in Council may, by order, deem any federal payment to the province to be, notwithstanding any provision in the Act, arrangement or agreement under which the federal payment is made, a cash contribution to that province for that fiscal year for the purpose of deducting the excess amount under that subsection or section 21 of that Act.

1991, c. 51, s. 4; 1995, c. 17, s. 51.

Déduction supplémentaire

(3) Lorsque le montant visé aux paragraphes 20(1) ou (2) de la *Loi canadienne sur la santé* est supérieur à celui dont il doit être déduit, le gouverneur en conseil peut, par décret, déclarer qu'un paiement fédéral à une province pour un exercice est, malgré la loi, l'arrangement ou l'accord autorisant ce paiement, réputé être une contribution pécuniaire à la province pour cet exercice afin de déduire l'excédent en vertu de ces paragraphes ou de l'article 21 de la *Loi canadienne sur la santé*.

1991, ch. 51, art. 4; 1995, ch. 17, art. 51.

PART V.1

CANADA HEALTH TRANSFER, CANADA SOCIAL TRANSFER, HEALTH REFORM TRANSFER, WAIT TIMES REDUCTION TRANSFER AND EARLY LEARNING AND CHILD CARE TRANSFER

PARTIE V.1

TRANSFERT CANADIEN EN MATIÈRE DE SANTÉ, TRANSFERT CANADIEN EN MATIÈRE DE PROGRAMMES SOCIAUX, TRANSFERT VISANT LA RÉFORME DES SOINS DE SANTÉ, TRANSFERT VISANT LA RÉDUCTION DES TEMPS D'ATTENTE ET TRANSFERT POUR L'APPRENTISSAGE ET LA GARDE DES JEUNES ENFANTS

Canada Health Transfer

Transfert canadien en matière de santé

Purposes

24. Subject to this Part and for the purpose of giving effect to the 2003 First Ministers' Accord on Health Care Renewal and the 2004 10-Year Plan to Strengthen Health Care, a Canada Health Transfer in the amounts referred to in subsection 24.1(1) is to be provided to the provinces for the purposes of

(*a*) maintaining the national criteria and conditions in the *Canada Health Act*, including those respecting public administration, comprehensiveness, universality, portability and accessibility, and the provisions relating to extra-billing and user charges; and

(*b*) contributing to providing the best possible health care system for Canadians and to

Fins du Transfert

24. Sous réserve de la présente partie et afin de donner effet à l'Accord de 2003 des premiers ministres sur le renouvellement des soins de santé et au Plan décennal pour consolider les soins de santé (2004), il est versé aux provinces les sommes visées au paragraphe 24.1(1), au titre du Transfert canadien en matière de santé, aux fins suivantes :

a) appliquer les conditions et critères nationaux prévus par la *Loi canadienne sur la santé* concernant notamment la gestion publique, l'intégralité, l'universalité, la transférabilité et l'accessibilité, ainsi que les dispositions concernant la surfacturation et les frais modérateurs;

b) contribuer à fournir aux Canadiens le meilleur système de soins de santé possible

making information about the health care system available to Canadians.

R.S., 1985, c. F-8, s. 24; 1995, c. 17, s. 52; 2003, c. 15, s. 8; 2005, c. 11, s. 2.

Amount

24.1 (1) The Canada Health Transfer is to consist of

(*a*) a cash contribution equal to

(i) $12.65 billion for the fiscal year beginning on April 1, 2004,

(ii) $1 billion for the fiscal year beginning on April 1, 2004,

(iii) $19 billion for the fiscal year beginning on April 1, 2005, and

(iv) the product obtained by multiplying the cash contribution for the immediately preceding year by 1.06, rounded to the nearest thousand, for each fiscal year in the period beginning on April 1, 2006 and ending on March 31, 2014; and

(*b*) the portion of the total equalized tax transfer for all provinces that is determined by multiplying the total equalized tax transfer for all provinces by the quotient, rounded to the nearest hundredth, that is obtained by dividing an amount equal to the cash contribution specified in subparagraph (*a*)(i) by an amount equal to the aggregate of the cash contributions specified in subparagraphs (*a*)(i) and 24.4(1)(*a*)(i).

Meaning of "total equalized tax transfer"

(2) In subsection (1), "total equalized tax transfer" means the total equalized tax transfer as determined in accordance with section 24.7.

Non-application

(3) The cash contribution referred to in subparagraph (1)(*a*)(ii) is not subject to subparagraphs 4(1)(*a*)(i) to (iii) of the *Canada Health Transfer and Canada Social Transfer Regulations*.

2003, c. 15, s. 8; 2005, c. 11, s. 3; 2007, c. 29, s. 64.

Provincial share

24.2 (1) The cash contribution established under paragraph 24.1(1)(*a*) that may be provided to a province for each of the fiscal years

et à mettre des renseignements sur le système de santé à la disposition des Canadiens.

L.R. (1985), ch. F-8, art. 24; 1995, ch. 17, art. 52; 2003, ch. 15, art. 8; 2005, ch. 11, art. 2.

Transfert

24.1 (1) Le Transfert canadien en matière de santé se compose des éléments suivants :

a) une contribution pécuniaire correspondant aux sommes suivantes :

(i) 12,65 milliards de dollars pour l'exercice commençant le 1er avril 2004,

(ii) 1 milliard de dollars pour l'exercice commençant le 1er avril 2004,

(iii) 19 milliards de dollars pour l'exercice commençant le 1er avril 2005,

(iv) la somme obtenue par multiplication de la contribution pécuniaire de l'exercice précédent par 1,06 — arrondie au millier près —, pour chaque exercice compris entre le 1er avril 2006 et le 31 mars 2014;

b) la fraction de la totalité des transferts fiscaux et de la péréquation s'y rattachant applicables à l'ensemble des provinces déterminée par multiplication de la totalité des transferts fiscaux et de la péréquation s'y rattachant applicables à l'ensemble des provinces par le quotient — arrondi au centième près — obtenu par division du montant de la contribution pécuniaire visée au sous-alinéa *a*)(i) par la somme des montants des contributions pécuniaires visées aux sous-alinéas *a*)(i) et 24.4(1)*a*)(i).

Totalité des transferts fiscaux et de la péréquation s'y rattachant

(2) La totalité des transferts fiscaux et de la péréquation s'y rattachant visée au paragraphe (1) est déterminée conformément à l'article 24.7.

Non-application

(3) La contribution pécuniaire visée au sous-alinéa (1)*a*)(ii) est soustraite à l'application des sous-alinéas 4(1)*a*)(i) à (iii) du *Règlement sur le Transfert canadien en matière de santé et le Transfert canadien en matière de programmes sociaux*.

2003, ch. 15, art. 8; 2005, ch. 11, art. 3; 2007, ch. 29, art. 64.

Quote-part d'une province

24.2 (1) La quote-part de la contribution pécuniaire visée à l'alinéa 24.1(1)*a*) qui peut être versée à une province pour chaque exercice vi-

mentioned in that paragraph is the amount determined by the formula

$$F \times (K/L) - M$$

where

F is the total of the amounts established under paragraphs 24.1(1)(*a*) and (*b*) for the fiscal year;

K is the population of the province for the fiscal year;

L is the total of the population of all provinces for the fiscal year; and

M is the amount obtained by multiplying the total equalized tax transfer for the province as determined in accordance with section 24.7 by the quotient, rounded to the nearest hundredth, that is obtained by dividing an amount equal to the cash contribution specified in subparagraph 24.1(1)(*a*)(i) by an amount equal to the aggregate of the cash contributions specified in subparagraphs 24.1(1)(*a*)(i) and 24.4(1)(*a*)(i).

Fiscal year 2009–2010

(2) Despite subsection (1), the cash contribution established under paragraph 24.1(1)(*a*) that may be provided to a province for the fiscal year beginning on April 1, 2009 is

(*a*) for Ontario, $9,233,217,000;

(*b*) for Quebec, $5,798,516,000;

(*c*) for Nova Scotia, $700,137,000;

(*d*) for New Brunswick, $557,488,000;

(*e*) for Manitoba, $903,325,000;

(*f*) for British Columbia, $3,353,843,000;

(*g*) for Prince Edward Island, $104,364,000;

(*h*) for Saskatchewan, $843,451,000;

(*i*) for Alberta, $1,961,782,000;

(*j*) for Newfoundland and Labrador, $450,450,000;

(*k*) for Yukon, $26,457,000;

(*l*) for the Northwest Territories, $26,824,000; and

(*m*) for Nunavut, $27,208,000.

2003, c. 15, s. 8; 2007, c. 29, s. 65; 2009, c. 2, s. 388.

sé à cet alinéa correspond au résultat du calcul suivant :

$$F \times (K/L) - M$$

où :

F représente la somme des montants visés aux alinéas 24.1(1)*a*) et *b*) pour l'exercice;

K la population de la province pour l'exercice;

L la population totale des provinces pour l'exercice;

M le montant déterminé par multiplication de la totalité des transferts fiscaux et de la péréquation s'y rattachant applicables à la province déterminée conformément à l'article 24.7 par la fraction — arrondie au centième près — obtenue par division du montant de la contribution pécuniaire visée au sous-alinéa 24.1(1)*a*)(i) par la somme des montants des contributions pécuniaires visées aux sous-alinéas 24.1(1)*a*)(i) et 24.4(1)*a*)(i).

Exercice 2009-2010

(2) Malgré le paragraphe (1), la quote-part de la contribution pécuniaire visée à l'alinéa 24.1(1)*a*) qui peut être versée à une province pour l'exercice commençant le 1er avril 2009 correspond au montant figurant en regard de son nom :

a) Ontario : 9 233 217 000 $;

b) Québec : 5 798 516 000 $;

c) Nouvelle-Écosse : 700 137 000 $;

d) Nouveau-Brunswick : 557 488 000 $;

e) Manitoba : 903 325 000 $;

f) Colombie-Britannique : 3 353 843 000 $;

g) Île-du-Prince-Édouard : 104 364 000 $;

h) Saskatchewan : 843 451 000 $;

i) Alberta : 1 961 782 000 $;

j) Terre-Neuve-et-Labrador : 450 450 000 $;

k) Yukon : 26 457 000 $;

l) Territoire du Nord-Ouest : 26 824 000 $;

m) Nunavut : 27 208 000 $.

2003, ch. 15, art. 8; 2007, ch. 29, art. 65; 2009, ch. 2, art. 388.

Provincial share — fiscal year 2014-2015 and later

24.21 Any cash contribution in the nature of contributions referred to in paragraph 24.1(1)(*a*) that is provided to a province under this Act for any fiscal year beginning after March 31, 2014 is to be determined by multiplying the total of such cash contributions to be provided to all the provinces for that fiscal year by the quotient obtained by dividing

(*a*) the population of that province for that fiscal year

by

(*b*) the total of the population of all provinces for that fiscal year.

2007, c. 29, s. 66.

Quote-part des provinces exercices 2014-2015 et suivants

24.21 La contribution pécuniaire du type de celle prévue à l'alinéa 24.1(1)*a*) versée à une province sous le régime de la présente loi pour chaque exercice commençant après le 31 mars 2014 est déterminée par multiplication de la totalité de ces contributions pécuniaires à l'ensemble des provinces pour l'exercice en cause par le quotient obtenu par division de la population de la province pour cet exercice par la population de l'ensemble des provinces pour le même exercice.

2007, ch. 29, art. 66.

Canada Social Transfer

Transfert canadien en matière de programmes sociaux

Purposes

24.3 (1) Subject to this Part, a Canada Social Transfer in the amounts referred to in subsection 24.4(1) is to be provided to the provinces for the purposes of

(*a*) financing social programs in a manner that provides provincial flexibility;

(*b*) maintaining the national standard, set out in subsection 25.1(1), that no period of minimum residency be required or allowed with respect to social assistance; and

(*c*) promoting any shared principles and objectives, including public reporting, that are developed under subsection (2) with respect to the operation of social programs.

Fins du Transfert

24.3 (1) Sous réserve de la présente partie, il est versé aux provinces une contribution constituée des sommes prévues au paragraphe 24.4(1), au titre du Transfert canadien en matière de programmes sociaux, aux fins suivantes :

a) financer les programmes sociaux d'une manière permettant aux provinces de jouir de flexibilité;

b) appliquer la norme nationale, énoncée au paragraphe 25.1(1), prévoyant qu'aucun délai minimal de résidence ne peut être exigé ou permis en ce qui concerne l'assistance sociale;

c) promouvoir les principes et objectifs communs élaborés en application du paragraphe (2), notamment en ce qui a trait à la préparation de rapports publics, à l'égard des programmes sociaux.

Discussion with provinces

(2) The Minister of Social Development shall invite representatives of all the provinces to consult and work together to develop, through mutual consent, a set of shared principles and objectives for social programs that could underlie the Canada Social Transfer.

Dialogue

(2) Le ministre du Développement social invite les représentants de toutes les provinces à se consulter et à travailler ensemble en vue d'élaborer, par accord mutuel, un ensemble de principes et d'objectifs communs à l'égard de programmes sociaux qui pourraient caractériser le Transfert canadien en matière de programmes sociaux.

Definition of "social programs"

(3) In this section, "social programs" includes programs in respect of post-secondary education, social assistance and social services,

Assimilation

(3) Au présent article, sont assimilés à des programmes sociaux les programmes d'éducation postsecondaire, d'assistance sociale et de services sociaux, y compris le développement de la petite enfance, les services éducatifs pour

CANADA

CONSOLIDATION

CODIFICATION

Canada Health Act

Loi canadienne sur la santé

CHAPTER C-6

CHAPITRE C-6

Current to December 14, 2010

À jour au 14 décembre 2010

Published by the Minister of Justice at the following address:
http://laws-lois.justice.gc.ca

Publié par le ministre de la Justice à l'adresse suivante :
http://lois-laws.justice.gc.ca

au montant payé ou à payer pour la prestation de ce service au titre du régime provincial d'assurance-santé.

L.R. (1985), ch. C-6, art. 2; 1992, ch. 20, art. 216(F); 1995, ch. 17, art. 34; 1996, ch. 8, art. 32; 1999, ch. 26, art. 11

CANADIAN HEALTH CARE POLICY

POLITIQUE CANADIENNE DE LA SANTÉ

Primary objective of Canadian health care policy

3. It is hereby declared that the primary objective of Canadian health care policy is to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers.

1984, c. 6, s. 3.

Objectif premier

3. La politique canadienne de la santé a pour premier objectif de protéger, de favoriser et d'améliorer le bien-être physique et mental des habitants du Canada et de faciliter un accès satisfaisant aux services de santé, sans obstacles d'ordre financier ou autre.

1984, ch. 6, art. 3.

PURPOSE

RAISON D'ÊTRE

Purpose of this Act

4. The purpose of this Act is to establish criteria and conditions in respect of insured health services and extended health care services provided under provincial law that must be met before a full cash contribution may be made.

R.S., 1985, c. C-6, s. 4; 1995, c. 17, s. 35.

Raison d'être de la présente loi

4. La présente loi a pour raison d'être d'établir les conditions d'octroi et de versement d'une pleine contribution pécuniaire pour les services de santé assurés et les services complémentaires de santé fournis en vertu de la loi d'une province.

L.R. (1985), ch. C-6, art. 4; 1995, ch. 17, art. 35.

CASH CONTRIBUTION

CONTRIBUTION PÉCUNIAIRE

Cash contribution

5. Subject to this Act, as part of the Canada Health and Social Transfer, a full cash contribution is payable by Canada to each province for each fiscal year.

R.S., 1985, c. C-6, s. 5; 1995, c. 17, s. 36.

Contribution pécuniaire

5. Sous réserve des autres dispositions de la présente loi, le Canada verse à chaque province, pour chaque exercice, une pleine contribution pécuniaire à titre d'élément du Transfert canadien en matière de santé et de programmes sociaux (ci-après, Transfert).

L.R. (1985), ch. C-6, art. 5; 1995, ch. 17, art. 36.

6. [Repealed, 1995, c. 17, s. 36]

6. [Abrogé, 1995, ch. 17, art. 36]

PROGRAM CRITERIA

CONDITIONS D'OCTROI

Program criteria

7. In order that a province may qualify for a full cash contribution referred to in section 5 for a fiscal year, the health care insurance plan of the province must, throughout the fiscal year, satisfy the criteria described in sections 8 to 12 respecting the following matters:

(*a*) public administration;

(*b*) comprehensiveness;

(*c*) universality;

(*d*) portability; and

(*e*) accessibility.

1984, c. 6, s. 7.

Règle générale

7. Le versement à une province, pour un exercice, de la pleine contribution pécuniaire visée à l'article 5 est assujetti à l'obligation pour le régime d'assurance-santé de satisfaire, pendant tout cet exercice, aux conditions d'octroi énumérées aux articles 8 à 12 quant à :

a) la gestion publique;

b) l'intégralité;

c) l'universalité;

d) la transférabilité;

e) l'accessibilité.

1984, ch. 6, art. 7.

Public administration

8. (1) In order to satisfy the criterion respecting public administration,

(*a*) the health care insurance plan of a province must be administered and operated on a non-profit basis by a public authority appointed or designated by the government of the province;

(*b*) the public authority must be responsible to the provincial government for that administration and operation; and

(*c*) the public authority must be subject to audit of its accounts and financial transactions by such authority as is charged by law with the audit of the accounts of the province.

Gestion publique

8. (1) La condition de gestion publique suppose que :

a) le régime provincial d'assurance-santé soit géré sans but lucratif par une autorité publique nommée ou désignée par le gouvernement de la province;

b) l'autorité publique soit responsable devant le gouvernement provincial de cette gestion;

c) l'autorité publique soit assujettie à la vérification de ses comptes et de ses opérations financières par l'autorité chargée par la loi de la vérification des comptes de la province.

Designation of agency permitted

(2) The criterion respecting public administration is not contravened by reason only that the public authority referred to in subsection (1) has the power to designate any agency

(*a*) to receive on its behalf any amounts payable under the provincial health care insurance plan; or

(*b*) to carry out on its behalf any responsibility in connection with the receipt or payment of accounts rendered for insured health services, if it is a condition of the designation that all those accounts are subject to assessment and approval by the public authority and that the public authority shall determine the amounts to be paid in respect thereof.

1984, c. 6, s. 8.

Désignation d'un mandataire

(2) La condition de gestion publique n'est pas enfreinte du seul fait que l'autorité publique visée au paragraphe (1) a le pouvoir de désigner un mandataire chargé :

a) soit de recevoir en son nom les montants payables au titre du régime provincial d'assurance-santé;

b) soit d'exercer en son nom les attributions liées à la réception ou au règlement des comptes remis pour prestation de services de santé assurés si la désignation est assujettie à la vérification et à l'approbation par l'autorité publique des comptes ainsi remis et à la détermination par celle-ci des montants à payer à cet égard.

1984, ch. 6, art. 8.

Comprehensiveness

9. In order to satisfy the criterion respecting comprehensiveness, the health care insurance plan of a province must insure all insured health services provided by hospitals, medical practitioners or dentists, and where the law of the province so permits, similar or additional services rendered by other health care practitioners.

1984, c. 6, s. 9.

Intégralité

9. La condition d'intégralité suppose qu'au titre du régime provincial d'assurance-santé, tous les services de santé assurés fournis par les hôpitaux, les médecins ou les dentistes soient assurés, et lorsque la loi de la province le permet, les services semblables ou additionnels fournis par les autres professionnels de la santé.

1984, ch. 6, art. 9.

Universality

10. In order to satisfy the criterion respecting universality, the health care insurance plan of a province must entitle one hundred per cent of the insured persons of the province to the insured health services provided for by the plan on uniform terms and conditions.

1984, c. 6, s. 10.

Universalité

10. La condition d'universalité suppose qu'au titre du régime provincial d'assurance-santé, cent pour cent des assurés de la province ait droit aux services de santé assurés prévus par celui-ci, selon des modalités uniformes.

1984, ch. 6, art. 10.

Portability

11. (1) In order to satisfy the criterion respecting portability, the health care insurance plan of a province

(*a*) must not impose any minimum period of residence in the province, or waiting period, in excess of three months before residents of the province are eligible for or entitled to insured health services;

(*b*) must provide for and be administered and operated so as to provide for the payment of amounts for the cost of insured health services provided to insured persons while temporarily absent from the province on the basis that

(i) where the insured health services are provided in Canada, payment for health services is at the rate that is approved by the health care insurance plan of the province in which the services are provided, unless the provinces concerned agree to apportion the cost between them in a different manner, or

(ii) where the insured health services are provided out of Canada, payment is made on the basis of the amount that would have been paid by the province for similar services rendered in the province, with due regard, in the case of hospital services, to the size of the hospital, standards of service and other relevant factors; and

(*c*) must provide for and be administered and operated so as to provide for the payment, during any minimum period of residence, or any waiting period, imposed by the health care insurance plan of another province, of the cost of insured health services provided to persons who have ceased to be insured persons by reason of having become residents of that other province, on the same basis as though they had not ceased to be residents of the province.

Transférabilité

11. (1) La condition de transférabilité suppose que le régime provincial d'assurance-santé :

a) n'impose pas de délai minimal de résidence ou de carence supérieur à trois mois aux habitants de la province pour qu'ils soient admissibles ou aient droit aux services de santé assurés;

b) prévoie et que ses modalités d'application assurent le paiement des montants pour le coût des services de santé assurés fournis à des assurés temporairement absents de la province :

(i) si ces services sont fournis au Canada, selon le taux approuvé par le régime d'assurance-santé de la province où ils sont fournis, sauf accord de répartition différente du coût entre les provinces concernées,

(ii) s'il sont fournis à l'étranger, selon le montant qu'aurait versé la province pour des services semblables fournis dans la province, compte tenu, s'il s'agit de services hospitaliers, de l'importance de l'hôpital, de la qualité des services et des autres facteurs utiles;

c) prévoie et que ses modalités d'application assurent la prise en charge, pendant le délai minimal de résidence ou de carence imposé par le régime d'assurance-santé d'une autre province, du coût des services de santé assurés fournis aux personnes qui ne sont plus assurées du fait qu'elles habitent cette province, dans les mêmes conditions que si elles habitaient encore leur province d'origine.

Requirement for consent for elective insured health services permitted

(2) The criterion respecting portability is not contravened by a requirement of a provincial health care insurance plan that the prior consent of the public authority that administers and operates the plan must be obtained for elective insured health services provided to a resident of the province while temporarily absent from the province if the services in question were avail-

Consentement préalable à la prestation des services de santé assurés facultatifs

(2) La condition de transférabilité n'est pas enfreinte du fait qu'il faut, aux termes du régime d'assurance-santé d'une province, le consentement préalable de l'autorité publique qui le gère pour la prestation de services de santé assurés facultatifs à un habitant temporairement absent de la province, si ces services y sont offerts selon des modalités sensiblement comparables.

able on a substantially similar basis in the province.

Definition of "elective insured health services"

(3) For the purpose of subsection (2), "elective insured health services" means insured health services other than services that are provided in an emergency or in any other circumstance in which medical care is required without delay.

1984, c. 6, s. 11.

Définition de « services de santé assurés facultatifs »

(3) Pour l'application du paragraphe (2), « services de santé assurés facultatifs » s'entend des services de santé assurés, à l'exception de ceux qui sont fournis d'urgence ou dans d'autres circonstances où des soins médicaux sont requis sans délai.

1984, ch. 6, art. 11.

Accessibility

12. (1) In order to satisfy the criterion respecting accessibility, the health care insurance plan of a province

(*a*) must provide for insured health services on uniform terms and conditions and on a basis that does not impede or preclude, either directly or indirectly whether by charges made to insured persons or otherwise, reasonable access to those services by insured persons;

(*b*) must provide for payment for insured health services in accordance with a tariff or system of payment authorized by the law of the province;

(*c*) must provide for reasonable compensation for all insured health services rendered by medical practitioners or dentists; and

(*d*) must provide for the payment of amounts to hospitals, including hospitals owned or operated by Canada, in respect of the cost of insured health services.

Accessibilité

12. (1) La condition d'accessibilité suppose que le régime provincial d'assurance-santé :

a) offre les services de santé assurés selon des modalités uniformes et ne fasse pas obstacle, directement ou indirectement, et notamment par facturation aux assurés, à un accès satisfaisant par eux à ces services;

b) prévoie la prise en charge des services de santé assurés selon un tarif ou autre mode de paiement autorisé par la loi de la province;

c) prévoie une rémunération raisonnable de tous les services de santé assurés fournis par les médecins ou les dentistes;

d) prévoie le versement de montants aux hôpitaux, y compris les hôpitaux que possède ou gère le Canada, à l'égard du coût des services de santé assurés.

Reasonable compensation

(2) In respect of any province in which extra-billing is not permitted, paragraph (1)(*c*) shall be deemed to be complied with if the province has chosen to enter into, and has entered into, an agreement with the medical practitioners and dentists of the province that provides

(*a*) for negotiations relating to compensation for insured health services between the province and provincial organizations that represent practising medical practitioners or dentists in the province;

(*b*) for the settlement of disputes relating to compensation through, at the option of the appropriate provincial organizations referred to in paragraph (*a*), conciliation or binding arbitration by a panel that is equally representative of the provincial organizations and

Rémunération raisonnable

(2) Pour toute province où la surfacturation n'est pas permise, il est réputé être satisfait à l'alinéa (1)*c*) si la province a choisi de conclure un accord et a effectivement conclu un accord avec ses médecins et dentistes prévoyant :

a) la tenue de négociations sur la rémunération des services de santé assurés entre la province et les organisations provinciales représentant les médecins ou dentistes qui exercent dans la province;

b) le règlement des différends concernant la rémunération par, au choix des organisations provinciales compétentes visées à l'alinéa *a*), soit la conciliation soit l'arbitrage obligatoire par un groupe représentant également les organisations provinciales et la province et ayant un président indépendant;

the province and that has an independent chairman; and

(*c*) that a decision of a panel referred to in paragraph (*b*) may not be altered except by an Act of the legislature of the province.

1984, c. 6, s. 12

c) l'impossibilité de modifier la décision du groupe visé à l'alinéa *b*), sauf par une loi de la province.

1984, ch. 6, art. 12

CONDITIONS FOR CASH CONTRIBUTION

Conditions

13. In order that a province may qualify for a full cash contribution referred to in section 5, the government of the province

(*a*) shall, at the times and in the manner prescribed by the regulations, provide the Minister with such information, of a type prescribed by the regulations, as the Minister may reasonably require for the purposes of this Act; and

(*b*) shall give recognition to the Canada Health and Social Transfer in any public documents, or in any advertising or promotional material, relating to insured health services and extended health care services in the province.

R.S., 1985, c. C-6, s. 13; 1995, c. 17, s. 37.

CONTRIBUTION PÉCUNIAIRE ASSUJETTIE À DES CONDITIONS

Obligations de la province

13. Le versement à une province de la pleine contribution pécuniaire visée à l'article 5 est assujetti à l'obligation pour le gouvernement de la province :

a) de communiquer au ministre, selon les modalités de temps et autres prévues par les règlements, les renseignements du genre prévu aux règlements, dont celui-ci peut normalement avoir besoin pour l'application de la présente loi;

b) de faire état du Transfert dans tout document public ou toute publicité sur les services de santé assurés et les services complémentaires de santé dans la province.

L.R. (1985), ch. C-6, art. 13; 1995, ch. 17, art. 37.

DEFAULTS

Referral to Governor in Council

14. (1) Subject to subsection (3), where the Minister, after consultation in accordance with subsection (2) with the minister responsible for health care in a province, is of the opinion that

(*a*) the health care insurance plan of the province does not or has ceased to satisfy any one of the criteria described in sections 8 to 12, or

(*b*) the province has failed to comply with any condition set out in section 13,

and the province has not given an undertaking satisfactory to the Minister to remedy the default within a period that the Minister considers reasonable, the Minister shall refer the matter to the Governor in Council.

MANQUEMENTS

Renvoi au gouverneur en conseil

14. (1) Sous réserve du paragraphe (3), dans le cas où il estime, après avoir consulté conformément au paragraphe (2) son homologue chargé de la santé dans une province :

a) soit que le régime d'assurance-santé de la province ne satisfait pas ou plus aux conditions visées aux articles 8 à 12;

b) soit que la province ne s'est pas conformée aux conditions visées à l'article 13,

et que celle-ci ne s'est pas engagée de façon satisfaisante à remédier à la situation dans un délai suffisant, le ministre renvoie l'affaire au gouverneur en conseil.

Consultation process

(2) Before referring a matter to the Governor in Council under subsection (1) in respect of a province, the Minister shall

(*a*) send by registered mail to the minister responsible for health care in the province a notice of concern with respect to any problem foreseen;

Étapes de la consultation

(2) Avant de renvoyer une affaire au gouverneur en conseil conformément au paragraphe (1) relativement à une province, le ministre :

a) envoie par courrier recommandé à son homologue chargé de la santé dans la province un avis sur tout problème éventuel;

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IMPORTANT INFORMATION

This Act is Current to December 29, 2010

HEALTH CARE COSTS RECOVERY ACT

[SBC 2008] CHAPTER 27

Assented to May 29, 2008

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Definitions

1 In this Act:

"beneficiary" has the same meaning as in the *Medicare Protection Act*;

"future cost of health care services" means the present value of the estimated total cost of all health care services that are provided, or are reasonably expected to be provided, to a beneficiary as a direct or indirect result of a personal injury described in section 2 after the date of settlement or, if there is no settlement, after the first day of trial;

"health care practitioner" means any of the following:

(a) a medical practitioner;

(b) a person authorized to practise as a member of a health care profession or occupation that may be prescribed under section 25 (2) (a) *[regulations]*;

"health care services" means

(a) benefits as defined in the *Hospital Insurance Act*,

(b) benefits as defined in the *Medicare Protection Act*,

(c) payments made by the government under the *Continuing Care Act*,

(d) expenditures, made directly or through one or more agents or intermediate bodies, by the government for emergency health services provided in respect of a beneficiary under the *Emergency and Health Services Act*, and

(e) any other act or thing, including, without limitation, the provision of any health care treatment, aid, assistance or service or any drug, device or similar matter associated with personal injury,

(i) for which a payment or expenditure is or may be made, whether directly or through one or more agents or intermediaries, by the government in respect of a beneficiary, and

(ii) that is designated by regulation under section 25 (2) (b) *[regulations]*;

"health care services claim", in relation to personal injury suffered by a beneficiary, means a claim for the recovery of the past and future costs of health care services attributable to that personal injury;

"past cost of health care services" means the total cost of all health care services provided to a beneficiary as a direct or indirect result of a personal injury described in section 2, including those services provided up to and including the date of settlement or, if there is no settlement, the first day of trial;

"wrongdoer" means

(a) a person whose negligent or wrongful act or omission causes or contributes to a beneficiary's personal injury or death, and

(b) a person who is responsible at law for the acts or omissions of a person referred to in paragraph (a),

but does not include the beneficiary.

Beneficiary's right to recover

2 (1) If, as a direct or indirect result of the negligence or wrongful act or omission of a wrongdoer, a beneficiary suffers a personal injury for which the beneficiary receives or could reasonably be expected to receive one or more health care services, the beneficiary may, subject to sections 6 *[government may intervene in proceeding or assume conduct of claim]* and 20 (2) and (3) *[payments to the government]*, recover from the wrongdoer

(a) the past cost of health care services, and

(b) the future cost of health care services.

(2) Subsection (1) applies whether or not the personal injury was caused in whole or in part by the wrongdoer.

(3) For the purposes of subsection (1) but subject to section 20 (2) and (3) *[payments to the government]*, payment or expenditure by the government, whether directly or through one or more agents or intermediaries, under any of the Acts referred to in the definition of "health care services" or under any other government plan or scheme of insurance for past and future costs referred to in subsection (1) must not be construed to affect the right of the beneficiary to recover those costs in the same manner as if those costs are paid or payable by the beneficiary.

(4) The past and future costs referred to in subsection (1) may be recovered as damages, compensatory damages or otherwise.

Obligation to claim

3 (1) If, in his or her own name or as a member of a class of persons under the *Class Proceedings Act*, a beneficiary referred to in section 2 (1) *[beneficiary's right to recover]* of this Act or his or her personal or other legal representative commences a legal proceeding against a person alleged to be the wrongdoer for damages arising from or related to the beneficiary's personal injury or death, the beneficiary or his or her personal or other legal representative must include a health care services claim in that legal proceeding.

(2) Subsection (1) does not apply if the government has already done either of the following:

(a) settled the health care services claim referred to in subsection (1);

(b) commenced a legal proceeding under section 8 (2) *[government has independent right to recover]* to recover the past and future costs of health care services.

(3) If a health care services claim has not been included in a legal proceeding described in subsection (1), the court must permit amendment of the originating documents, up to 6 months after the date on which the originating documents were filed with the court, in order to provide for that inclusion.

(4) Nothing in the *Limitation Act* prevents inclusion of a health care services claim under subsection (3) if the original legal proceeding for damages under subsection (1) is brought within the time limited for doing so under that Act.

Requirement to notify government of claim

4 (1) Within 21 days after commencing a legal proceeding referred to in section 3 (1) *[obligation to claim]*, written notice of the legal proceeding must be given to the government

(a) by the beneficiary or his or her personal or other legal representative, or

(b) if the beneficiary or his or her personal or other legal representative is represented in the legal proceeding by a lawyer, by the lawyer or by the beneficiary or his or her personal or other legal representative.

(2) Notice under subsection (1) must be in the prescribed form and include a copy of the originating documents for the legal proceeding.

Final disposition of claim or legal proceeding

5 (1) A legal proceeding referred to in section 3 (1) *[obligation to claim]* must not be discontinued or dismissed by consent unless the consent of the minister is filed with the court.

(2) The court must not set aside, dismiss or strike out a health care services claim unless the court is satisfied that the government has been given a reasonable opportunity to appear and make representations.

(3) The court must not make an order finally disposing of a legal proceeding referred to in section 3 (1) *[obligation to claim]* unless the court is satisfied that the government has been given both of the following:

(a) the written notice required under section 4 *[requirement to notify government of claim]*;

(b) written notice of the application for the order of final disposition.

Government may intervene in proceeding or assume conduct of claim

6 (1) The government may, in relation to a legal proceeding referred to in section 3 (1) *[obligation to claim]*, do any of the following:

(a) intervene in the proceeding;

(b) on written notice to the beneficiary or his or her personal or other legal representative, as the case may be, assume conduct of the health care services claim portion of the proceeding.

(2) In assuming conduct under subsection (1) (b), the government may, as it sees fit, pursue, discontinue or settle all or any part of the health care services claim.

Government has subrogated right

7 (1) The government is subrogated to any right of the beneficiary referred to in section 2 *[beneficiary's right to recover]* to recover the past and future costs of health care services under that section.

(2) For the purposes of subsection (1), the government may commence legal proceedings, in its own name or in the name of the beneficiary, for recovery of those past and future costs of health care services.

(3) If a legal proceeding is commenced under section 3 (1) *[obligation to claim]* after the commencement of a legal proceeding referred to in subsection (2) of this section, the 2 legal proceedings are, unless the court orders otherwise, to be consolidated.

Government has independent right to recover

8 (1) Despite section 2 *[beneficiary's right to recover]* and independent of its subrogated right under section 7 *[government has subrogated right]*, if, as a direct or indirect result of the negligence or wrongful act or omission of a wrongdoer, a beneficiary suffers a personal injury for which the beneficiary receives or could reasonably be expected to receive one or more health care services, the government may recover from the wrongdoer

(a) the past cost of health care services, and

(b) the future cost of health care services.

(2) The government may commence a legal proceeding in its own name for the recovery of the past and future costs of health care services referred to in subsection (1).

(3) Subsection (1) applies whether or not the personal injury was caused in whole or in part by the wrongdoer.

(4) The past and future costs of health care services referred to in subsection (1) may be recovered as damages, compensatory damages or otherwise.

(5) Subject to subsection (7), the government must not commence a legal proceeding under subsection (2) after the later of the following 2 dates:

(a) the date that is 6 months after the expiration of the limitation period that applies to the beneficiary's right to commence a legal proceeding against the alleged wrongdoer for damages in respect of the personal injury referred to in section 2 *[beneficiary's right to recover]*;

(b) the earliest of the following dates:

(i) the date that is 6 months after the date on which the government first receives notice under section 4 *[requirement to notify government of claim]*;

(ii) the date that is 6 months after the date on which the minister first receives notice or information under section 10 *[information from insurer]*;

(iii) the date that is 6 months after the date on which the minister is first provided with records or information from the beneficiary or his or her personal or other legal representative under section 11 (2) *[beneficiary's duty to cooperate]*;

(iv) the date that is 6 months after the date on which the minister first receives notice under section 12 *[beneficiary's duty to give notice to minister before settlement]*;

(v) the date that is 6 months after the date on which the minister first receives notice under section 13 (1) (a) *[settlement of claims]*.

(6) The government may include in a legal proceeding commenced under this section a claim for an order establishing liability for the personal injury or death suffered by a beneficiary referred to in section 2 (1) *[beneficiary's right to recover]* and the claim may be made even after the expiration of the limitation period that applied to the beneficiary's right to commence a legal proceeding against the alleged wrongdoer, but any order granted in respect of that claim has effect only in relation to the health care services claim.

(7) Subsection (5) (b) does not apply if the limitation period referred to in subsection (5) (a) has expired before the date that subsection comes into force.

Government proceedings

9 (1) The government need not obtain the permission of the beneficiary or his or her family members or personal or other legal representative to commence a legal proceeding under section 7 (2) *[government has subrogated right]* or 8 (2) *[government has independent right to recover]*.

(2) It is not a defence to a legal proceeding commenced by the government under section 8 (2) *[government has independent right to recover]* that a claim for damages for the beneficiary's personal injury or death has been adjudicated or settled unless

(a) the claim or settlement included a health care services claim, and

(b) in the case of a settlement, the requirements of section 13 *[settlement of a health care services claim]* have been met.

(3) It is not a defence to a legal proceeding commenced in respect of a beneficiary for a claim, other than a health care services claim, for damages for the beneficiary's personal injury or death that a legal proceeding commenced by the government under section 7 (2) *[government has subrogated right]* or 8 (2) *[government has independent right to recover]* has been adjudicated or settled.

(b) must, within 30 days after the person's receipt of that amount, submit that amount to the minister responsible for the *Financial Administration Act*.

Indemnification of beneficiary for costs and expenses

21 Subject to the regulations, if any, under section 25 (2) (h) *[regulations]*, the government must indemnify a beneficiary or his or her personal or other legal representative for the following:

(a) any costs awarded against that person in relation to a legal proceeding referred to in section 3 (1) *[obligation to claim]*, as those costs relate to the conduct of the health care services claim;

(b) expenses reasonably and necessarily incurred by that person in complying with section 11 (1) and (2) (a) *[beneficiary's duty to cooperate]*.

Service of notices to government

22 Written notice to the government under section 4 (1) *[requirement to notify government of claim]* or 5 (3) (b) *[final disposition of claim or legal proceeding]*

(a) must be served on the Attorney General at the Ministry of the Attorney General in the City of Victoria, and

(b) is sufficiently served if

(i) left there during office hours with a solicitor on the staff of the Attorney General at Victoria,

(ii) mailed by registered mail to the Deputy Attorney General at Victoria, or

(iii) if provided by any other means of service prescribed in the regulations.

Section 5 of *Offence Act* does not apply

23 Section 5 of the *Offence Act* does not apply to this Act.

Application of this Act

24 (1) Subject to this section, this Act applies in relation to any personal injury suffered by a beneficiary, whether before or after this subsection comes into force.

(2) The requirements of sections 3 *[obligation to claim]*, 4 *[requirement to notify government of claim]* and 5 *[final disposition of claim or legal proceeding]* do not apply in relation to legal proceedings commenced before this subsection comes into force.

(3) This Act does not apply in relation to health care services that are provided or are to be provided to a beneficiary in relation to

(a) personal injury or death arising out of a wrongdoer's use or operation of a motor vehicle if the wrongdoer has, when the injury is caused, coverage under the plan, as those terms are defined in the *Insurance (Vehicle) Act*,

(b) personal injury or death arising out of a tobacco related wrong as defined in the *Tobacco Damages and Health Care Costs Recovery Act*, or

(c) personal injury or death arising out of and in the course of the beneficiary's employment if compensation is paid or payable by the Workers' Compensation Board out of the accident fund continued under the *Workers Compensation Act*.

(4) In subsection (3) (c):

"compensation" includes a health care benefit provided under the *Workers Compensation Act*;

"personal injury" includes occupational disease as defined in the *Workers Compensation Act*.

Regulations

25 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) prescribing health care professions and occupations for the purposes of paragraph (b) of the definition of "health care practitioner";

(b) designating an act or thing for the purposes of paragraph (e) of the definition of "health care services";

(c) prescribing forms for the purposes of this Act;

(d) prescribing the means of giving a notice to the minister under section 12 *[beneficiary's duty to give notice to minister before settlement]*, 13 (1) (a) or (8) (a) *[settlement of claims]*,