

No. L031300  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KENNETH KNIGHT

PLAINTIFF

AND:

IMPERIAL TOBACCO CANADA LIMITED

DEFENDANT

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

THIRD PARTY

**THIRD PARTY NOTICE OF IMPERIAL TOBACCO CANADA LIMITED**

TO: ATTORNEY GENERAL OF CANADA

AND TO: His Solicitor

THIS ACTION has been brought by the Plaintiff, Kenneth Knight against the Defendant Imperial Tobacco Canada Limited ("ITCAN"). The Plaintiff's claim against ITCAN is set out in the Writ of Summons and Statement of Claim. None of the statements of fact or allegations contained herein are intended to be, nor should they be construed as admissions to the allegations or claims advanced by the Plaintiff. ITCAN repeats and relies on its Statement of Defence.

TAKE NOTICE that ITCAN claims against Her Majesty the Queen in Right of Canada for the relief set out in this Third Party Notice.

The material facts upon which ITCAN relies are:

## PART ONE

### I. THE FEDERAL GOVERNMENT OF CANADA

#### **A. The Federal Government**

1. The Federal Government was, at material times, responsible for protecting the health of Canadians including consumers of tobacco products and was responsible for providing accurate and reliable health information to them.

2. The Federal Government implemented smoking and health initiatives and programmes through Health Canada. Health Canada, the successor to the Department of National Health and Welfare and the products safety branch of the former Department of Consumer and Corporate Affairs, is established pursuant to the *Department of Health Act*, S.C. 1996, Ch 8. At material times Health Canada has had a statutory duty and responsibility under Section 4 of the *Department of Health Act* and predecessor sections, to promote and preserve the health of the people of Canada including:

- (a) to promote and preserve the physical, mental and social well-being of the people of Canada;
- (b) to protect the people of Canada against risks to health;
- (c) to investigate and research public health, including the monitoring of diseases;
- (d) to establish and control safety standards and safety information requirements for consumer products; and

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- (e) to collect, analyse, interpret, publish and distribute information relating to public health.

**B. Agriculture Canada**

3. The Federal Department of Agriculture and Agri-Food at various material times operated research facilities to promote the development, growth, marketing and distribution of tobacco and otherwise support the tobacco industry.

4. The Federal Government, Health Canada and the Federal Department of Agriculture and Agri-Food are hereinafter collectively referred to as the "Federal Government".

**II. THE DEVELOPMENT OF "LIGHT AND "MILD" CIGARETTES**

5. By the mid-1960s, the international and Canadian scientific consensus was that lowering the tar content of tobacco smoke might reduce the incidence of tobacco related diseases in the population of smokers.

6. In the mid-1960s, the Federal Government explored ways to reduce tar in tobacco smoke. The Federal Government determined to limit the maximum amount of tar and nicotine cigarettes could contain as measured by standard testing methods. Legislation was introduced into Parliament to achieve that objective. While the Bill did not become law, the rationale for the Bill was to encourage continuing smokers to switch to lower tar cigarettes.

7. In or about 1971, ITCAN agreed, at the Federal Government's direction or request, to comply with maximum limits for tar and nicotine in cigarettes as measured by standard testing methods. The maximum limits allowable were subsequently lowered in stages until 1984.

8. At the request or direction of the Federal Government, ITCAN designed and developed cigarettes that complied with the maximum limits and delivered lower average tar content as measured by standard testing methods. In different ways, the design and composition features, all of which were known to the Federal Government, that lowered the tar content of cigarettes as measured by standard testing methods were applied to all cigarettes so that the tar and nicotine yields of all cigarettes decreased materially from the early 1970s to the mid 1980s.

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9. In 1978 the Federal Government directed or requested that ITCAN and other Canadian tobacco manufacturers set targets for the reduction of tar in cigarettes sold in Canada on a global basis. ITCAN agreed to attempt to reduce the "Sales Weighted Average Tar" content of cigarettes (or "SWAT" level) in accordance with government targets. SWAT levels are a measurement of the average tar content of cigarettes as measured by standard testing methods, taking into account the sales volumes of these brands. In order to reduce SWAT levels, cigarette manufacturers had to (a) introduce into the market brands with lower tar deliveries and (b) promote the lower tar brands so they had higher sales volumes than those with higher tar and nicotine yields as measured by standard testing methods.

10. ITCAN successfully reduced the SWAT levels of its brands between 1978 and 1984 and did so in a manner that was consistent with the direction, requests and standards of the Federal Government, although ITCAN did not promote its brands on the basis that cigarettes containing lower levels of tar as measured by standard measuring methods were "safer" or "less hazardous" than cigarettes containing higher levels of tar.

### III. THE PURPOSE OF STANDARDIZED SMOKING TESTS

11. On November 20, 1968, the Federal Government for the first time released to the press a table showing the tar and nicotine content of 84 cigarette brands sold in Canada. This information was released to encourage smokers to switch to lower tar products and to enable them to compare the tar and nicotine content of cigarette smoke on a brand basis. The Federal Government continued to publish the tar and nicotine tables until 1986 (the "League Tables").

12. The information contained in the League Tables was generated by an approved protocol that measured a cigarette's average tar and nicotine consistently and reproducibly over time.

13. Given the variations in individual smoking behaviour, it was never the purpose of the testing protocol to measure tar and nicotine yields to particular individual smokers. Rather, the protocol created a single, standardized test to ensure consistency and reproducibility and to provide consumers with comparative brand information. This testing protocol became a basis of tar and nicotine information provided to consumers by or at the direction of the Federal Government, throughout the material period, even though the Federal Government knew or

understood that the machine-measured yield did not and could not measure the tar and nicotine yields to particular individuals and groups of individuals.

**IV. THE DISSEMINATION OF INFORMATION TO CONSUMERS ABOUT "LIGHT" AND "MILD" CIGARETTES BY THE FEDERAL GOVERNMENT**

14. The Federal Government played the principal role in the collection of tar and nicotine information, in the publication of such information and in requiring that it be printed on cigarette packaging and advertising.

15. The Federal Government published League Tables disclosing the tar and nicotine yields of various brands of Canadian cigarettes between 1968 and 1986. That information was widely publicized in the media and was used by health professionals in advising smokers on the health risks of smoking.

16. The Federal Government's programme to disseminate tar and nicotine information recognized that many consumers would choose to continue to smoke. The Federal Government's programme was intended to encourage continuing smokers to smoke cigarettes containing less tar and nicotine as measured by standard testing methods.

17. It was the Federal Government's view that, first, lower tar cigarettes presented a reduced risk to smokers when compared to cigarettes of higher tar as measured by standard testing methods, and secondly, that the publication of tar and nicotine figures was a necessary part of its smoking and health programme.

18. The Federal Government regularly published and widely disseminated other information, beyond the League Tables, all with an aim to encouraging smokers to switch to lower tar and nicotine cigarettes as measured by standard testing methods. Whatever views consumers have about the health risks associated with "Light" and "Mild" cigarettes result from the dissemination of information to consumers by the Federal Government and other sources, but not the defendant.

19. The Federal Government's website continued, until August 2003, to encourage smokers to switch to lower tar and nicotine delivery cigarettes in the event that they would not quit smoking.

20. The Federal Government published the League Tables and encouraged smokers to switch to lower tar and nicotine delivery cigarettes with full knowledge of the relevant epidemiology and scientific research pertaining to the smoking of tobacco, its effects on health and the methods by which the tar and nicotine content of tobacco smoke was reduced.

**V. THE DISSEMINATION OF INFORMATION ABOUT "LIGHT" AND "MILD" CIGARETTES BY ITCAN BY REQUEST OF THE FEDERAL GOVERNMENT OR BY REGULATION**

21. In 1962 and again in 1964 ITCAN agreed not to promote cigarettes on the basis of any express or implied health claims. These agreements were in furtherance of an ongoing policy of Canadian tobacco manufacturers not to make health claims about cigarettes and precluded advertising, promoting or the publishing the tar and nicotine content of particular brands of cigarettes. The Federal Government endorsed this practice.

22. Subsequently, the Federal Government changed its programme with respect to the publishing by tobacco manufacturers of information relating to tar and nicotine yields of cigarettes as measured by standard testing methods. On January 1, 1976 at the request and direction of the Federal Government and under threat of government regulation, ITCAN and other members of the Canadian Manufacturers Council ("CTMC") agreed to publish tar and nicotine information on cigarette packages.

23. From January 1, 1989 onwards, ITCAN was required under the *Tobacco Products Control Act*, S.C. 1988, c. 20 to report to the Federal Government and to publish on packages the emissions of tar, nicotine and carbon monoxide and other smoke constituent yields as measured by standard testing methods.

24. At material times, the Federal Government requested that ITCAN use its promotional expertise to market so-called "Light" and "Mild" cigarettes to meet its SWAT and SWAN targets and monitored ITCAN's promotional activities.

**VI. THE FEDERAL GOVERNMENT'S KNOWLEDGE OF SMOKING AND HEALTH ISSUES**

25. At material times to this action the Federal Government knew and kept abreast of every advance in medical and scientific knowledge on all matters pertaining to the smoking of tobacco and its effects on health including matters relating to cigarette design. Without limiting the generality of the foregoing, the Federal Government knew and kept abreast of research relating to the so-called phenomenon of smoker "compensation".

26. Further, the Federal Government was aware at material times of the design and composition changes to ITCAN's cigarettes which lowered the tar and nicotine yields of "Light" and "Mild" cigarettes as measured by standard testing methods.

27. The Federal Government also knew and kept abreast of every advance in chemical, biological, medical and technical knowledge and technique concerning the growing, harvesting, curing and manufacture of tobacco and tobacco products.

**B. The Federal Government's Attempt to Design a "Less Hazardous Cigarette"**

28. The Federal Government and particularly the Delhi Research Station of Agriculture Canada undertook a comprehensive research and development programme in support of the Canadian tobacco industry from 1963 to 2000. The purpose of this research and of the programme was to improve the quality and marketability of Canadian tobacco having regard to the desires and preferences of tobacco consumers.

29. In or about 1968 Agriculture Canada, at Delhi Research Station, initiated research into smoking and health issues by attempting to identify allegedly hazardous components in tobacco smoke.

30. In or about 1970, Agriculture Canada and the Federal Government established a committee on "less hazardous tobacco" in order to attempt to develop a cigarette capable of being marketed as "less hazardous" than alternative or pre-existing cigarettes.

31. Beginning in 1971, as one component of the "Less Hazardous Cigarette" programme, Agriculture Canada funded by the Federal Government began research into the development of less hazardous tobacco.

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32. In or about 1977 and thereafter, the Federal Government publicized the results of its research.

33. The Delhi Research Station manufactured cigarettes from the tobacco varieties that it had developed for evaluation by various tobacco manufacturers including ITCAN.

34. The result of the Federal Government's tobacco development and production programme was that the Federal Government created by 1980 varieties of tobacco with a lower tar to nicotine ratio, which included Nordel, Delgold, Newdel and Candel which the Federal Government licensed and promoted for use by all growers of tobacco in Canada and which the Federal Government recommended for use by Canadian tobacco manufacturers including ITCAN.

35. The tobacco varieties so developed by the Federal Government became, by 1982, almost the only tobacco varieties available to the Canadian tobacco manufacturers and the tobacco products manufactured from the said varieties then became the tobacco products consumed in British Columbia. Thus the Federal Government's tobacco development and production programme reinforced the Federal Government's larger efforts to reduce the tar yields of cigarettes.

**VII. REPRESENTATIONS AND ADVICE OF THE FEDERAL GOVERNMENT TO ITCAN**

36. The Federal Government has made representations to ITCAN and provided it with advice in relation to matters now alleged to involve deceptive acts or practices.

37. The representations made by the Federal Government to ITCAN include the following:

- (a) that tar and nicotine measuring standards provided accurate information to consumers on which consumers could make informed smoking decisions;
- (b) that deliveries of tar and nicotine to smokers of "Light" and "Mild" cigarettes are reduced relative to regular cigarettes;



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- (c) that "Light" and "Mild" cigarettes would reduce the incidence of tobacco related diseases in the population of smokers;
- (d) compensation, to the extent it occurs is partial and temporary; and
- (e) consumption of lower tar cigarettes reduces the risk of contracting tobacco related diseases.

38. The Federal Government, drawing upon its expertise in smoking and health matters, provided advice to ITCAN as follows:

- (a) that "Light" and "Mild" products should be developed and marketed by the tobacco companies;
- (b) that machine tested tar and nicotine yields of cigarettes should be published to consumers having regard to the fact that those numbers do not and could not reflect actual intake by individual smokers;
- (c) that the tar and nicotine measuring standards provided accurate information to consumers which consumers could use to make informed smoking decisions and compare brand information;
- (d) compensation, to the extent it occurs, is partial and temporary; and
- (e) that the use of "Light" and "Mild" cigarettes by continuing smokers would reduce the incidence of tobacco related disease.

39. ITCAN, deferring to the expertise of the Federal Government in smoking and health matters, relied upon the representations and advice provided by the Federal Government.

**VIII. THE SUPERVISION AND REGULATION OF ITCAN BY THE FEDERAL GOVERNMENT**

40. At material times, the right to manufacture, promote and distribute cigarettes, including "Light" and "Mild" cigarettes was authorized and sanctioned by the Federal

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Government and ITCAN's activities were monitored, and directed by it. In material matters, ITCAN acted on the advice and at the request of the Federal Government.

41. The Federal Government also monitored ITCAN's advertising, marketing and promotional activities in relation to "Light" and "Mild" cigarettes to ensure they complied with its overall objectives and health programmes.

42. Through its advice to, requests and direction of ITCAN, the Federal Government has defined the standards applicable to ITCAN's communications with its consumers. The Federal Government has monitored and directed ITCAN in matters relating to smoking and health and has requested ITCAN to act in certain ways or refrain from acting in certain ways now alleged by the Plaintiff to be deceptive acts or practices under the *Trade Practice Act*, R.S.B.C. 1996, c. 457.

43. The Federal Government, in particular, defined and delineated the standard applicable to communications with consumers in relation to, *inter alia*:

- (a) the promotion, distribution and sale of cigarettes containing lower amounts of tar and nicotine as measured by standard testing methods;
- (b) what "health claims", if any, could or should be made by ITCAN to its consumers; and
- (c) what information should be disclosed to consumers about "Light" and "Mild" cigarettes including their tar and nicotine content when measured by standard testing methods.

**I. THE FEDERAL GOVERNMENT COLLECTED TAXES ASSOCIATED WITH THE SALE OF "LIGHT" AND "MILD" CIGARETTES**

44. At material times the purchase price of "Light" and "Mild" cigarettes has included Federal Government taxes. At material times a substantial component of the purchase price was made up of taxes.

**PART TWO****IX. THE FEDERAL GOVERNMENT OWED DUTIES TO CONSUMERS****A. The Federal Government Owed a Duty of Care to Consumers in Negligence**

45. The Federal Government had, at material times, a duty of care to individual consumers deriving from its public health responsibilities and its smoking and health programmes. Without limiting the generality of the foregoing, the Federal Government assumed a duty to the Plaintiff to take reasonable care in the development and implementation of its smoking and health initiatives and programmes.

46. The Federal Government has acknowledged, at material times, that it has a duty to smokers to implement programmes to ensure that they are adequately informed of the risks of smoking and the properties of cigarettes.

**B. The Federal Government Owed a Duty to Consumers as a "supplier" within the Meaning of the *Trade Practice Act***

47. The Federal Government's various programmes were intended to and did encourage continuing smokers to smoke cigarettes containing less tar and nicotine as measured by standard testing methods and to encourage them to switch to lower tar and nicotine cigarettes. In promoting the consumption by consumers of "Light" and "Mild" cigarettes over other kinds of cigarettes, the Federal Government was at material times a "supplier" within the meaning of the *Trade Practice Act* and accordingly owed consumers a statutory duty.

**X. THE FEDERAL GOVERNMENT OWED DUTIES TO ITCAN AT COMMON LAW AND AT EQUITY**

48. The Federal Government assumed a duty of care to ITCAN in giving advice, directions and making representations and requests to ITCAN, based on the Federal Government's expertise in health related matters, which ITCAN acted on or complied with.

49. The Federal Government knew or ought to have known that ITCAN was reasonably relying on its advice, direction, requests and representations and that it was deferring to the Federal Government's expertise in matters of public health.

**XI. ITCAN COMMITTED NO DECEPTIVE ACTS OR PRACTICES**

50. ITCAN says that the Federal Government defined the duties and set the standard applicable to ITCAN's communications with consumers and that in complying with those duties and standards it committed no deceptive acts or practices within the meaning of the *Trade Practice Act* as alleged or at all.

51. The conduct of ITCAN in researching, developing and designing "Light" and "Mild" cigarettes complied with the duties defined by and the standards set by the Federal Government. Furthermore, those standards did not breach any duties owed to consumers.

52. The monitoring, supervision and requests of the Federal Government set the standards to be met by ITCAN in its promotional and marketing practices in relation to "Light" and "Mild" cigarettes and in complying with those standards ITCAN committed no deceptive acts or practices. The publishing by ITCAN of tar and nicotine yields as measured by standard testing methods at the request of the Federal Government complied with standards set by the Federal Government and ITCAN did not commit any deceptive acts or practices as alleged or at all. The standards referred to herein were reasonable in all the circumstances.

**XII. IN THE ALTERNATIVE, THE FEDERAL GOVERNMENT BREACHED ITS DUTIES TO CONSUMERS**

**A. The Federal Government Breached the Standard of Care in Negligence**

53. If certain allegations in the Statement of Claim are correct, which is denied, and consumers were misinformed about the properties of "Light" and "Mild" cigarettes and the health risks of smoking "Light" and "Mild" cigarettes, then the Federal Government breached the standard of care in the operation of its health programmes and its programme to provide accurate information to consumers and its conduct or fault caused or contributed to damages allegedly suffered by the Plaintiff. If certain allegations in the Statement of Claim are correct, ITCAN says as follows:

- (a) Consumers in British Columbia relied on the Federal Government for accurate information about the purpose of standard testing methods and

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the use to which could be put information about the tar and nicotine deliveries of cigarettes as measured by standard testing methods.

- (b) Consumers in British Columbia relied on the Federal Government for accurate information about the health risks of smoking generally and the risks of smoking "Light" and "Mild" cigarettes. If consumers were misinformed about the health risks of smoking it was because the Federal Government negligently failed to provide adequate information to consumers or misrepresented information to them.
- (c) The Federal Government promoted "Light" and "Mild" cigarettes over higher tar and nicotine cigarettes as measured by standard testing methods. If cigarettes containing low tar and nicotine are not associated with the reduced incidence of tobacco related diseases in the population of smokers this fact was known or ought to have been known to the Federal Government and it negligently promoted "Light" and "Mild" cigarettes.
- (d) The Federal Government published and encouraged the publication of tar and nicotine and other smoke constituent yields as measured by standard smoking methods. If the publication of such information misinformed or misled consumers of the properties of "Light" and "Mild" cigarettes and the health risks of smoking them, then that is because of conduct of fault of the Federal Government and it knew or ought to have known that consumers would be misled.

54. If certain allegations in the Statement of Claim are correct, which is denied, ITCAN claims contribution and indemnity pursuant to the *Negligence Act*, RSBC, 1996, c. 333 measured to the extent of any liability of ITCAN to the Plaintiff.

**B. The Federal Government Committed Deceptive Acts or Practices**

55. If certain allegations in the Statement of Claim are correct, which is denied, and consumers were misinformed about the properties of "Light" and "Mild" cigarettes and the health risks of smoking "Light" and "Mild" cigarettes, then the Federal Government engaged in

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deceptive acts or practices under the *Trade Practice Act* in developing its health programmes and its conduct of fault caused or contributed to damages allegedly suffered by the Plaintiff.

56. ITCAN repeats paragraph 53 to above.

57. If certain allegations in the Statement of Claim are correct, which is denied, ITCAN claims contribution and indemnity pursuant to the *Negligence Act*, RSBC, measured to the extent of any liability of ITCAN to the Plaintiff.

**XIII. IN THE ALTERNATIVE, THE FEDERAL GOVERNMENT IS LIABLE TO ITCAN FOR BREACH OF DUTY OWED TO ITCAN**

58. The Federal Government knew or ought to have known that ITCAN would reasonably rely on its advice and would comply with its direction or requests respecting the development, marketing and promotion of "Light" and "Mild" cigarettes. Without limiting the generality of the foregoing, the Federal Government knew or ought to have known that ITCAN would reasonably rely on its advice and directions in relation to those matters particularized in paragraphs 37 and 38 herein.

59. It is alleged that ITCAN committed deceptive acts or practices in relation to those matters respecting which the Federal Government provided ITCAN with direction, advice and regulatory directives.

60. It was reasonably foreseeable to the Federal Government that ITCAN could come under statutory liability if in acting on the representations and following the advice of the Federal Government, it breached duties to consumers in relation to "Light" and "Mild" cigarettes.

61. If certain allegations in the Statement of Claim are correct, which is denied, then the representations made by the Federal Government in furtherance of its smoking and health programme were false and were made negligently and in breach of the duty of care owed to ITCAN whereby ITCAN has suffered loss and damage measured by the extent of any liability to the Plaintiff.

**XIV. IN THE ALTERNATIVE, THE FEDERAL GOVERNMENT IS LIABLE TO ITCAN FOR EQUITABLE INDEMNITY**

62. ITCAN at material times acted at the request of the Federal Government. The requests or recommendations made by the Federal Government involved ITCAN acting in a manner that was not manifestly tortious or apparently illegal to ITCAN. If in so doing it comes under a liability to the Plaintiff, the Federal Government is required to indemnify ITCAN to the extent of the liability so incurred.

63. Further, only a small portion of the purchase price of "Light" and "Mild" cigarettes consists of moneys payable to ITCAN. The majority of the purchase price has, at material times, consisted of taxes levied by both the Provincial and the Federal Government. In these circumstances, the Federal Government is liable to ITCAN in equity to indemnify ITCAN to the extent of any liability of ITCAN to the Plaintiff for amounts received by the Federal Government in taxes.

WHEREFORE ITCAN claims against the Federal Government as follows:

- (a) A declaration that the Federal Government defined and mandated standards applicable to the publication by ITCAN of tar and nicotine yields as measured by standard testing methods;
- (b) A declaration that the Federal Government mandated and approved communications by ITCAN with consumers respecting the use of descriptors such as "Light" and "Mild" to describe brands of its cigarettes;
- (c) A declaration that ITCAN complied with the mandated and approved standards of the Federal Government in relation to "Light" and "Mild" cigarettes and thereby

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committed no deceptive acts or practices within the meaning of the *Trade Practice Act*;

- (d) A declaration that the Federal Government is a supplier within the meaning of the *Trade Practice Act*;
- (e) A declaration that the Federal Government owed purchasers of "Light" and "Mild" cigarettes duties of care to provide reliable information to consumers about the deliveries of tar and nicotine about the health risks associated with the use of "Light" and "Mild" cigarettes;
- (f) Alternatively, a declaration that the Federal Government breached its common law, equitable and statutory duties owed to purchases of "Light" and "Mild" cigarettes thereby causing or contributing to damage or loss to the Plaintiff in this action;
- (g) Alternatively, an award of contribution and indemnity pursuant the provisions of the *Negligence Act*;
- (h) Alternatively, a declaration that the Federal Government owed and breached duties to ITCAN;
- (i) Alternatively, damages against the Federal Government measured by the extent of any liability of ITCAN to the Plaintiff;
- (j) An Order that the Federal Government indemnify in whole or in part ITCAN to the extent of any liability of ITCAN to the Plaintiff;



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- (k) Costs; and
- (l) Such other relief as to this honourable court seems just.

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

- (a) **GIVE NOTICE** of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and **YOU MUST ALSO DELIVER** a copy of the Appearance to the Defendants' address for delivery, which is set out in this Third Party Notice, and
- (b) **FILE** a Statement of Defence in the above registry of this court within the Time for Defence provided for below and **DELIVER** a copy of the Statement of Defence to the Defendants' address for delivery.

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

#### **JUDGMENT MAY BE TAKEN AGAINST YOU IF**

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

#### **TIME FOR APPEARANCE**

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

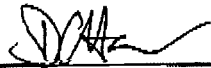
If this notice is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing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

#### **TIME FOR DEFENCE**

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

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(1)	The ADDRESS OF THE REGISTRY is:  800 Smithe Street, Vancouver, B.C. V3M 1C9
(2)	The Defendant's ADDRESS FOR DELIVERY is:  Suite 14 - 1075 West Georgia Street Vancouver, B.C. V6E 3C9  Fax number for delivery: n/a
(3)	The NAME and OFFICE ADDRESS of the Defendant's SOLICITORS are:  Berardino & Harris Suite 14 - 1075 West Georgia Street Vancouver, B.C. V6E 3C9

Dated: April 29, 2004  
Solicitors for Imperial Tobacco Canada  
Limited

(Reference: D.C. Harris/030185)