

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

PLAINTIFF

AND:

IMPERIAL TOBACCO CANADA LIMITED AND OTHERS

DEFENDANTS

**REPLY TO THE STATEMENT OF DEFENCE OF  
CANADIAN TOBACCO MANUFACTURERS' COUNCIL**

1. In reply to paragraphs 54, 205(c) and 205(e) of the Statement of Defence:
  - (a) the government denies that its claim is for the “net cost” to the government of health care benefits and in any event says that the net cost of health care benefits has been increased as a result of tobacco related disease and will be increased by reason of the consumption of tobacco products;
  - (b) if by “net cost” the defendant means the cost of health care benefits less any alleged “savings” in health care expenditures due to the early death of persons from the consumption of tobacco products, the government denies that such savings, if any, are deductible from a claim for the cost of health care benefits under the *Tobacco Damages and Health Care Costs Recovery Act* (hereinafter the “Act”).
2. In reply to paragraph 202 of the Statement of Defence, the government says that the doctrine of *nemo bis vexari* is not applicable and that the action is not a *res judicata* because:

(a) the claim herein is founded upon a different cause of action than that which formed the basis of the Previous Action; and

(b) the claim in the Previous Action was never adjudicated on its merits.

3. In reply to paragraph 203(a) of the Statement of Defence, the government says that whether or not insured persons have suffered pecuniary damage in respect of the cost of health care benefits is immaterial to the cause of action conferred on the government by the *Act* or to the claim advanced by the government in the Statement of Claim.

4. In reply to paragraph 203(b) of the Statement of Defence, the government denies that the liability alleged is an *ex post facto* attempt to make actionable conduct that was not actionable when it occurred and, in any event, the *Act* has the retroactive effect necessary to give its provisions full effect for the purpose of a claim under section 2.

5. The government denies the allegations of fact contained in paragraphs 53, 176(a), 204(c) to (g), and 208 to 219 of the Statement of Defence and says that:

(a) the misrepresentations, acts and omissions alleged in the Statement of Claim were also directed to governments, and public health agencies, including the plaintiff and were relied on by them;

(b) the defences and legal principles referred to are inapplicable to actions and decisions made by government in the legislative or policy sphere; and

(c) the defences and legal principles referred to are inapplicable to a claim brought under the *Act*.

6. The government denies the allegations contained in paragraph 205(a) and further says that the issue of causation is to be determined according to the provisions of the *Act*.

7. In reply to paragraph 205(b) of the Statement of Defence, if the cost of health care benefits was paid pursuant to the requirements of the statutes referred to, this does not preclude a claim to recover those costs in a claim under the *Act*. In fact, the right of the government to recover the cost of health care benefits under the *Act* depends upon those benefits being paid pursuant to, *inter alia*, the statutes referred to.

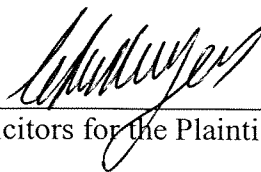
8. In reply to paragraph 205(d) of the Statement of Defence, the government admits that it receives tax revenue from the sale of cigarettes but denies that tax revenue from the sale of cigarettes is to be deducted from a claim for the cost of health care benefits under the *Act*. The government further denies that this revenue exceeds the costs of providing health care services to insured persons who have suffered tobacco related disease.

9. In reply to paragraph 207 of the Statement of Defence, the government pleads section 6 of the *Act*.

10. The government denies the allegations contained in paragraphs 220 to 231. The government says that the action is an aggregate action under section 2 of the *Act*, in respect of which defences based on the conduct of individual insured persons are inapplicable. The allegations contained in paragraphs 220 to 231, which are not admitted, are material, if at all, only under section 3(4) of the *Act* pursuant to which the defendant may seek to establish that its breach of duty did not cause or contribute to the exposure of insured persons to a tobacco product.

Bull, Housser & Tupper

per:



Solicitors for the Plaintiff

Dated: October 11, 2001

This REPLY is prepared by Bull, Housser & Tupper, Solicitors for the Plaintiff, whose office address and address for delivery is 3000 - 1055 West Georgia Street, Vancouver, British Columbia, V6E 3R3 Attention: D.A. Webster, Q.C. Telephone: (604) 687-6575 Facsimile: (604) 641-4949