

Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED**
AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

RESPONDING MOTION RECORD
(Sanction Order and CCAA Plan Administrator Appointment Order)
Returnable on January 29, 2025

VOLUME 1 OF 2

January 20, 2025

FOGLER, RUBINOFF LLP
Lawyers
Scotia Plaza
40 King Street West, Suite 2400
P.O. Box #215
Toronto, ON M5H 3Y2

Vern W. DaRe (LSO# 32591E)
Tel: 416-941-8842
Fax: 416-941-8852
Email: vdare@foglers.com

CANADIAN CANCER SOCIETY
116 Albert Street, Suite 500
Ottawa, ON K1P 5G3

Robert Cunningham (LSO# 35179L)
Tel: 613-762-4624
Email: rcunning@cancer.ca

Lawyers for Canadian Cancer Society

TO: COMMON SERVICE LIST

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AND IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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Applicants

**COMMON SERVICE LIST
(as of January 13, 2025)**

TO:	<p>THORNTON GROUT FINNIGAN LLP 100 Wellington Street West, Suite 3200 TD West Tower, Toronto-Dominion Centre Toronto, ON M5K 1K7 Fax: 416-304-1313</p> <p>Robert I. Thornton Tel: 416-304-0560 Email: rthornton@tgf.ca</p> <p>Leanne M. Williams Tel: 416-304-0060 Email: lwilliams@tgf.ca</p> <p>Rachel A. Nicholson Tel: 416-304-1153 Email: rnicholson@tgf.ca</p>
------------	--

* For any additions or questions, please contact Nancy Thompson at nancy.thompson@blakes.com

	<p>Mitchell W. Grossell Tel: 416-304-7978 Email: mgrossell@tgf.ca</p> <p>John L. Finnigan Tel: 416-304-0558 Email: jfinnigan@tgf.ca</p> <p>Rebekah O'Hare Tel: 416-307-2423 Email: rohare@tgf.ca</p> <p>Rudrakshi Chakrabarti Tel: 416-307-2425 Email: rchakrabarti@tgf.ca</p> <p>Lawyers for JTI-Macdonald Corp.</p>
AND TO:	<p>DELOITTE RESTRUCTURING INC. Bay Adelaide East 8 Adelaide Street West Suite 200 Toronto, ON M5H 0A9 Fax: 416-601-6690</p> <p>Paul Casey Tel: 416-775-7172 Email: paucasey@deloitte.ca</p> <p>Warren Leung Tel: 416-874-4461 Email: waleung@deloitte.ca</p> <p>Jean-Francois Nadon Tel: 514-390-0059 Email: jnadon@deloitte.ca</p> <p>Phil Reynolds Tel: 416-956-9200 Email: philreynolds@deloitte.ca</p> <p>The Monitor of JTI-Macdonald Corp.</p>

AND TO:	<p>BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9 Fax: 416-863-2653</p> <p>Pamela Huff Tel: 416-863-2958 Email: pamela.huff@blakes.com</p> <p>Linc Rogers Tel: 416-863-4168 Email: linc.rogers@blakes.com</p> <p>Jake Harris Tel: 416-863-2523 Email: jake.harris@blakes.com</p> <p>Nancy Thompson, Law Clerk Tel: 416-863-2437 Email: nancy.thompson@blakes.com</p> <p>Lawyers for Deloitte Restructuring Inc., in its capacity as Monitor of JTI-Macdonald Corp.</p>
AND TO:	<p>MILLER THOMSON LLP Scotia Plaza 40 King Street West, Suite 5800 Toronto, ON M5H 3S1</p> <p>Craig A. Mills Tel: 416-595-8596 Email: cmills@millert Thomson.com</p> <p>Lawyers for North Atlantic Operating Company, Inc.</p>
AND TO:	<p>MILLER THOMSON LLP 1000, rue De La Gauchetière Ouest, bureau 3700 Montreal, QC H3B 4W5</p> <p>Hubert Sibre Tel: 514-879-4088 Email: hsibre@millert Thomson.com</p> <p>Lawyers for AIG Insurance Canada</p>

AND TO:	BLUETREE ADVISORS INC. First Canada Place 100 King Street West Suite 5600 Toronto, ON M5X 1C9 William E. Aziz Tel: 416-575-2200 Email: baziz@bluetreadvisors.com Chief Restructuring Officer of JTI-Macdonald Corp.
AND TO:	STIKEMAN ELLIOTT LLP Commerce Court West 199 Bay Street, Suite 5300 Toronto, ON M5L 1B9 Fax: 416-947-0866 David R. Byers Tel: 416-869-5697 Email: dbyers@stikeman.com Maria Konyukhova Tel: 416-869-5230 Email: mkonyukhova@stikeman.com Lesley Mercer Tel: 416-869-6859 Email: lmercer@stikeman.com Lawyers for British American Tobacco p.l.c., B.A.T. Industries p.l.c. and British American Tobacco (Investments) Limited
AND TO:	OSLER, HOSKIN & HARCOURT LLP 100 King Street West 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8 Fax: 416-862-6666 Deborah Glendinning Tel: 416-862-4714 Email: dglendinning@osler.com Marc Wasserman Tel: 416-862-4908 Email: mwasserman@osler.com

	<p>John A. MacDonald Tel: 416-862-5672 Email: jmacdonald@osler.com</p> <p>Michael De Lellis Tel: 416-862-5997 Email: mdelellis@osler.com</p> <p>Craig Lockwood Tel: 416-862-5988 Email: clockwood@osler.com</p> <p>Marleigh Dick Tel: 416-862-4725 Email: mdick@osler.com</p> <p>Martino Calvaruso Tel: 416-862-6665 Email: mcalvaruso@osler.com</p> <p>Lawyers for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
<p>AND TO:</p>	<p>DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Natasha MacParland Tel: 416-863-5567 Email: nmacparland@dwpv.com</p> <p>Chanakya Sethi Tel: 416-863-5516 Email: csethi@dwpv.com</p> <p>Rui Gao Tel: 416-367-7613 Email: rgao@dwpv.com</p> <p>Benjamin Jarvis Tel: 514-807-0621 Email: bjarvis@dwpv.com</p> <p>Robert Nicholls Email: rnicholls@dwpv.com</p>

	<p>Anisha Visvanatha Tel: 416-367-7480 Email: avisvanatha@dwpv.com</p> <p>Ashley Perley, Law Clerk Tel: 416-566-0463 Email: aperley@dwpv.com</p> <p>Lawyers for FTI Consulting Canada Inc., in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
AND TO:	<p>MORGAN, LEWIS & BOCKIUS LLP 101 Park Avenue New York, NY 10178-0060</p> <p>Jennifer Feldsher Tel: 212-309-6017 Email: jennifer.feldser@morganlewis.com</p> <p>MORGAN, LEWIS & BOCKIUS LLP One State Street Hartford, CT 06103-3178</p> <p>David K. Shim Tel: 860-240-2580 Email: david.shim@morganlewis.com</p> <p>US Counsel for FTI Consulting Canada Inc., in its capacity as Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
AND TO:	<p>FTI CONSULTING CANADA INC. 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M4K 1G8 Fax: 416-649-8101</p> <p>Greg Watson Tel: 416-649-8077 Email: greg.watson@fticonsulting.com</p> <p>Paul Bishop Tel: 416-649-8053 Email: paul.bishop@fticonsulting.com</p> <p>Jeffrey Rosenberg Tel: 416-649-8073 Email: jeffrey.rosenberg@fticonsulting.com</p>

	<p>Kamran Hamidi Tel: 416-649-8068 Email: kamran.hamidi@fticonsulting.com</p> <p>Carter Wood Tel: 416-844-9169 Email: carter.wood@fticonsulting.com</p> <p>Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
AND TO:	<p>MCCARTHY TÉTRAULT LLP 66 Wellington Street West Suite 5300 TD Bank Tower, Box 48 Toronto, ON M5K 1E6 Fax: 416-868-0673</p> <p>James Gage Tel: 416-601-7539 Email: jgage@mccarthy.ca</p> <p>Heather Meredith Tel: 416-601-8342 Email: hmeredith@mccarthy.ca</p> <p>Paul Steep Tel: 416-601-7998 Email: psteep@mccarthy.ca</p> <p>Trevor Courtis Tel: 416-601-7643 Email: tcourtis@mccarthy.ca</p> <p>Deborah Templer Tel: 416-601-8421 Email: dtempler@mccarthy.ca</p> <p>Lawyers for Rothmans, Benson & Hedges, Inc.</p>
AND TO:	<p>LAPOINTE ROSENSTEIN MARCHAND MELANÇON LLP 1 Place Ville Marie, Suite 1300 Montreal, QC H3B 0E6</p>

	<p>Mireille Fontaine Tel: 514-925-6342 Email: mireille.fontaine@lrmm.com</p> <p>Lawyers for the Top Tube Company</p>
AND TO:	<p>TORYS LLP 79 Wellington St. West, Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2 Fax: 416-865-7380</p> <p>Scott Bomhof Tel: 416-865-7370 Email: sbomhof@torys.com</p> <p>Adam Slavens Tel: 416-865-7333 Email: aslavens@torys.com</p> <p>Lawyers for JT Canada LLC Inc. and PricewaterhouseCoopers Inc., in its capacity as receiver of JTI-Macdonald TM Corp.</p>
AND TO:	<p>PRICEWATERHOUSECOOPERS PwC Tower 18 York St., Suite 2600 Toronto, ON M5J 0B2 Fax: 416-814-3210</p> <p>Mica Arlette Tel: 416-814-5834 Email: mica.arlette@pwc.com</p> <p>Tyler Ray Email: tyler.ray@pwc.com</p> <p>Receiver and Manager of JTI-Macdonald TM Corp.</p>
AND TO:	<p>BENNETT JONES 100 King Street West Suite 3400 Toronto, ON M5X 1A4 Fax: 416-863-1716</p> <p>Jeffrey Leon Tel: 416-777-7472 Email: leonj@bennettjones.com</p>

	<p>Mike Eizenga Tel: 416-777-4879 Email: eizengam@bennettjones.com</p> <p>Sean Zweig Tel: 416-777-6254 Email: zweigs@bennettjones.com</p> <p>MCKENZIE LAKE LAWYERS 140 Fullarton Street, Suite 1800 London, ON N6A 5P2</p> <p>Michael Peerless Tel: 519-667-2644 Email: mike.peerless@mckenzielake.com</p> <p>SISKINDS 275 Dundas Street, Unit 1 London, ON N6B 3L1</p> <p>Andre I.G. Michael Tel: 519-660-7860 Email: andre.michael@siskinds.com</p> <p>James Virtue Tel: 519-660-7898 Email: jim.virtue@siskinds.com</p> <p>Lawyers for the Province of British Columbia, Province of Manitoba, Province of New Brunswick, Province of Nova Scotia, Province of Prince Edward Island, Province of Saskatchewan, Government of Northwest Territories, Government of Nunavut, and Government of Yukon in their capacities as plaintiffs in the HCCR Legislation claims</p>
AND TO:	<p>MINISTRY OF THE ATTORNEY GENERAL Legal Services Branch 1001 Douglas Street Victoria, BC V8W 2C5 Fax: 250-356-6730</p> <p>Peter R. Lawless Tel: 250-356-8432 Email: peter.lawless@gov.bc.ca</p>

AND TO:	<p>KSV ADVISORY INC. 150 King Street West Suite 2308, Box 42 Toronto, ON M5H 1J9 Fax: 416-932-6266</p> <p>Noah Goldstein Tel: 416-932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>Bobby Kofman Email: bkofman@ksvadvisory.com</p> <p>Jordan Wong Tel: 416-932-6025 Email: jwong@ksvadvisory.com</p> <p>Financial Advisory for the Provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan, in their capacities as plaintiffs in the HCCR Legislation claims</p>
AND TO:	<p>MINISTRY OF THE ATTORNEY GENERAL Crown Law Office - Civil 720 Bay Street, 8th Floor Toronto, ON M7A 2S9 Fax: 416-326-4181</p> <p>Jacqueline Wall Tel: 416-434-4454 Email: jacqueline.wall@ontario.ca</p> <p>Lawyers for His Majesty the King in Right of Ontario</p>
AND TO:	<p>FISHMAN FLANZ MELAND PAQUIN LLP Place du Canada 1010 de la Gauchetière St. West, Suite 1600 Montreal, QC H3B 2N2</p> <p>Avram Fishman Email: afishman@ffmp.ca</p> <p>Mark E. Meland Tel: 514-932-4100 Email: mmeland@ffmp.ca</p> <p>Margo R. Siminovitch Email: msiminovitch@ffmp.ca</p>

Jason Dolman

Email: jdolman@ffmp.ca

Nicolas Brochu

Email: nbrochu@ffmp.ca

Tina Silverstein

Email: tsilverstein@ffmp.ca

CHAITONS LLP

5000 Yonge Street 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton

Tel: 416-218-1129

Email: harvey@chaitons.com

George Benchetrit

Tel: 416-218-1141

Email: george@chaitons.com

TRUDEL JOHNSTON & LESPÉRANCE

750, Cote de la Place d'Armes, Bureau 90

Montréal, QC H2Y 2X8

Fax: 514-871-8800

Philippe Trudel

Tel: 514-871-8385, x203

Email: philippe@tjl.quebec

Bruce Johnston

Tel: 514-871-8385, x202

Email: bruce@tjl.quebec

André Lespérance

Tel: 514-871-8805

Email: andre@tjl.quebec

KUGLER KANDESTIN s.e.n.c.r.l., LLP

1 Place Ville-Marie, Suite 1170

Montréal, QC H3B 2A7

Gordon Kulger

Tel: 514-360-2686

Email: gkulger@kklex.com

	<p>Robert Kugler Tel: 514-360-8882 Email: rkugler@kklex.com</p> <p>Lawyers for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)</p>
AND TO:	<p>KLEIN LAWYERS LLP 100 King Street West, Suite 5600 Toronto, ON M5X 1C9</p> <p>Douglas Lennox Tel: 416-506-1944 Email: dlennox@callkleinlawyers.com</p> <p>KLEIN LAWYERS LLP 400 – 1385 West 8th Avenue Vancouver, BC V6H 3V9</p> <p>David A. Klein Email: dklein@callkleinlawyers.com</p> <p>Nicola Hartigan Tel: 604-874-7171 Email: nhartigan@callkleinlawyers.com</p> <p>Lawyers for the representative plaintiff, Kenneth Knight, in the certified British Columbia class action, <i>Knight v. Imperial Tobacco Canada Ltd.</i>, Supreme Court of British Columbia, Vancouver Registry No. L031300</p>
AND TO:	<p>JENSEN SHAWA SOLOMON DUGID HAWKES LLP 800, 304 – 8 Avenue SW Calgary, AB T2P 1C2 Fax: 403-571-1528</p> <p>Carsten Jensen, QC Tel: 403-571-1526 Email: jensenc@jssbarristers.ca</p> <p>Sabri Shawa, QC Tel: 403-571-1527 Email: shawas@jssbarristers.ca</p> <p>Stacy Petriuk Tel: 403-571-1523 Email: petriuks@jssbarristers.ca</p>

	<p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>CUMING & GILLESPIE 4200, 825 – 8th Avenue SW Calgary, AB T2P 1G1</p> <p>Laura M. Comfort Email: laura@cglaw.ca</p> <p>Lawyers for His Majesty the King in Right of Alberta</p>
AND TO:	<p>HIS MAJESTY THE KING IN RIGHT OF ALBERTA 9th Fl. Peace Hills trust Tower 10011 – 109th Street Edmonton, AB T5J 3S8</p> <p>Doreen Mueller Email: doreen.mueller@gov.ab.ca</p>
AND TO:	<p>STEWART MCKELVEY 1741 Lower Water Street, Suite 600 Halifax, NS B3J 0J2 Fax: 902-420-1417</p> <p>David Wedlake Tel: 902-444-1705 Email: dwedlake@stewartmckelvey.com</p> <p>Eryka Gregory Tel: 902-44401747 Email: egregory@stewartmckelvey.com</p> <p>Lawyers for Sobeys Capital Incorporated</p>

AND TO:	<p>CASSELS BROCK & BLACKWELL LLP Suite 3200, Bay Adelaide Centre – North Tower 40 Temperance Street Toronto, ON M5H 0B4</p> <p>Shayne Kukulowicz Tel: 416-860-6463 Fax: 416-640-3176 Email: skukulowicz@cassels.com</p> <p>Joseph Bellissimo Tel: 416-860-6572 Fax: 416-642-7150 Email: jbellissimo@cassels.com</p> <p>Monique Sassi Tel: 416-860-6886 Fax: 416-640-3005 Email: msassi@cassels.com</p> <p>Lawyers for Ernst & Young Inc, in its capacity as court-appointed monitor of Rothmans, Benson & Hedges, Inc.</p>
AND TO:	<p>ERNST & YOUNG INC. Ernst & Young Tower 100 Adelaide Street West P.O. Box 1 Toronto, ON M5H 0B3</p> <p>Murray A. McDonald Tel: 416-943-3016 Email: murray.a.mcdonald@parthenon.ey.com</p> <p>Brent Beekenkamp Tel: 416-943-2652 Email: brent.r.beekenkamp@parthenon.ey.com</p> <p>Edmund Yau Tel: 416-943-2177 Email: edmund.yau@parthenon.ey.com</p> <p>Matt Kaplan Tel: 416-932-6155 Email: matt.kaplan@parthenon.ey.com</p> <p>Monitor of Rothmans, Benson & Hedges, Inc.</p>

AND TO:	<p>GOWLING WLG (CANADA) LLP 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5 Fax: 416-862-7661</p> <p>Clifton Prophet Tel: 416-862-3509 Email: clifton.prophet@gowlingwlg.com</p> <p>Steven Sofer Tel: 416-369-7240 Email: steven.sofer@gowlingwlg.com</p> <p>Nicholas Kluge Tel: 416-369-4610 Email: nicholas.kluge@gowlingwlg.com</p> <p>Lawyers for Philip Morris International Inc.</p>
AND TO:	<p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP 155 Wellington Street West, 35th Floor Toronto, ON M5V 3H1</p> <p>Kenneth T. Rosenberg Email: ken.rosenberg@paliareroland.com</p> <p>Lilly Harmer Email: lily.harmer@paliareroland.com</p> <p>Massimo (Max) Starnino Email: max.starnino@paliareroland.com</p> <p>ROEBOTHAN MCKAY MARSHALL Paramount Building 34 Harvey Road, 5th Floor St. John's NL A1C 3Y7 Fax: 709-753-5221</p> <p>Glenda Best Tel: 705-576-2255 Email: gbest@wrmlaw.com</p> <p>HUMPHREY FARRINGTON McCLAIN, P.C. 221 West Lexington, Suite 400 Independence, MO 64050</p>

	<p>Kenneth B. McClain Tel: 816-836-5050 Email: kbm@hfmlegal.com</p> <p>Lawyers for His Majesty the King in Right of Newfoundland</p>
AND TO:	<p>WESTROCK COMPANY OF CANADA CORP. 15400 Sherbrooke Street East Montreal, QC H1A 3S2</p> <p>Dean Jones Tel: 514-642-9251 Email: dean.jones@westrock.com</p>
AND TO	<p>FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO (FSRA) Legal and Enforcement Division 25 Sheppard Avenue West, Suite 100 Toronto, Ontario M2N 6S6</p> <p>Michael Spagnolo Legal Counsel Tel: 647-801-8921 Email: michael.spagnolo@fsrao.ca</p>
AND TO:	<p>KAPLAN LAW 393 University Avenue, Suite 2000 Toronto, ON M5G 1E6</p> <p>Ari Kaplan Tel: 416-565-4656 Email: ari@kaplanlaw.ca</p> <p>Counsel to the Former Genstar U.S. Retiree Group Committee</p>
AND TO:	<p>McMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3</p> <p>Wael Rostom Tel: 416-865-7790 Email: wael.rostom@mcmillan.ca</p>

	<p>Emile Catimel-Marchand Tel: 514-987-5031 Email: emile.catimel-marchand@mcmillan.ca</p> <p>Lawyers for The Bank of Nova Scotia</p>
AND TO	<p>MERCHANT LAW GROUP LLP c/o #400 – 333 Adelaide St. West Toronto, ON M5V 1R5 Fax: 613-366-2793</p> <p>Evatt Merchant, QC Tel: 613-366-2795 Email: emerchant@merchantlaw.com</p> <p>Lawyers for the Class Action Plaintiffs (MLG)</p>
AND TO:	<p>LABSTAT INTERNATIONAL INC. 262 Manitou Drive Kitchener, ON N2C 1L3</p> <p>Andrea Echeverria Tel: 519-748-5409 Email: aecheverria@labstat.com</p>
AND TO:	<p>CERNOS FLAHERTY SVONKIN LLP 220 Bay Street, Suite 700 Toronto, ON M5J 2W4 Fax: 647-725-5440</p> <p>Patrick Flaherty Tel: 416-855-0403 Email: pflaherty@cfscounsel.com</p> <p>Bryan D. McLeese Tel: 416-855-0414 Email: bmcleese@cfscounsel.com</p> <p>Clair Wortsman Email: cwortsman@cfscounsel.com</p>

	<p>STOCKWOODS LLP 77 King Street West, Suite 4130 TD North Tower, P.O. Box 140, TD Centre Toronto, ON M5K 1H1 Fax: 416-593-9345</p> <p>Brian Gover Tel: 416-593-2489 Email: briang@stockwoods.ca</p> <p>Justin Safayeni Tel: 416-593-3494 Email: justins@stockwoods.ca</p> <p>Lawyers for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International Inc.</p>
AND TO:	<p>COZEN O'CONNOR LLP Bay Adelaide Centre – North Tower 40 Temperance Street, Suite 2700 Toronto, Ontario M5H 0B4</p> <p>Steven Weisz Tel: 647-417-5334 Fax: 416-361-1405 Email: sweisz@cozen.com</p> <p>INCH HAMMOND PROFESSIONAL CORPORATION 1 King Street West, Suite 500 Hamilton, ON L8P 4X8</p> <p>John F.C. Hammond Tel: 905-525-4481 Email: hammond@inchlaw.com</p> <p>Lawyer for Grand River Enterprises Six Nations Ltd.</p>
AND TO:	<p>STROSBERG WINGFIELD SASSO LLP 1561 Ouellette Avenue Windsor, ON M8X 1K5 Fax: 866-316-5308</p> <p>William V. Sasso Tel: 519-561-6222 Email: william.sasso@swslitigation.com</p>

	<p>David Robins Tel: 519-561-6215 Email: david.robins@sWSlitigation.com</p> <p>Lawyers for The Ontario Flue-Cured Tobacco Growers' Marketing Board, plaintiffs in Ontario Superior Court of Justice Court File No. 1056/10CP (Class Proceedings)</p>
AND TO:	<p>ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 Fax: 416-973-0810</p> <p>Edward Park Tel: 647-292-9368 Email: edward.park@justice.gc.ca</p> <p>Kevin Dias Email: kevin.dias@justice.gc.ca</p> <p>Lawyers for the Minister of National Revenue</p>
AND TO:	<p>LAX O'SULLIVAN LISUS GOTTLIEB LLP Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Jonathan Lisus Tel: 416-598-7873 Email: jlisus@lolg.ca</p> <p>Matthew Gottlieb Tel: 416-644-5353 Email: mgottlieb@lolg.ca</p> <p>Nadia Campion Tel: 416-642-3134 Email: ncampion@lolg.ca</p> <p>Andrew Winton Tel: 416-644-5342 Email: awinton@lolg.ca</p> <p>Lawyers for the Court-Appointed Mediator</p>

AND TO:	<p>FOGLER, RUBINOFF LLP Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8 Fax: 416-941-8852</p> <p>Vern W. DaRe Tel: 416-941-8842 Email: vdare@foglers.com</p> <p>CANADIAN CANCER SOCIETY 116 Albert Street, Suite 500 Ottawa, ON K1P 5G3 Fax: 613-565-2278</p> <p>Robert Cunningham Tel: 613-565-2522 ext. 4981 Email: rcunning@cancer.ca</p> <p>Lawyers for Canadian Cancer Society</p>
AND TO:	<p>BLANEY MCMURTRY LLP 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p>David R. Mackenzie Tel: 416-597-4890 Email: dmackenzie@blaney.com</p> <p>David Ullmann Tel: 416-596-4289 Email: dullmann@blaney.com</p> <p>Alexandra Teodorescu Tel: 416-596-4279 Email: ateodorescu@blaney.com</p> <p>Lawyers for La Nordique Compagnie D'Assurance du Canada</p>
AND TO:	<p>ST-PIERRE LÉTOURNEAU 2600, boulevard Laurier, porte760 Quebec, QC G1V 4T3</p>

	<p>Marc-André Maltais Tel: 418-657-8702, ext. 3107 Email: marc-andre.maltais1@retraitequebec.gouv.qc.ca</p> <p>Lawyers for Retraite Québec</p>
AND TO:	<p>LECKER & ASSOCIATES 4789 Yonge Street, Suite 514 Toronto, ON M2N 0G3</p> <p>Shira Levine Email: slevine@leckerslaw.com</p> <p>Lawyer for Imperial Tobacco claimant</p>
AND TO:	<p>McMILLAN LLP 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048</p> <p>Brett Harrison Tel: 416-865-7932 Email: brett.harrison@mcmillan.ca</p> <p>Tushara Weerasooriya Tel: 416-865-7890 Email: tushara.weerasooriya@mcmillan.ca</p> <p>Guneev Bhinder Tel: 416-307-4067 Email: guneev.bhinder@mcmillan.ca</p> <p>Lawyers for the Province of Quebec</p>
AND TO:	<p>ATTORNEY GENERAL OF CANADA Department of Justice Canada Ontario Regional Office, L.E.A.D. 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p> <p>Victor Paolone Tel: 647-256-7548 Email: victor.paolone@justice.gc.ca</p>

AND TO:	McMILLAN LLP Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3 Fax: 416-865-7048 Stephen Brown-Okruhlik Tel: 416-865-7043 Email: stephen.brown-okruhlik@mcmillan.ca Lawyers for Citibank Canada
AND TO:	BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON M5H 4E3 Fax: 416-367-6749 Alex MacFarlane Tel: 416-367-6305 Email: amacfarlane@blg.com James W. MacLellan Tel: 416-367-6592 Email: jmaclellan@blg.com Bevan Brooksbank Tel: 416-367-6604 Email: bbrooksbank@blg.com Lawyers for Chubb Insurance Company of Canada
AND TO:	INDUSTRY CANADA, LEGAL SERVICES 235 Queen Street, 8 th Floor, East Tower Ottawa, ON K1A 0H5 c/o LEAD Admissions Team, Department of Justice Canada Email: TOR.Leadadmissions@justice.gc.ca
AND TO:	ROCHON GENOVA LLP Barristers • Avocats 121 Richmond Street West, Suite 900 Toronto, ON M5H 2K1 Fax: 416-363-0263

	<p>Joel P. Rochon Tel: 416-363-1867 x222 Email: jrochon@rochongenova.com</p> <p>Lawyers for Suzanne Jacklin, Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa, Roderick Dennis McDermid, Linda Dorion, Thelma Adams, Ben Sample and Deborah Kunta, in their capacity as Representative Plaintiffs in certain proposed class proceedings</p>
AND TO:	<p>WAGNERS 1869 Upper Water Street, Suite PH301 3rd Floor, Pontac House, Historic Properties Halifax, NS B3J 1S9 Fax: 902-422-1233</p> <p>Raymond F. Wagner, K.C. Tel: 902-425-7330 Email: raywagner@wagners.co</p> <p>Kate Boyle Tel: 902-425-7330 Email: kboyle@wagners.co</p> <p>Maddy Carter Tel: 902-425-7330 Email: mcarter@wagners.co</p> <p>Lauren Harper Tel: 905-425-7330 Email: lharper@wagners.co</p> <p>Representative Counsel</p>
AND TO:	<p>REVENU QUÉBEC 1600, boul. René-Lévesque Ouest Secteur R23DGR Montréal, QC H3H 2V2</p> <p>Alain Casavant Email: alain.casavant@revenuquebec.ca</p>
AND TO:	<p>PELLETIER D'AMOURS 1, Complexe Desjardins Tour Sud, 12e étage Montreal, QC H5B 1B1</p>

	<p>Geneviève Chabot Email: genevieve.chabot@dgag.ca</p> <p>Lawyers for Desjardins Assurances</p>
AND TO:	<p>SMART & BIGGAR / FETHERSTONHAUGH 55 Metcalfe Street, Suite 1000 P.O. Box 2999, Station D Ottawa, ON K1P 5Y6</p> <p>Kohji Suzuki Email: ksuzuki@smartbiggar.ca</p> <p>Francois Guay Email: fguay@smartbiggar.ca</p> <p>Christian Bolduc Email: cbolduc@smartbiggar.ca</p> <p>Melanie Powers Email: mlpowers@smartbiggar.ca</p> <p>Matthew Burt Email: meburt@smartbiggar.ca</p> <p>Lawyers for, and creditor of, Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited</p>
AND TO:	<p>KORNBLUM LAW PROFESSIONAL CORPORATION 508 Lawrence Avenue West Toronto, ON M6A 1A1</p> <p>Attention: Susanne Macneall Email: s.macneall@kornblum.ca</p> <p>Lawyers for Mr. Girsh Nair</p>
AND TO:	<p>TYR LLP 488 Wellington Street West, Suite 300-302 Toronto, ON M5V 1E3</p> <p>James Bunting Tel: 647-519-6607 Email: jbunting@tyrllp.com</p>

	<p>Sam Cotton Tel: 613-862-9264 Email: scotton@tyrllp.com</p> <p>Lawyers for the Heart and Stroke Foundation</p>
AND TO:	<p>HEART AND STROKE FOUNDATION 2300 Yonge Street Toronto, ON M4P 1E4</p> <p>Emily Sternberg Email: emily.sternberg@heartandstroke.ca</p>
AND TO:	<p>TYR LLP 488 Wellington Street West, Suite 300-302 Toronto, ON M5V 1E3</p> <p>James Doris Tel: 647-519-5840 Email: jdoris@tyrllp.com</p> <p>Lawyers for the U.S. Department of Justice</p>
AND TO:	<p>GOODMANS LLP Bay Adelaide Centre – West Tower 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 Tel: 416-979-2211 Fax: 416-979-1234</p> <p>Gale Rubenstein Email: grubenstein@goodmans.ca</p> <p>Peter Ruby Email: pruby@goodmans.ca</p> <p>Joseph Pasquariello Email: jpasquariello@goodmans.ca</p> <p>Lawyers for PricewaterhouseCoopers Inc. as Liquidator of Northumberland General Insurance Company</p>

<p>Courtesy Copy To:</p>	<p>DEBTWIRE 1501 Broadway, 8th Floor New York, NY 10036</p> <p>John Bringardner Tel: 646-378-3143 Email: john.bringardner@acuris.com</p> <p>Global Legal Editor</p>
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Email Service List

rthornton@tgf.ca; lwilliams@tgf.ca; rnicholson@tgf.ca; mgrossell@tgf.ca; jfinnigan@tgf.ca; rohare@tgf.ca; rchakrabarti@tgf.ca; paucasey@deloitte.ca; waleung@deloitte.ca; jnadon@deloitte.ca; philreynolds@deloitte.ca; pamela.huff@blakes.com; linc.rogers@blakes.com; jake.harris@blakes.com; nancy.thompson@blakes.com; cmills@millერთhompson.com; hsibre@millერთhompson.com; baziz@bluetreadadvisors.com; dbyers@stikeman.com; mkonyukhova@stikeman.com; lmercer@stikeman.com; dglendinning@osler.com; mwasserman@osler.com; jmacdonald@osler.com; mdelellis@osler.com; clockwood@osler.com; mdick@osler.com; mcalvaruso@osler.com; nmacparland@dwpv.com; csethi@dwpv.com; rgao@dwpv.com; bjarvis@dwpv.com; rnicholls@dwpv.com; avisvanatha@dwpv.com; aperley@dwpv.com; jennifer.feldsher@morganlewis.com; david.shim@morganlewis.com; greg.watson@fticonsulting.com; paul.bishop@fticonsulting.com; jeffrey.rosenberg@fticonsulting.com; kamran.hamidi@fticonsulting.com; carter.wood@fticonsulting.com; jgage@mccarthy.ca; hmeredith@mccarthy.ca; psteep@mccarthy.ca; tcourtis@mccarthy.ca; dtempler@mccarthy.ca; mireille.fontaine@lrm.com; sbomhof@torys.com; aslavens@torys.com; mica.arlette@pwc.com; tyler.ray@pwc.com; leonj@bennettjones.com; eizengam@bennettjones.com; zweigs@bennettjones.com; mike.peerless@mckenzielake.com; andre.michael@siskinds.com; jim.virtue@siskinds.com; peter.lawless@gov.bc.ca; ngoldstein@ksvadvisory.com; bkofman@ksvadvisory.com; jwong@ksvadvisory.com; jacqueline.wall@ontario.ca; afishman@ffmp.ca; mmeland@ffmp.ca; msiminovitch@ffmp.ca; jdolman@ffmp.ca; nbrochu@ffmp.ca; tsilverstein@ffmp.ca; harvey@chaitons.com; george@chaitons.com; philippe@tjl.quebec; bruce@tjl.quebec; andre@tjl.quebec; gkugler@kklex.com; rkugler@kklex.com; dlennox@callkleinlawyers.com; dklein@callkleinlawyers.com; nhartigan@callkleinlawyers.com; jensenc@jssbarristers.ca; shawas@jssbarristers.ca; petriuks@jssbarristers.ca; ken.rosenberg@paliareroland.com; lily.harmer@paliareroland.com; max.starnino@paliareroland.com; laura@cglaw.ca; doreen.mueller@gov.ab.ca; beatrice.loschiavo@paliareroland.com; natalia.botelho@paliareroland.com; michelle.jackson@paliareroland.com; dwedlake@stewartmckelvey.com; egregory@stewartmckelvey.com; skukulowicz@cassels.com; jbellissimo@cassels.com; msassi@cassels.com; murray.a.mcdonald@parthenon.ey.com; brent.r.beekenkamp@parthenon.ey.com; edmund.yau@parthenon.ey.com; matt.kaplan@parthenon.ey.com; clifton.prophet@gowlingwlg.com; steven.sofer@gowlingwlg.com; nicholas.kluge@gowlingwlg.com; gbest@wrmmlaw.com; kbm@hfmlegal.com; dean.jones@westrock.com; michael.spagnolo@fsrao.ca; ari@kaplanlaw.ca; wael.rostom@mcmillan.ca; emile.catimel-marchand@mcmillan.ca; emerchant@merchantlaw.com; jt.m.ccaa@merchantlaw.com; aecheverria@labstat.com; pflaherty@cfscounsel.com; bmclease@cfscounsel.com; cwortsman@cfscounsel.com; briang@stockwoods.ca; justins@stockwoods.ca; sweisz@cozen.com; hammond@inchlaw.com; william.sasso@swslitigation.com; david.robins@swslitigation.com; edward.park@justice.gc.ca; kevin.dias@justice.gc.ca; jlisus@lolg.ca; mgottlieb@lolg.ca; ncampion@lolg.ca; awinton@lolg.ca; vdare@foglars.com; rcunning@cancer.ca; dmackenzie@blaney.com; dullmann@blaney.com; ateodorescu@blaney.com; marc-

* For any additions or questions, please contact Nancy Thompson at nancy.thompson@blakes.com

andre.maltais1@retraitequebec.gouv.qc.ca; slevine@leckerslaw.com;
john.bringardner@acuris.com; brett.harrison@mcmillan.ca; tushara.weerasooriya@mcmillan.ca;
guneev.bhinder@mcmillan.ca; victor.paolone@justice.gc.ca; stephen.brown-
okruhlik@mcmillan.ca; amacfarlane@blg.com; jmaclellan@blg.com; bbrooksbank@blg.com;
TOR.Leadadmissions@justice.gc.ca; jrochon@rochongenova.com; raywagner@wagners.co;
mcarter@wagners.co; lharper@wagners.co; kboyle@wagners.co;
alain.casavant@revenuquebec.ca; genevieve.chabot@dgag.ca; ksuzuki@smartbiggar.ca;
fguay@smartbiggar.ca; cbolduc@smartbiggar.ca; mlpowers@smartbiggar.ca;
meburt@smartbiggar.ca; s.macneall@kornblumlaw.ca; jbunting@tyrllp.com;
scotton@tyrllp.com; emily.sternberg@heartandstroke.ca; jdoris@tyrllp.com;
john.bringardner@acuris.com; grubenstein@goodmans.ca; pruby@goodmans.ca;
jpasquariello@goodmans.ca;

Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED**
AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

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TAB 1

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**ONTARIO
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OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

**AFFIDAVIT OF KELLY WILSON CULL
(SWORN JANUARY 20, 2025)**

I, Kelly Wilson Cull, of the City of Bedford, in the Province of Nova Scotia, MAKE OATH
AND SAY:

1. I am Director, Advocacy, for the Canadian Cancer Society (“CCS”). As such, I have personal knowledge of the matters contained in this Affidavit. To the extent that I refer to information that is not within my personal knowledge, I have stated the source of that information and believe it to be true.
2. This Affidavit is sworn in support of the CCS response to the Motion for Plan Sanction Orders regarding the tobacco companies in these proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”). It is the CCS position that the CCAA Plans should be modified prior to Court approval and sanction, and that the CCAA Plans should not be sanctioned in their current form. CCS has proposed changes, with recommended text, to: (1) ensure the release is not extended to protect Tobacco Companies from liability for future wrongful

conduct; (2) to restrict promotion; (3) to require public disclosure of internal tobacco company documents provided in provincial lawsuits; (4) to expand the mandate of the Cypres Foundation (“Foundation”) to include programs and initiatives to reduce tobacco use, and (5) to make a series of administrative changes related to the Foundation to improve the Foundation’s operations and impact. All of the CCS proposed changes would be feasible, would advance the public interest.

3. Measures of this nature are not new. They were at the origin of provincial tobacco lawsuits. On June 16, 1997, the BC government announced that Health Minister Joy MacPhail had written to tobacco companies demanding that they stop marketing affecting teenagers, fund programs to discourage teenagers from smoking, disclose documents including regarding market research and health dangers, and pay for health costs, otherwise BC would file a lawsuit (the Minister’s letter is reproduced in Exhibit A). BC would file a lawsuit, becoming the first province do so.
4. In the CCAA Plans, CCS does not object to the allocation of payments among the Claimants. In particular, CCS supports the compensation for individuals for the Quebec Class Action Plaintiffs (“QCAPs”) and the Pan-Canadian Claimants (“PCCs”).

About CCS

5. In my role at CCS, I advocate and manage advocacy to governments to advance public policies to reduce cancer incidence and deaths, and to improve the lives of the people living with cancer. I have worked for CCS for 16 years in roles involving advocacy for public policy, which throughout this period has included advocacy related to tobacco control.
6. Founded in 1938, CCS is a national non-profit charity. CCS achieves its mission through patient services, public education/information, and research, as well as advocacy in relation to relevant public policy issues. The CCS national headquarters is in Toronto.
7. Tobacco use is the leading cause of cancer deaths among both men and women, including about 30% of all cancer deaths. Smoking causes not only lung cancer, but also at least 16 different types of cancer, and many other diseases.

8. CCS has extensive experience and expertise regarding tobacco control, and has been involved dating back to at least the 1960's. CCS has been instrumental in many public policy measures that have been adopted despite tobacco industry opposition. CCS also engages in tobacco-related research, and in public education/information and cessation programmes to reduce tobacco use. The tobacco control expertise of CCS has been recognized by governmental and nongovernmental bodies. Canada is recognized as a world leader in tobacco control.

CCS role in tobacco health care cost recovery lawsuits and class actions

9. CCS has for decades supported tobacco class actions and provincial government health care cost recovery lawsuits, as well as other product liability claims against the tobacco industry. CCS has supported provincial legislation that has facilitated such lawsuits, and has urged that provinces file tobacco health care lawsuits. CCS has attended court hearings in many of these cases in multiple provinces as an observer, and before the Supreme Court of Canada, regarding various pre-trial issues. I am advised by counsel: that in 1997, CCS spoke publicly at the announcement by B.C. Premier Glen Clark and Minister of Health Joy MacPhail that B.C. would be the first province to file a tobacco health care claim should the tobacco industry not comply with government demands, which the industry did not do; and that in 1999, CCS organized a national meeting in Montreal for lawyers to encourage litigation against the tobacco industry.

The U.S. tobacco health care lawsuit settlement experience

10. Health care cost recovery lawsuits in Canada are inspired by the U.S. experience, which included 1997 and 1998 individual state tobacco health care settlements in Mississippi, Florida, Texas, and Minnesota; a Master Settlement Agreement for 46 states, the District of Columbia and US territories in November 1998; and a 1997 Proposed Resolution that was not in the end implemented. Information about the U.S. settlements is publicly available.
11. The U.S. settlements included compensation, with an estimated US\$245.5 billion to be payable to state governments over 25 years. The settlements also included public health tobacco control measures, thus illustrating how tobacco control measures could be included in a Canadian settlement. It should be recognized that the tobacco control measures in the

U.S. settlements were agreed to in a different context, a context that was in the U.S. and that was more than 25 years ago.

12. A summary prepared by CCS of public health measures in the U.S. tobacco settlements provides an outline of such measures. This summary is reproduced in Exhibit B to my Affidavit, and states that tobacco control measures in the various U.S. settlements include:
- Establishing and funding a new independent foundation to do tobacco control (American Legacy Foundation, now called Truth Initiative).
 - Marketing restrictions (eg restrictions on billboards, sponsorship, branded merchandise, cartoon characters, product placement in entertainment media).
 - Public disclosure of/ access to more than 40 million pages of previously secret tobacco industry documents.
 - Restrictions on lobbying, including the dissolution of the lobbying group the Tobacco Institute, and of the “research” organizations, the Council for Tobacco Research and the Council for Indoor Air Research.
 - Ban on initiating most new legal challenges to existing laws of states (or of municipalities or other state political subdivisions).
 - A “look back” provision requiring industry to pay monetary penalties if reductions in youth use do not reach specified targets.

CCS role in the CCAA proceedings to date

13. I am advised by counsel that: counsel for CCS has attended all hearings in the CCAA proceedings to date subsequent to the initial orders, and has appeared on the record for all these hearings except for the first two days of the comeback hearing.
14. Tobacco products are highly addictive. Tobacco products kill when used exactly as the manufacturer intends. The societal goal in Canada is not to maintain tobacco sales, but to reduce sales as quickly as possible and thus prevent disease and save lives. There should not be “business as usual” with more than 46,000 Canadians continuing to die each year from tobacco.
15. The potential for a plan under the CCAA that has weak public health measures is of fundamental concern to CCS.
16. Tobacco companies want to increase tobacco sales or at least to forestall sales declines. CCS wants to minimize tobacco sales. The ultimate objective is to have a tobacco-free society.

Health Canada's objective is to reduce tobacco use to less than 5% by 2035. Tobacco is only legal by historical accident. If tobacco were proposed to be a new product today given what is known about the health consequences, tobacco would never be allowed on the market.

17. Measures in the CCAA Plans to reduce tobacco use will reduce disease and death, will benefit the health of the Pan-Canadian Claimants and tobacco class action members, and will benefit public health in all provinces. All provincial governments have an objective to reduce tobacco use in order to not only to reduce disease and death, but also to reduce health care costs, the underlying reason behind the provincial lawsuits.
18. Attached to my Affidavit are the following Exhibits:

Exhibit A – Letter from BC Health Minister to Tobacco Company CEO's, June 16, 1997, and some associated media coverage.

Exhibit B – Canadian Cancer Society, “Tobacco Control Measures Found in US Tobacco Settlements” July 2019.

Exhibit C – Letter from Canadian Cancer Society counsel Robert Cunningham to counsel for the Monitors, October 30, 2024.

Exhibit D – Letter from Canadian Cancer Society counsel Robert Cunningham to counsel for the Monitors, December 27, 2024, enclosing document dated December 27, 2024, and entitled “Canadian Cancer Society Proposed Changes in Track Changes to Articles 9 and 11 of the First Amended and Restated Court-Appointed Mediator’s and Monitors’ CCAA Plan of Compromise and Arrangement Concerning Imperial Tobacco Canada Ltd.”.

Exhibit E – Letter from Canadian Cancer Society counsel Robert Cunningham to counsel for the Monitors, December 30, 2024, enclosing document dated December 30, 2024, and entitled “Canadian Cancer Society Proposed Changes in Track Changes to Schedule “S” of the First Amended and Restated Court-Appointed Mediator’s and Monitors’ CCAA Plan of Compromise and Arrangement Concerning Imperial Tobacco Canada Ltd. [Schedule “V” of the RBH and JTIM CCAA Plans]”.

Exhibit F – Letter from Canadian Cancer Society counsel Robert Cunningham to counsel to Participants in the Meetings of Creditors, Tobacco Companies, and companies related to the Tobacco Companies, January 3, 2025, enclosing CCS proposed changes dated December 27, 2024, to Articles 9 and 11 of the CCAA Plans [See **Exhibit D to this Affidavit**], and proposed changes dated December 30, 2024, to Schedule “S” of the Imperial CCAA Plan [Schedule “V” of the RBH and JTIM CCAA Plans] [See **Exhibit E to this Affidavit**].

Exhibit G – Letters dated March 2, 2020, August 24, 2021, and January 6, 2023, from the Canadian Cancer Society and other health organizations to the Saskatchewan Government with recipients including Minister of Health, Attorney General, Premier and others. (Similar letters were sent to all provincial governments; letters similar to the earliest of the two letters are available at www.StopBigTobacco.ca)

Exhibit H – Letter from the Canadian Cancer Society and other health organizations to Premiers, May 29, 2023.

Exhibit I – Saskatchewan Amended Statement of Claim, for tobacco health care cost recovery claim, amended October 5, 2012.

Exhibit J – Canadian Cancer Society sample news releases of September 30, 2005, March 4, 2009 and June 8, 2012 regarding provincial tobacco health care cost recovery legislation and litigation.

SWORN by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, on January 20, 2025 in accordance with O. Reg. 431/20, by Administering Oath or Declaration Remotely



Commissioner for Taking Affidavits

KATELIN Z. PARKER

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**

Signed by:
Kelly Wilson Cull
1EA0CCD7714F42F...

KELLY WILSON CULL

List of Exhibits to Affidavit

Exhibit A – Letter from BC Health Minister to Tobacco Company CEO's, June 16, 1997, and some associated media coverage.

Exhibit B – Canadian Cancer Society, “Tobacco Control Measures Found in US Tobacco Settlements” July 2019.

Exhibit C – Letter from Canadian Cancer Society counsel Robert Cunningham to counsel for the Monitors, October 30, 2024.

Exhibit D – Letter from Canadian Cancer Society counsel Robert Cunningham to counsel for the Monitors, December 27, 2024, enclosing document dated December 27, 2024, and entitled “Canadian Cancer Society Proposed Changes in Track Changes to Articles 9 and 11 of the First Amended and Restated Court-Appointed Mediator’s and Monitors’ CCAA Plan of Compromise and Arrangement Concerning Imperial Tobacco Canada Ltd.”.

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This is Exhibit "A" referred to in the Affidavit of Kelly Wilson Cull sworn by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**

THE FOLLOWING LETTER WAS SENT TO THE CHIEF EXECUTIVE OFFICERS
OF THE TOBACCO INDUSTRY IN CANADA ON MONDAY, JUNE 16, 1997:

I am writing to you as one of the Canadian leaders in the multi-national tobacco industry.

As you know, one in four British Columbians is addicted to tobacco products, and fully half of these people will die from tobacco-related causes. Tobacco now causes 5,800 deaths in my province each year, which is more than the total number who die from motor vehicle accidents, homicides, suicides, AIDS and drug use combined.

Ninety percent of smokers start as children or teenagers. Your industry makes about \$1 billion in pre-tax profit in Canada every year, some of it from children addicted to your products.

The tobacco industry in the United States has entered into negotiations with the many state governments that have been pursuing compensation for costs resulting from tobacco products. Through this and other recent actions, the multi-national tobacco industry has implicitly, and in one case explicitly, admitted that tobacco is addictive and responsible for great harm.

In coming days I will be further addressing the damage caused by your industry by announcing new steps to expand British Columbia's *Tobacco Reduction Strategy*.

Today, I am asking you and your company to take responsibility for the harm your product has caused British Columbians, particularly children. Specifically, there are three specific steps which must be taken by tobacco companies if your industry is to finally become part of the solution to the serious problems associated with tobacco use.

First, British Columbia is demanding that your company and your industry stop targeting children and help protect our young people from tobacco. To accomplish this, the tobacco industry must stop all marketing that affects children and teens. Your industry should also begin to fund, on an ongoing basis, intensive public education to prevent tobacco use by children, along with programs to help teens stop smoking.

.../2.

- 2 -

Second, British Columbia demands that your company and your industry provide full public disclosure of what you know about the health dangers of tobacco. This will require tobacco industry executives to publicly acknowledge what we have known for many years: that tobacco is addictive, deadly and causes cancer, lung and heart disease. You should also disclose to the public all ingredients used in tobacco products, disclose all market research documents, including those relating to or directed at teens and young adult smokers, and acknowledge the practice of manipulating nicotine levels to keep smokers addicted to tobacco. In addition, your employees should be allowed to tell the truth about industry research.

Third, British Columbia insists that your company and your industry be accountable for tobacco-related health care costs. This includes providing just compensation to British Columbia's health care system for the treatment costs of tobacco-related illnesses, and for the costs of tobacco prevention and cessation programs designed to help smokers quit and prevent tobacco use by our teens and children.

The Government of British Columbia believes the tobacco industry must do the right thing: leave children alone, tell the truth about what's in tobacco products, and be accountable for tobacco-related health care costs. I ask you not to hide behind highly-paid lobbyists and lawyers, but to take personal responsibility for each of these steps, and to do so immediately.

If the industry begins the process of taking responsibility for the harm your products cause to our young people and to other British Columbians, we will be able to make major progress towards reducing the terrible death and damage which smoking inflicts on British Columbians.

Given the importance of this issue, the Government of British Columbia and all British Columbians expect you to provide a full and prompt response to this letter and to begin the steps necessary, to address these concerns.

If you and your industry do not respond appropriately, my government will take necessary legal action and introduce other measures.

Yours sincerely,



Joy K. MacPhail
Minister

THE LETTER WAS SENT TO THE FOLLOWING:

**Mr. R. Donald Brown
Chairman, President and CEO
Imperial Tobacco Ltd.
3810 St. Antoine Street
Montreal, Quebec
H4c 1B5**

**Mr. Joe Heffernan
President and CEO
Rothmans, Benson & Hedges Inc.
1500 Don Mills Road
North York, Ontario
M3B 3L1**

**Mr. Richard Kauffeld
Chairman and CEO
RJR-Macdonald Inc.
1 Canadian Place
60th Floor - Suite 6000
Toronto, Ontario
M5X 1E8**



9712

NEWS RELEASE

MINISTRY OF HEALTH
1997:124

FOR IMMEDIATE RELEASE
June 16, 1997

B.C. ISSUES DEMANDS TO MULTINATIONAL TOBACCO INDUSTRY - TELL THE TRUTH, QUIT TARGETING CHILDREN: PREMIER

VICTORIA -- Premier Glen Clark and Health Minister Joy MacPhail today challenged the tobacco industry to leave children alone and tell the truth about tobacco products.

"The products of the \$168 billion worldwide industry kill 5,800 British Columbians a year and the number is rising," Clark said.

"Ninety per cent of people who smoke started before age 19. Half of them will ultimately die as a result of smoking. Every day in B.C., 20 kids take up smoking. By targeting kids, the tobacco industry builds long-term customers and profits and sentences our children to shorter, healthier lives.

"It's time to finally go to the source of the problem...the tobacco industry itself. That is why the government is calling on the industry to finally do the right thing."

The health minister has written letters to Canadian CEOs of multinational tobacco companies, telling them it's time to:

- stop all marketing targeted at children and teens and help protect them from tobacco;
- disclose the health dangers of tobacco, all the ingredients used in tobacco products and the manipulation of nicotine levels to keep smokers hooked;
- be accountable for the health care treatment and prevention costs of tobacco-related illnesses.

"In British Columbia, we're all paying half a billion dollars a year to treat the health problems tobacco causes, while the tobacco industry is reaping almost \$1 billion in profits in Canada every year at the expense of our children and thousands of other British Columbians," Clark said.

MacPhail said the challenge to the industry is the first in a series of actions the government is taking to protect children from the tobacco industry and help British Columbians break their addiction to smoking.

MINISTRY OF HEALTH
1997:124

Page Two

MacPhail said she will also be introducing legislation in the House later today that will pave the way for legal action against the tobacco industry, should that prove necessary.

"While putting this legislation in place will enable us to move quickly in that direction, I do not view legal action as the first step we should be taking against the industry," MacPhail said. "But I believe our readiness to take this action will force the industry to consider the other options we are presenting.

"Our government is prepared to consider other revenue measures, such as licensing fees, to ensure the industry pays its share of the cost of smoking prevention and the treatment of tobacco-related illnesses," MacPhail said.

"And while the tobacco industry considers our government's challenge, we will be airing television messages which show how the tobacco industry glamorizes its products, and that the truth about tobacco is very different," she said.

The award-winning messages were produced by the State of Massachusetts and generously provided to British Columbia by the Center for Disease Control in Atlanta. The messages, which focus on the industry's callous disregard for the truth, will air over the next three weeks.

"Just as the problems created by the multinational tobacco industry affect people all over the world, the messages in these television spots are universal," MacPhail said. "Our children shouldn't have to learn the truth about tobacco the hard way, as the people in these ads have done."

- 30 -

For media information, contact:
Communications & Issues Management
(250) 952-1887

News Release Internet Address:
<http://www.hlth.gov.bc.ca/news.html>

Saskatchewan wants provinces to work together against smoking

Canadian Press

Tuesday, June 17, 1997

REGINA (CP) -- Ottawa and the provinces should consider pooling resources to take on large and wealthy tobacco companies in court, Saskatchewan Health Minister Eric Cline said Tuesday.

He praised the British Columbia government's announcement Monday that it will bring in legislation allowing class-action lawsuits against the tobacco industry.

B.C. wants to use its legislative muscle to press for direct compensation for taking care of people with smoking-related illnesses.

But it could be more cost-effective if governments work together to take on the industry, Cline said.

"We, being a relatively small province and the tobacco companies having very deep pockets, perhaps we could work with some of the other provinces or the federal government to take action together."

Cline said he hopes the issue will be put "very near the top of the agenda" when health ministers next meet, likely in September.

Federal Health Minister Allan Rock, who has said he's watching B.C.'s plan with interest, also wants to discuss a co-ordinated approach with the provinces.

A non-smokers' rights groups has warned that tobacco industry lawyers will likely put up a tough fight against the B.C. legislation.

Saskatchewan will consider applying for intervener status to support B.C. in such a court battle, Cline said.

"Anything that would do some good plus would keep the cost to a minimum and not duplicate efforts, I think would be a sensible way of going."

The four Atlantic premiers pledged last month to look into suing tobacco manufacturers for health-related costs of smoking.

Government lawyers in the provinces are determining the best way to proceed.

-----/
B.C. first province to take on tobacco giants

Canadian Press
Monday, June 16, 1997

VICTORIA (CP) -- The B.C. government is taking on the tobacco industry, using its legislative muscle to press for direct compensation for taking care of people with smoking-related illnesses.

It's a first for Canada that will be closely watched by the other provinces.

But it could take well over a decade before British Columbia or any other province collects money from tobacco companies for health care costs, analysts said Monday.

As for hopes the industry will pay up voluntarily, a lawyer familiar with the battle in the United States has two words: Fat chance.

"It will never happen. Not a hope in hell," Eric LeGresley, lawyer for the Non-Smokers Rights Association, said from Ottawa.

Premier Glen Clark and Health Minister Joy MacPhail announced B.C. will bring in legislation allowing class-action lawsuits against the tobacco industry.

The legislation would make it easier for the province to prove its case in court.

The government is also planning tough licensing fees for tobacco manufacturers if they want to sell cigarettes in the province. The money raised would be used for smoking-prevention programs.

"To the tobacco industry I am saying very simply it's time to leave our kids alone and finally to begin to take responsibility for the harm your products inflict upon our citizens," said Clark.

"Our government is calling on the tobacco industry to finally do the right thing."

But the tobacco industry spent seven years taking Canada's law against cigarette advertising to the Supreme Court of Canada.

Industry lawyers can be expected to put up as tough a fight with

every aspect of the British Columbia legislation, said LeGresley.

"In a worst-case scenario, it could take 15 years before British Columbia sees the first penny," and that's only if the province wins, he said.

Health Minister Allan Rock said he's watching B.C.'s plan with interest and will meet with the provinces to discuss a co-ordinated approach in September.

Meanwhile, Nova Scotia Health Minister Jim Smith says he's anxious to see where the B.C. tobacco legislation goes.

"It's a major public health issue," said Smith.

Last month, the four Atlantic premiers pledged to look into suing tobacco manufacturers for health-related costs of smoking. Government lawyers in the provinces are determining the best way to proceed.

Nationally, smoking costs Canadians \$15 billion a year in lost productivity and health care costs.

MacPhail has written to tobacco executives demanding the industry:

- * Stop marketing to children and teens and fund programs to discourage kids from smoking.
- * Disclose all documents showing what the industry knew and when about the health effects of smoking, and admit the industry manipulates nicotine levels to keep smokers addicted.
- * Compensate British Columbia for treatment costs for smoking-related illnesses.

"If you and your industry do not respond appropriately, my government will take necessary legal action and introduce other measures," MacPhail wrote.

But the tobacco makers say the government program is a disguised tax grab.

"We are shocked and enraged by this apparently politically motivated tax grab by the government of British Columbia," said Rob Parker, president of the Canadian Tobacco Manufacturers Council.

Parker said the industry has not advertised at all for most of the last decade and does not market to children.

"It appears that they've (B.C.) imported a U.S. idea that isn't working very well there and is likely to be inapplicable here."

Canadian laws are different, taxes are higher and there are voluntary and legal bans on advertising, added Parker.

Tobacco companies in the United States have been blitzed by the threat of class-action lawsuits from at least 37 states.

The states are expected to present the White House with a tobacco settlement this week. It is expected the industry could end up paying \$300 billion or more.

LeGresley said it's time tobacco companies began taking responsibility for the health costs associated with their industry in the same way as forestry companies have to pay for environmental costs associated with theirs.

At the very least, actions such as British Columbia's could force the industry to develop less hazardous products, he said.

"You change decision-making within the tobacco companies when they're bearing all the costs of the business."

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Canada weighs joint anti-tobacco approach

Reuters

Monday June 16 7:28 PM EDT

OTTAWA, June 16 (Reuter) - Health Minister Allan Rock said on Monday he hoped to discuss a joint approach with Canada's provinces on the issue of suing tobacco companies.

Rock was commenting on legislation announced by British Columbia on Monday that would clear the way for the province to file lawsuits against tobacco firms to recoup medical costs for treating smokers.

`` Similar action to that announced today by the government of British Columbia is also being considered by other provinces," Rock said in a statement. `` I'll be meeting with my provincial colleagues in September, at which time I hope that coordinated approaches between both levels of government can be discussed."

Rock's predecessor, David Dingwall, said in April the government was considering possible lawsuits against the tobacco firms and Rock's spokeswoman Jennifer Lang confirmed that this was under consideration.

`` I don't think he's ruling it out," she told Reuters. `` It's certainly on the table, I think."

`` I'm watching with great interest the decision taken by the government of B.C. to seek damages from Canada's tobacco manufacturers for the costs of smoking-related illnesses," said Rock.

`` It kills over 40,000 Canadians a year. Nationally smoking costs Canada's health care system C\$3.5 billion in direct costs, and overall it's estimated that smoking costs C\$15 billion a year in lost productivity and health care costs.

He added he was willing to provide British Columbia with any data that might be helpful.

Imperial Tobacco Ltd. (IMS.TO), a unit of Imasco Ltd. is the biggest cigarette company in Canada and is 40 percent owned by B.A.T Industries Plc (BATS.L) of Britain.

The second biggest company, Rothmans, Benson and Hedges Inc., is 60 percent owned by Rothmans Inc. (ROC.TO) and 40 percent by Philip Morris Cos Inc. (MO). Rothmans Inc is a unit of Rothmans International Plc (RIN_.L), which is owned by Swiss luxury goods holding company Cie Financiere Richmond AG (RIFZ.S).

Third-ranked RJR MacDonald is wholly owned by RJR Nabisco Holdings Corp. (RN) unit R.J. Reynolds Tobacco International.

American cigarette brands are also sold in Canada.

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Alberta Looks At Following Suit To Combat Smoking

Calgary Sun
Wednesday, June 18, 1997
CREDIT: By JASON van RASSEL
Calgary Sun

The Alberta government is studying whether B.C.'s tough new anti-smoking campaign will work in this province.

"We're looking at it and the potential it may have," Alberta Health spokesman Garth Norris said.

"But at this point in time, we have no plans other than to look."

On Monday, the B.C. government introduced legislation that will make it easier to sue tobacco companies and issued a series of demands to the industry -- most notably that tobacco companies admit the harmful effects of cigarette smoking and pay the \$500 million a year in treatment costs of B.C. smokers.

Diane Colley-Urquhart, who heads the Canadian Cancer Society's Alberta-N.W.T. division, said, "This is a first step, a major step in this country and I think it will put pressure on other provinces.

"We'd certainly be supportive of our (provincial) government doing the same thing here."

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Saskatchewan may join tobacco battle

Wire Service: OTC (COMTEX Newswire)
Date: Wed, Jun 18, 1997

REGINA, Saskatchewan, June 18 (UPI S) -- The Saskatchewan government says it may also sue tobacco companies for medical costs related to smoking. Saskatchewan would join British Columbia, which has introduced an anti-tobacco legislation to recoup millions of health care dollars.

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Ontario to consider following B.C. on tobacco initiative

Canadian Press
Tuesday, June 17, 1997

TORONTO (CP) -- Ontario has not ruled out following British Columbia's lead in pursuing tobacco companies to reimburse the costs of smoking-related illnesses.

But Premier Mike Harris says that's not a priority -- prevention is.

"If we could prevent, discourage people from smoking, it would be a moot point. I think that's our primary goal," Harris said Tuesday.

The B.C. government announced Monday it will take on the tobacco industry and plans to enact legislation that allows direct compensation to be paid to those who care for people with smoking-related illnesses.

Individuals in Ontario have taken similar legal action against tobacco companies but Health Minister Jim Wilson said the government had not made any final decisions.

"Certainly, it's something we'll take a close look at," Wilson said.

"We're not in any way ruling it out. My view would be that we should be taking a national approach.

"We have the toughest tobacco control act in the country, so other provinces have some catching up to do," he said, adding that Ontario has fined more people for selling cigarettes to minors than any other province.

Wilson said there had been discussion on the reimbursement issue at the last provincial health ministers' meeting.

The B.C. legislation would allow class-action lawsuits against the tobacco industry and would make it easier for the province to prove its case in court.

Ontario already has legislation in place permitting class-action lawsuits.

The B.C. government is also planning to implement tough licensing fees for tobacco manufacturers who want to sell cigarettes. The money raised would be used for provincial smoking-prevention programs.

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Harris Chokes On Butt Suits
Premier Says Junk Food, Liquor Just As Harmful As Smoking

Toronto Sun

Wednesday, June 18, 1997
By JAMES WALLACE
Queen's Park Bureau

Premier Mike Harris isn't eager to sue tobacco companies while junk food and liquor firms sell products just as bad for the public.

British Columbia is planning to follow the lead of some state governments in the U.S. by going to court to make tobacco firms pay for smoking-related health costs.

Harris said people consume "alcohol ... foods or other things" that are bad for them and cost the health-care system money.

"I do a lot of things that probably aren't good for my health and smoking, I felt, was one of them and I felt lucky to be able to give it up."

"But I don't know the legalities of being able to hold somebody liable for what in British Columbia is a legal product."

Ontario plans to watch the court battle but will stay on the sidelines for now, Harris said.

"I don't think our goal here is to see how we can raise more money," Harris said.

"I think there's a lot that we should and can be doing and we are doing to try and discourage smoking."

Health Minister Jim Wilson said the issue will be discussed when he meets his provincial counterparts in a few months.

"My view would be we should be taking a national approach," Wilson said.

Class-action suits are already before the courts in this province and the government wants to review those cases before wading into the debate, Wilson said.

"We're not in any way ruling it out ... we want to check out the legalities of it," Wilson said.

Winnipeg Free Press

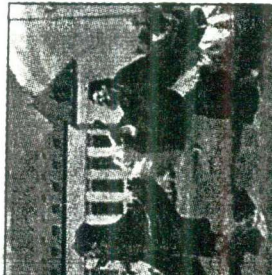
Celebrating 125 years

Tuesday, June 17, 1997

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B.C. targets tobacco

Staff-CP

Manitoba also looking at hitting firms with health costs

THE MANITOBA government has started counting the health costs attributable to smoking here, in light of British Columbia's threat yesterday to make the tobacco industry pay for such expenses.

Health Minister Darren Praznik said he knew a while ago that B.C.'s legislation was coming and asked staff to tally how much Manitoba spends treating people who get sick due to cigarettes.

In a year, Manitoba spends about \$105 million treating people with illnesses directly related to smoking, Praznik said last night.

"We take in \$106 million in tobacco tax revenues, so we're at a wash on hard costs."

British Columbia Premier Glen Clark and Health Minister Joy MacPhail announced yesterday they will bring in legislation allowing class-

action lawsuits against the tobacco industry.

The legislation would make it easier for the province to prove its case in court.

"You look at all your options," Praznik said when asked if he would follow B.C.'s lead and introduce a similar law in Manitoba.

"We want to see if there's something worth pursuing here."

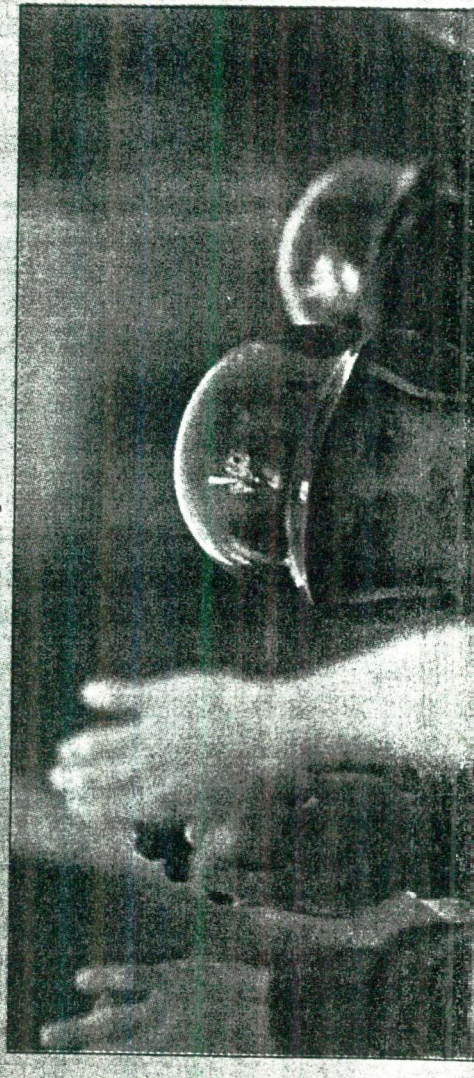
Tobacco makers said B.C.'s plan is disguised tax grab.

"We are shocked and enraged by this apparently politically motivated tax grab by the government of British Columbia," said Rob Parker, president of the Canadian Tobacco Manufacturers Council.

Continued

Please see MANITOBA/A2

Baseball stadium, football scores



Merchants won't put up with crooks

Violence met with violence

By Doug Nairne
Philips Reporter

Resisting thugs risky/ A8

WJ

Digest

CONSUMER WATCH

Car TV patented

We are all accustomed to watching movies or television programs on a plane. But what about in a car?

A Japanese inventor wants to install television screens that car passengers — but not drivers — can watch as they ride.

Tsuyoshi Todoriki, who works for Nissan Motor Co., envisions a television monitor housed in a console just above the gear shift. The television screen would probably displace a radio, cigarette lighter or ashtray.

The screen would be made of a liquid crystal filter and would transmit a picture according to the voltage applied to its surface electrodes. The filter would limit the picture's angle — the area around the driver's seat would receive image transmissions so low that no picture would result.

The filter would interrupt the light from the picture directed toward the driver's seat.

The area around the front seat passenger would receive a high-resolution transmission.

The screen would also have thin horizontal louvers attached to its surface.

DEATHS

ATKINSON, Willis Leonard, husband of Eleanor Atkinson.

BEGALKE, Antonia, 87, widow of Emmanuel Begalke.

BRYNJOLFSSON, Lillian, of Tampa, Fla., widow of Krink Brynjolfsson.

De PAULO, John Joseph, 64, of Tyn-dall, husband of Marlene De Paulo.

DUNCAN, Evelyn Amy, widow of Bill Duncan.

EDWARDS, Jackson, husband of Elaine Edwards.

GALLANT, Lynda Sharon, wife of Stanley Gallant.

GREGOIRE, Guy Claude, husband of Linda Gregoire.

HAMILTON, Donald Walter.

KADYNIUK, Fredrick Modest, 69.

KRUPA, Dennis Nicholas, 62, of Onanole, husband of Olga Krupa.

LANGEVIN, Wilfrid, of Oakville, Ont., widower of Fay Langevin.

LERNER, Arthur H.

LINDBLOOM, Alison Kathleen, 48, wife of Randy Lindbloom.

LOVERING, Noel, of Kamloops, B.C., husband of Elvira (Vi) Lovering.

MATTHEWS, Nelson Everett, 75.

NICOLAS, Julien, 72.

OLCHOWY, John Luke, 77, husband of Mary Olchowy.

PAUL, Joachim, 79.

Manitoba to add up 'soft costs'

Continued from A1

The B.C. government is also planning tough licensing fees for tobacco manufacturers if they want to sell cigarettes in the province. The money raised would be used for smoking-prevention programs.

MacPhail has written to the tobacco firm executives asking they take immediate steps or risk court action from the province. Included in her requests were that they stop marketing to children and teens and fund programs to discourage kids from smoking, and that they provide compensation to British Columbia for treatment costs of illnesses caused by smoking.

Parker said the industry has not advertised at all for most of the last decade and does not market to children.

Praznik said he is interested in British Columbia's bold step to challenge the tobacco industry.

"Ultimately anything that is effective in reducing young people in becoming addicted to tobacco is worth pursuing."

Praznik said on the face of it, the move sounds good, but he wants a sober review of the legislation to see if there are options for Manitoba. Manitoba will be watching what, if any, success B.C. has in shaking some co-operation out of the firms.

The costs the Manitoba government tallied include doctors' visits, time spent in hospital and home-care expenses of people with smoking-related illnesses. The costs were tallied by following cases, for example, of smokers who developed lung cancer, Praznik said.

sick to work, he said.

B.C.'s step is a first for Canada that will be closely watched by the other provinces.

But it could take well over a decade before British Columbia or any other province collects money from tobacco companies for health-care costs, analysts said yesterday.

As for hopes the industry will pay up voluntarily, a lawyer familiar with the battle in the United States has two words: Fat chance.

"It will never happen. Not a hope in hell," Eric LeGresley, lawyer for the Non-Smokers Rights Association, said from Ottawa.

The tobacco industry spent seven years taking Canada's law against cigarette advertising to the Supreme Court of Canada.

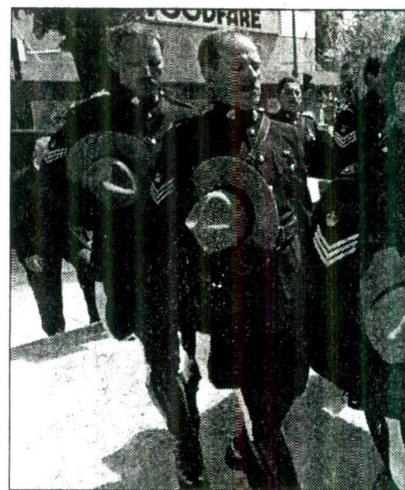
Industry lawyers can be expected to put up as tough a fight with every aspect of the British Columbia legislation, said LeGresley.

"In a worst-case scenario, it could take 15 years before British Columbia sees the first penny," and that's only if the province wins, he said.

Federal Health Minister Allan Rock said he's watching B.C.'s plan with interest and will meet with the provinces to discuss a co-ordinated approach in September. Meanwhile, Nova Scotia Health Minister Jim Smith says he's anxious to see where the B.C. tobacco legislation goes.

"It's a major public-health issue," said Smith.

Last month, the four Atlantic premiers pledged to look into suing tobacco manufacturers for health-related costs of smoking. Government lawyers in the provinces are determining the best route to sue.



RCMP officers carry Knowles' coffin

Knowles' int

Continued from A1

But if the mourners were an eclectic group one was shy about pulling out Knowles' coffin for those less privileged and his left roots. leader Alexa McDonough read from Scripture.

And Rev. Dr. Eleanor Geib, minister of the north United Church, made a plea to the assembled politicians of various stripes to end poverty and the unemployment of young a

"But it's incumbent on each and every of us," she said, before going on to read a poem Knowles, also a United Church minister, us funerals.

Knowles, called the conscience of Parliament represented Winnipeg North Centre from 1984 for all but four years.

Temporarily derailed during the Diefent

'Be nice' to Homolka, inmates told

Montreal

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THE WINNIPEG SUN Tuesday, June 17, 1997 5

Filmon eyes anti-cig law

Would allow gov'ts to sue tobacco firms

TOM BRODBECK

Legislature Reporter

The Filmon government will review legislation announced in British Columbia yesterday that would allow government to sue tobacco companies for costs linked to cigarette smoking.

"We know that it is hazardous to (people's) health and we know that the costs and consequences of that are borne by the taxpayers at large," said Premier Gary Filmon yesterday. "We're interested in doing anything we can to prevent young people and people in general from smoking."

The proposed legislation is designed to allow government to team up with groups and individuals to wage class-action suits against tobacco companies to recoup health-care costs.



■ **DOER: Lauds move**

Legal opinion

Filmon said his justice officials will review the bill first before deciding whether to follow B.C.'s lead.

"We're going to be reviewing this from a legal perspective to see what potential it

might hold for us or any other government in Canada," said Filmon. "We're not sure how it will work and that's why we want some legal review and opinions on it."

Manitoba's health-care system spends about \$103 million a year treating ailments directly related to smoking.

That figure does not include diseases or illnesses caused in part by smoking.

The province expects to take in about \$106 million in tobacco taxes this year.

'Positive legislation'

NDP Leader Gary Doer said he supports the B.C. legislation, adding he's pleased the Filmon government is taking a serious look at it.

"It looks like very positive legislation," said Doer. "Governments are paying money for emphysema and cancer and other diseases that are caused by cigarette smoking."

The B.C. program would follow the lead of more than 37 American states that have filed lawsuits to recover billions of dollars in compensation for health-care costs.

But tobacco makers say the B.C. government program is just a disguised tax grab.

"It appears that they've imported a U.S. idea that isn't working very well there and is likely to be inapplicable here," said Rob Parker, president of the Canadian tobacco Manufacturers council.

—With CP

Should Manitoba follow B.C.'s lead in plan to sue tobacco companies? See Feedback on page 8.

Atlantic premiers look at suing tobacco companies

Canadian Press
Monday, May 26, 1997

ST. JOHN'S, Nfld. (CP) - Bouyed by promising developments in the United States, the Atlantic premiers have agreed to look into the possibility of suing tobacco manufacturers for the health-related costs of smoking.

"Given the momentum that is growing towards receiving monies from the manufacturers of cigarettes for the appalling damage that they do to people, it is important that we look at what we ... can do," Nova Scotia Premier John Savage said Monday.

The four Atlantic leaders will ask their attorneys general to consider the legal avenues available to them. Meanwhile, they'll seek support from their colleagues on the issue during the annual premiers' conference.

The B.C. government has already said it is looking at suing cigarette companies to recover taxpayers' money it spends looking after people with smoking-related illnesses - and it's asked the other provinces to join in.

Lawyers for the NDP government have looked at 30 anti-smoking suits south of the border, including states suing tobacco companies to recover health-care costs.

B.C. Health Minister Joy MacPhail has said tobacco costs the province \$500 million annually, primarily in treatments for heart disease and cancer. British Columbia collected \$516 million in tobacco tax revenues in 1995.

The Atlantic premiers did not release estimates on the regional costs of health-related illnesses, nor in the benefits of taxing tobacco sales.

At least 23 U.S. states have reached a settlement with Liggett and Myers, the Delaware-based maker of the Chesterfield and Lark brands of cigarettes.

In the settlements, Liggett agreed to help in lawsuits against other tobacco companies. The states are claiming the industry owes them hundreds of millions of dollars in smoking-related damages.

Liggett also agreed to label its cigarettes addictive, to admit they cause cancer, and to pay the states millions of dollars over the next 25 years if the company is sold.

Liggett executives acknowledged tobacco companies targeted youth in advertising and they promised to avoid such campaigns in the future.

Alaska's attorney general, Bruce Botelho, has called the

settlement "the civil equivalent of turning state's evidence.

"It's access to documents that had been confidential, which confirm what I would call a conspiracy to suppress the truth about tobacco and the conspiracy to target young people," he said earlier this month.

Other companies are also discussing settlements. Philip Morris and R.J. Reynolds are negotiating with states' attorneys general to end litigation against the industry by paying billions of dollars over 25 years.

In another important case, a Florida jury awarded \$750,000 to a 37-year-old man last fall, ruling the Brown and Williamson Tobacco Corp. is liable for his lung cancer. A similar case was previously overturned on appeal.

In Canada, a Vancouver man who lost limbs to a disease he claims was caused by smoking launched a similar suit in 1988. It has not yet gone to court.

And in 1995, four Ontario residents filed a class-action suit against Canada's three largest tobacco companies: Imperial Tobacco Ltd., Rothmans, Benson and Hedges Inc. and RJR Macdonald Inc.

This is Exhibit “B” referred to in the Affidavit of Kelly Wilson Cull sworn by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**

Tobacco Control Measures Found in US Tobacco Settlement Agreements

Canadian Cancer Society
July 2019

Introduction

In 1997 and 1998 in the US, there were a series of tobacco litigation settlements involving state governments and tobacco manufacturers:

Proposed Global Settlement, not in the end implemented	June 20, 1997	
Mississippi	July 2, 1997	
Florida	August 25, 1997	
Texas	January 16, 1998	
Minnesota	May 8, 1998	link
Master Settlement Agreement (MSA), signed by 46 states, D.C. and U.S. territories	November 23, 1998	link

The Proposed Global Settlement of June 20, 1997, agreed to by tobacco manufacturers, would have affected private class actions and individual lawsuits in addition to state medicare cost recovery lawsuits. This Proposed Settlement was not in the end adopted because Congress did not enact necessary legislation.

The U.S. state medicare settlements included compensation, with US\$245.5 billion payable to state governments over 25 years. The settlements also included tobacco control measures. It should be recognized that these tobacco control measures were agreed to in a different context, a regulatory context that was in the U.S. and that was more than 20 years ago.

This note provides an outline of tobacco control measures in the U.S. tobacco settlements. The listing is not exhaustive. Tobacco control measures in the settlements included:

- Establishing and funding a new independent foundation to do tobacco control (American Legacy Foundation, now called Truth Initiative).
- Marketing restrictions (eg restrictions on billboards, sponsorship, branded merchandise, cartoon characters, product placement in entertainment media).
- Public disclosure of/ access to more than 40 million pages of previously secret tobacco industry documents.
- Restrictions on lobbying, including the dissolution of the lobbying group the Tobacco Institute, and of the “research” organizations, the Council for Tobacco Research and the Council for Indoor Air Research.
- Ban on initiating most new legal challenges to existing laws of states (or of municipalities or other state political subdivisions).
- A “look back” provision requiring industry to pay monetary penalties if reductions in youth use do not reach specified targets.

Funding of Tobacco Control

- Establishment of an independent charitable foundation to support reducing youth tobacco use and substance abuse and the prevention of diseases associated with tobacco use (American Legacy Foundation, now Truth Initiative, www.truthinitiative.org) (MSA, s. VI(a)).
- Industry pays \$25 million per year for ten years to the Foundation; individual company payments to be based on market share (MSA, s. VI(b)).
- Industry also to pay about \$300 million per year for 5 years for a National Public Education Fund to be conducted by the Foundation; individual company payments to be based on market share (MSA, s. VI(c)).
- Foundation to have a Board of Directors comprised of 11 directors. The National Association of Attorneys General, the National Governors' Association and the National Conference of State Legislatures shall each select two directors. These 6 directors shall choose 5 additional directors, one of which shall have expertise in public health, and 4 of the additional directors shall have expertise in medical, child psychology or public health disciplines (MSA, s. VI(d)).
- The Foundation's activities to include:
 - Carry out a nationwide, sustained advertising and education program to counter youth tobacco use and educate consumers about the cause and prevention of diseases associated with tobacco use (MSA, s. VI(f)(1)).
 - Develop, disseminate and test the effectiveness of model advertising and education programs (MSA, s. VI(f)(2)).
 - Develop and disseminate criteria for effective cessation programs (MSA, s. VI(f)(4)).
 - Commission studies, fund research and publish reports on factors that influence youth smoking and substance abuse, and develop other youth prevention programs (MSA, ss. VI(f)(5)-(6)).
 - Track and monitor youth smoking and substance abuse with a focus on reasons for increases or failures to decrease tobacco and substance abuse rates and actions that can be taken (MSA, s. VI(f)(9)).
 - Provide grants to states and political subdivisions (MSA, s. VI(g)).
- In fiscal 2018, the Truth Initiative had expenditures of US\$111 million (C\$148 million).
- Note that in 2003 with American Legacy Foundation funds, the Legacy Tobacco Documents Library was established at the University of California, San Francisco, and is now called the Truth Initiative Tobacco Documents Library.

Proposed Settlement

- Under the Proposed Settlement (Title VII), tobacco control funding was determined as follows (\$ million), with payments in perpetuity:

	Year 1	Year 2	Year 3	Year 4	Year 5+
mass media education campaign to be conducted by new independent foundation	500	500	500	500	500
cessation initiatives	1,000	1,000	1,000	1,000	1,500
youth tobacco reduction	125	125	125	225	225
FDA obligations/enforcement (including grants to states for enforcement)	300	300	300	300	300
Community action based on ASSIST program	75	75	100	125	125
research/development to reduce tobacco use	100	100	100	100	100
replace tobacco sponsorships with "Quit" theme*	75	75	75	75	75
Total	2,175	2,175	2,200	2,325	2,825

*After 10 years, the \$75 million to replace tobacco sponsorships to be reallocated to mass media campaigns (50%), enforcement (25%) and community action (25%).

- Under the Proposed Settlement, there would also be a \$25 billion public health trust fund for tobacco-related medical research.

Minnesota Settlement

- In the Minnesota Settlement, an independent public health foundation was established and funded through the settlement (Minnesota Settlement, s. II.C.). The foundation is called ClearWay Minnesota and is funded through 3% of the funding from the settlement. ClearWay Minnesota has continuously been in operation since being established in 1998. The total expenses in fiscal 2018 were US\$15.2 million (C\$20.3 million) with Minnesota having a population of 5.6 million. The Board of Directors includes members appointed by the state Governor, House Speaker, Senate Majority Leader and Attorney General respectively. The Board of Directors includes members with a public health background. See www.clearwaymn.org.
- The Minnesota Settlement (s. VIII.A) also included
 - \$102 million in a separate account to fund cessation programs in Minnesota, to be administered as ordered by the Court.

- \$100 million into a national research account (\$10 million per year for 10 years, with payments based on market share), with 70% envisioned for research grants related to eliminating youth tobacco use, and 30% for other tobacco control purposes, though the administrator of the national research account would have the discretion to change the allocation.
- Note that \$102 million cessation amount and the \$100 million research amount were later rolled into funding for ClearWay Minnesota.

“Look Back” Provision

Tobacco companies will be required to assume responsibility to reduce tobacco use by youth under age 18 through a “look back” provision (Proposed Settlement, Title II, App. V).

- Sets reduction targets of underage use, with industry to pay an \$80 million surcharge for each percentage point for which the target is not met. The youth prevalence reduction targets are:
Cigarettes: 5 yrs – 30% 7 yrs – 50%; 10 yrs and after – 60%;
Smokeless Tobacco: 5 yrs – 25%; 7 yrs – 35%; 10 yrs and after – 45%
- The \$80 million is based on the present value of the lifetime profit for a new youth smoker. The amount will be increased or decreased based on average profit per unit earned by the cigarette industry. The surcharge will be reduced to prevent double counting of persons whose smoking had already resulted in the imposition of a surcharge in previous years.
- Establishes an annual cap of \$2 billion on penalty payments for the cigarette industry, with proportionate amounts for the smokeless tobacco industry.
- Amounts received in surcharges shall be provided as grants to states and local government authorities to reduce youth tobacco use, with FDA able to withhold up to 10% for administration.
- Manufacturer may apply to FDA for abatement of up to 75% if company had fully complied with Act, had taken all reasonably available measures to reduce youth tobacco use and had not taken any action to undermine the achievement of required reductions.

(Note that the look back provision was strengthened in the bill of Senator John McCain.)

Marketing Restrictions

Marketing restrictions including restrictions or prohibitions on the following:

- Use of cartoon characters (MSA, s. III(b)).
- Billboards and transit ads, as well as other outdoor advertising not in direct proximity to a tobacco retailer (MSA, s. III(d)).
 - For billboards, states may place own messages discouraging tobacco use/exposure to tobacco smoke for remainder of industry’s billboard lease, at industry expense (MSA, s. III(d)(3)).
- Product placements in movies/entertainment media (MSA s. III(e)).
- Free samples (but not in adult-only facilities) (MSA, s. III(g)).
- Gifts to youth in exchange for proofs of purchase (MSA, s. III(h)).
- Branded merchandise (“brand-stretching”) (MSA, s. III(f), (i)).

- Brand borrowing, (i.e. using a non-tobacco brand, sports team, entertainment group or celebrity for tobacco branding, eg Rolls-Royce, Rolling Stones) (MSA, s. III(j)).
- Branded sponsorships (eg of sports and arts events/facilities) (MSA, s. III(c)).
- Direct and indirect targeting of youth (MSA, s. III(a)).
- Minimum pack size of 20 cigarettes to December 31, 2001, and not oppose legislation to this effect afterwards (MSA, s. III(k)).
- Industry agreements with third parties (eg media companies) prohibiting advertising discouraging tobacco use, exposure to tobacco smoke (MSA, s. III(d)(4)).

Additional Marketing Restrictions

(Proposed Settlement, Title I(A), App. VII)

- All marketing restrictions in 1996 FDA tobacco rule including regarding sponsorships, brand-stretching, brand borrowing, limiting ads to FDA specified permitted media, requiring permitted ads to be in black text on a white background (except in adult-only facilities and adult publications), providing non-tobacco items or gifts based on proofs of purchase (the FDA rule was not in effect due to litigation).
- Ban use of human images and cartoon characters in all tobacco advertising and packaging.
- Ban all outdoor advertising, including ads directed outside a retailer.
- Ban Internet advertising.
- Restrict advertising at point of sale.
- Ban payments for product placement in movies, TV programs and video games.

Disclosure of Tobacco Company Documents

- Tobacco manufacturers will place on a website at their expense all non-privileged documents and indices produced in state lawsuits, and maintain this website until June 30, 2010 (about 12 years). Minimum standards for indexing and search features on the website were specified. An electronic version of website content is to be provided to the National Association of Attorney Generals (MSA, s. IV, Exhibit I).
- Requires the industry to add all documents produced in future civil actions until June 30, 2010 (MSA, s. IV(e)).

Disclosure provisions in Proposed Settlement (App. VIII)

- Industry would establish and maintain at its expense a document depository in the Washington, D.C. area open to the public. Certain document indices shall be placed in depository in electronic and hard-copy form. No documents in the depository shall have any confidential designation of any kind.
- Tobacco manufacturers and trade associations to provide to the depository all documents provided on discovery as well as any additional documents discussing or referring to health research, addiction or dependency, safer/less hazardous cigarettes, studies of the smoking habits of minors and the relationship between advertising or promotion and youth smoking.

- There is a continuing disclosure obligation to provide all future research on health and safety of tobacco products to the FDA and, subject to legitimate trade secrets, to the document depository. The continuing disclosure to the document depository also applies to all documents from manufacturers and trade associations referring to the relationship between advertising and promotion and underage smoking.
- A process is established for judicial determination of legitimacy of claims of privileges or protections, including attorney-client privilege, and work product and trade secret protections. If a claim of privilege is not upheld and if the claimant did not have a good faith factual and legal basis for an assertion of privilege, then costs and attorneys' fees shall be assessed, and additional costs and sanctions may be imposed.
- All documents placed in the depository shall be deemed to be produced for any U.S. litigation.

Disclosure provisions in Minnesota Settlement

- The industry shall maintain at its expense the Minnesota Depository for 10 years. BAT shall maintain at its expense the Depository at Guildford, U.K. (or other alternative appropriate location) for a period of 10 years. All documents produced on discovery by the industry, and for which no privilege is claimed, shall be provided to the Depositories. The Depositories shall be open to the public (Minnesota Settlement, s. VII).
- At the end of 10 years, or sooner at the state's discretion, the documents in the Minnesota Depository shall be transferred to the State Archives (Minnesota Settlement, s. VII.E).
- Industry shall provide to the state for the Depository a copy of all CD-ROMs of documents that do not contain any privileged documents or information (Minnesota Settlement, s. VII.F).
- Continuing obligation on industry to produce to the Depository all documents produced by industry in other US smoking and health litigation that are not privileged and not covered by a protective order (Minnesota Settlement, s. VII.G).
- Industry obligation, extending original discovery request, to produce documents in discovery pertaining to state legislation or executive action relating to tobacco Minnesota is extended beyond August 17, 1994 to date of settlement, May 8, 1998 (Minnesota settlement, s. IV.4.).

Suppressing Research

- Prohibits manufacturers from jointly contracting or conspiring to:
 - Limit information about the health hazards from the use of their products
 - Limit or suppress research into smoking and health
 - Limit or suppress research into the marketing or development of new products (MSA, s. III(q)).

Restrictions on Legal Challenges to Tobacco Control Laws

- Ban on initiating new legal challenges to existing tobacco control laws of states, or of municipalities or other state political subdivisions, with some limited specified exceptions (MSA, s. V, Exhibit M).
- Ban on legal challenges on future legislative proposals or rules on certain specified tobacco control issues (MSA s. III(m), Exhibit F; Minnesota Settlement s.IV.A.1, Sched. B).

Restrictions on Lobbying

- Dissolution of Tobacco Institute, Council for Tobacco Research, and the Council for Indoor Air Research (MSA, s. III(o)); (Proposed Settlement, Title I(G), App. IV, with provisions to dissolve TI and CTR).
- Require all records of these organizations that relate to any smoking and health litigation to be preserved (MSA, s. III(o)(4)).
- Provides regulation and oversight of any new trade organizations (MSA, s. III(p); Proposed Settlement, Title I(G), App. IV).
- The industry may not reconstitute the Council for Tobacco Research or its function in any form (Minnesota Settlement, s. VI).
- Industry will not lobby to weaken terms of settlement (MSA, s. III(m)(3)).
- Industry will not lobby to support or cause to be supported any diversion of settlement proceeds to any program or use that is neither tobacco-related nor health-related, including in any future legislative appropriation of settlement proceeds (MSA, s.III(n)).
- All lobbyists (and third parties engaging in lobbying on behalf of a manufacturer) will not support or oppose legislation or government action without the manufacturer's express authorization (Proposed Settlement, Title I(G)).
- Public disclosure of lobbying fees for lobbying at state or local level, and of payments to third parties if payment is in part to attend or participate at state or local government hearing in Minnesota in any way related to tobacco (Minnesota Settlement, s. IV.B.).
- Disclosure at request of Attorney General of any lobbying fees at state or local level (if state has no laws regarding disclosure of financial contributions regarding lobbying activities) (MSA, s.III (m)(B)).

Additional Measures

(Proposed Settlement)

- Package health warnings in black and white covering top 25% of front and back of cigarette packages (Title I(B)).
- FDA authority regarding testing, reporting and disclosure of tobacco smoke constituents, including on packages (Title I(B)).
- Measures in FDA rule on youth access: minimum age 18; require photo identification of anyone under 27; require all sales to be face-to-face transactions; ban sales from opened packages; minimum cigarette package size of 20; ban free sampling (the FDA rule was not in effect due to litigation) (Title I(C)).
- Ban vending machines (Title I(C)).

- Ban self-service displays except in adult-only facilities (Title I(C)).
- Federal tobacco retail licence requirement, licensing fees, and suspension/revocation of licences for certain offences (Title I(D), App. II).
- FDA authority to make product standards and regarding product claims (Title I(E)).
- Provisions regarding ingredient disclosure to FDA and to public (Title I(F)).
- Establish a national rule under Occupational Safety and Health Administration authority to ban smoking in indoor buildings regularly entered by 10 or more individuals at least one day per week, with an exception for independently ventilated designated smoking areas. No employee shall be required to enter the designated smoking area while smoking is occurring. There would be an exemption for restaurants (but not “fast food” restaurants), bars, private clubs, hotel guest rooms, casinos, bingo parlors, tobacco merchants and prisons. (Title IV).

Protection for whistleblowers

- Provide whistleblowers in tobacco industry with maximum protection available under current federal statutes (Proposed Settlement, Title I(G)).

“Most favoured nation” provision

- If a later settlement with another state contained a better provision, than that provision would also be effective for the earlier settlement (Missouri Settlement, para. 7; Florida Settlement, s. IV; Texas Settlement, s. 16; Minnesota Settlement, s. III.D.; see also MSA, s. XVIII(b)).

Enforcement of settlement

- Provides court jurisdiction for implementation and enforcement (MSA, s. VII(a)).
- If the court issues an enforcement order enforcing the agreement (e.g. injunctive relief) and a party violates that order, the court may order monetary, civil contempt or criminal sanctions to enforce compliance with the enforcement order (MSA, s. VII(b),(c), Exhibit L, Model Consent Decree, s. VI(A)).
- Key public health provisions of the agreement are included in consent decrees to be filed in each state (MSA, Exhibit L, Model Consent Decree).
- Mandates payment to states of costs and attorney fees for violations of consent decree (MSA, Exhibit L, Model Consent Decree).
- Allows states access to company documents, records and personnel to enforce the agreement (MSA, s. VII(g)).
- For exports, each cigarette package shall have a visible indication that distinguishes the package from packages intended for sale in the US (MSA s. XVIII(ee)).

This summary has been prepared drawing on the settlement agreements, as well as other documents summarizing the settlements.

This is Exhibit “C” referred to in the Affidavit of Kelly Wilson Cull sworn by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**



Canadian Cancer Society
Société canadienne du cancer

October 30, 2024

BY EMAIL

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto, Ontario M5V 3J7
Attention: Natasha MacPharland and Chanakya A. Sethi

CASSELS BROCK & BLACKWELL LLP

40 Temperance St. – Suite 3200
Toronto, Ontario M5H 0B4
Attention: Shayne Kukulowicz and Joseph Bellisimo

BLAKE, CASSELS & GRAYDON LLP

199 Bay Street, Suite 4000
Commerce Court West
Toronto Ontario M5L 1A9
Attention: Pamela L J. Huff and Linc Rogers

Re: Tobacco CCAA Proceedings, Motions for a Claims Procedure Order and Meeting Order to be heard October 31, 2024

Dear Counsel for the Monitors:

On behalf of the Canadian Cancer Society (CCS), I am writing further to my October 23, 2024, email regarding concerns of the CCS with the proposed CCAA Plans in connection with the tobacco CCAA proceedings. I will take this opportunity to put some of CCS's concerns in writing.

CCS does not oppose the motions of the Monitors for a Claims Procedure Order and Meeting Order on a without prejudice basis to its position in any other motion including the sanction hearing, if applicable.

CCS is of the view that changes should be made to the CCAA Plans prior to final approval and sanction. This letter provides a short summary overview of some important issues for the Court to consider, and for creditors to consider.

Despite the ongoing damage to public health caused by tobacco, and even though tobacco remains the leading preventable cause of disease and death in Canada, there is nothing in the current CCAA plans that actually reduces tobacco use. While a portion of tobacco company

116 Albert Street, Suite 500, Ottawa, Ontario K1P 5G3

profits would be paid to claimants, otherwise it would be “business as usual” for tobacco companies. In the CCAA context, *Red Cross* involving tainted blood provides a relevant example. It would make no sense that after restructuring the distribution and promotion of tainted blood should continue as before.

Mandate of Cy-près Foundation should be expanded

The mandate of the Cy-près Foundation is extremely narrow, related to research on diagnosis and treatment of tobacco-related diseases. The mandate does not include funding research generally regarding tobacco products or reducing tobacco use, nor other funding for initiatives such as smoking cessation programs or awareness campaigns. Expanding the mandate would increase the benefit of the Foundation for the Pan-Canadian Claimants, as well as for tobacco product consumers generally.

For the Pan-Canadian Claimants, not smoking through quitting smoking and preventing relapse back to smoking reduces the risk for cancer, heart disease, stroke, emphysema and other tobacco-related diseases. Smoking not only causes cancer but smoking status can also substantially reduce survivability if a person contracts cancer. Further, for a person who survives smoking-related cancer, not smoking greatly reduces the risk of subsequent disease, such as a second cancer, heart disease, stroke or emphysema.

In the United States, state governments filed health care cost recovery lawsuits against the tobacco industry similar to the lawsuits filed by provinces in Canada. The 1998 Master Settlement Agreement involving 46 states created a foundation to reduce tobacco use that continues to this day.

Regarding Article 11 in the Plans, some of the drafting may not be in the form that was intended.

Tobacco company documents provided on disclosure should be disclosed

In the provincial lawsuits, extensive tobacco industry documentation has been provided as part of pre-trial discovery. In its lift stay motion dated March 29, 2019, Ontario indicated that it received 8 million documents from tobacco companies on discovery.¹

The Plans are currently silent regarding these documents. The Plans should include a provision for provinces to provide these documents to the Industry Documents Library at the University of California at San Francisco. This library provides online public access to extensive documentation arising from tobacco litigation. Hundreds of academic articles have been published regarding these tobacco documents. These documents are beneficial for the further development and effectiveness of tobacco control policies and programs. Further, the tobacco companies have engaged in a decades-long cover-up; this cover-up should not be further maintained.

¹ Factum of the Moving Party, Her Majesty the Queen in Right of Ontario, Motions to Lift Stays, dated March 29, 2019, returnable April 4-5, 2024, p. 61, para. 60.

As a result of the US state government health care litigation against tobacco companies, more than 40 million pages of tobacco company documents have become public.

The tobacco company documents provided to Ontario and other provinces are an asset. If these documents are destroyed, or are returned to tobacco companies to destroy, the documents will be lost forever. In the CCAA context, an asset of a company should not be simply destroyed.

The Plan would establish a Foundation to conduct research. But at the same time, the Plan would allow the extensive research by tobacco companies regarding smoking knowledge attitudes, and behaviour, as well as tobacco marketing, to be destroyed. This is not coherent. Given their resources, the tobacco companies have carried out the best and most comprehensive tobacco-related research.

Absence of restrictions on tobacco promotion

The Plans contain no restrictions on remaining tobacco promotion. Such promotion is extensive. Many of the earlier Monitor reports for JTI-Macdonald (but not the other two companies) provide specific information on promotional expenditures. For example, in the February 13, 2020, Seventh Report of the Monitor for JTI-Macdonald (the smallest company by market share), \$78.4 million in promotions and marketing expenditure was forecasted to be spent in the 35-week period ending October 2, 2020.²

Restricting tobacco promotion would reduce tobacco use. Moreover, this would reduce tobacco company expenditures and increase company profitability, and thus increase payments to provinces and territories through tobacco company annual contributions.

In the U.S., tobacco promotion restrictions were included in settlements between state governments and tobacco companies.

Business activities consistent with past practice

There are issues with the wording of Article 11 as to whether it enables or protects tobacco industry behaviour that is harmful to the public.

Under Article 11, “Covenants and Other Payment Assurance”, s.11.1(a) states that “[the company] shall use commercially reasonable efforts to operate and carry on business in a manner consistent with its Business Plan [...] and as may be necessary or required in the Ordinary Course of Business of [the company].”

In s.1.1, “Ordinary Course of Business” is defined to mean “[...] the ordinary course of day-to-day business activities and operations of that company consistent with *past practices* [...]” (emphasis added)

² Seventh Report of the Monitor for JTI-Macdonald, p.15 (“promotions and marketing” was not defined).

S.11.1(g) provides that “[the company]” [...] shall not conduct their businesses and operations [...], and/or alter their [...] operational practices, in any manner that circumvents or is adverse to the ability of [the company] to satisfy its obligations under the CCAA Plan including [...] Annual Contributions.”

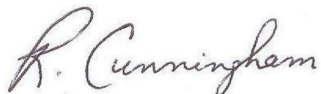
Regardless of the purpose of these provisions, the effect needs to be examined. Do these provisions in the Plans create an obligation or right to carry out business activities consistent with tobacco company past practices? The past practices of tobacco companies have been extremely detrimental: misinformation to the public and to governments, lobbying against tobacco control laws, misleading advertising, and wrongdoing of many kinds. Does the current wording in Article 11 enable tobacco companies to engage in tortious and detrimental activity consistent with past practices? It appears that clarifications/modifications to Article 11 would be necessary for public protection.

Other issues

- The structure of the Plans is such that future smokers through their product purchases will generate profits for tobacco companies to provide compensation for past claimants. Despite this, through the Foundation or otherwise, the Plans contain no action measures to reduce tobacco use among future smokers, or to prevent youth and others from starting to use tobacco.
- The Plans provide that alternative products such as electronic cigarettes will be separated from tobacco companies and placed into a new company. It is unclear from the Plans, however, the extent that the tobacco company and the new company could share costs, or have a service agreement, such as related to distribution, retail salespersons, marketing, warehousing, etc. Inappropriate cost sharing could have an adverse impact on the tobacco company’s annual contributions.
- The Canadian Cancer Society was not a participant in the mediation, and thus was only able to begin reviewing the Plans of approximately 1400 pages long following public release on October 17, 2024. Further review of these Plans will continue.

We would be pleased to elaborate on the important issues raised in this letter, and to work with the Court-Appointed Mediator, the Monitors and the parties regarding potential modifications to the Plans.

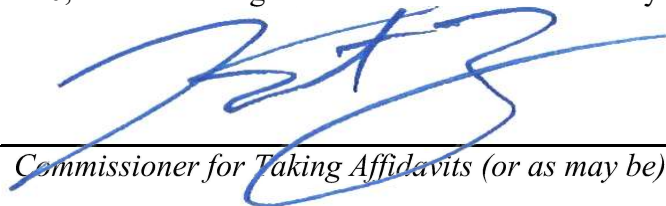
Yours truly,



Robert Cunningham
613-762-4624

cc. Vern DaRe, Fogler, Rubinoff LLP

This is Exhibit “D” referred to in the Affidavit of Kelly Wilson Cull sworn by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**



Canadian Cancer Society
Société canadienne
du cancer

December 27, 2024

BY EMAIL

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto, Ontario M5V 3J7
Attention: Natasha MacParland and Chanakya A. Sethi

CASSELS BROCK & BLACKWELL LLP

40 Temperance St. – Suite 3200
Toronto, Ontario M5H 0B4
Attention: Shayne Kukulowicz and Joseph Bellisimo

BLAKE, CASSELS & GRAYDON LLP

199 Bay Street, Suite 4000
Commerce Court West
Toronto Ontario M5L 1A9
Attention: Pamela L J. Huff and Linc Rogers

Re: Proposed Tobacco CCAA Plans

Dear Counsel for the Monitors:

On behalf of the Canadian Cancer Society (“CCS”), I am writing further to my oral submissions made at the hearing on October 31, 2024, and to my October 30, 2024, letter to you regarding concerns of the CCS with the proposed CCAA Plans in connection with the tobacco CCAA proceedings. My letter of October 30, 2024, is enclosed.

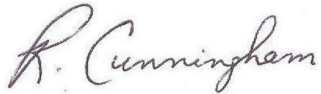
Also enclosed please find a document with proposed changes to the CCAA Plans as outlined in track changes made to the First Amended and Restated Plan for Imperial Tobacco Canada Ltd. dated December 5, 2024 (the same changes are proposed for the CCAA Plans regarding RBH and JTIM). The rationale underlying these proposed changes is also set out in the document. Some of the proposed changes are administrative in nature, while others are more substantive.

It is noted that the Amended and Restated Plans dated December 5, 2024, include an expansion of the limited scope of the mandate of the Foundation to include tobacco-related research. This is acknowledged. However, we would urge that further changes to the CCAA Plans, as outlined in the enclosures to this letter, be made. CCS is of the view that changes should be made to the CCAA Plans prior to final approval and sanction.

116 Albert Street, Suite 500, Ottawa, Ontario K1P 5G3

We would be pleased to elaborate on the important issues raised regarding the proposed changes, and to work with the Court-Appointed Mediator, the Monitors and the parties regarding potential modifications to the CCAA Plans.

Yours truly,

A handwritten signature in cursive script that reads "R. Cunningham".

Robert Cunningham
613-762-4624

cc. counsel for the Court-Appointed Mediator, Provinces and Territories, PCCs, QCAPs and
Knight class action
Vern DaRe, Fogler, Rubinoff LLP

encl.

Canadian Cancer Society Proposed Changes in Track Changes to Articles 9 and 11 of the First Amended and Restated Court-Appointed Mediator's and Monitors' CCAA Plan of Compromise and Arrangement Concerning Imperial Tobacco Canada Ltd.

December 27, 2024

ARTICLE 9. ESTABLISHMENT AND ADMINISTRATION OF THE CY-PRÈS FOUNDATION

9.1 Purpose of the Cy-près Foundation

The Cy-près Fund will be administered by a public charitable foundation (“**Cy-près Foundation**”) to be established as part of the implementation of the CCAA Plan. The Cy-près Foundation shall be independent and free from any influence or interference by any of the Claimants, Tobacco Companies, Tobacco Company Groups, or any potential or actual beneficiary of the Cy-près Foundation. Although it is recognized that the governance of the Cy-près Foundation will be independent and free from any influence or interference, the Cy-près Foundation shall remain under the jurisdiction of the CCAA Court.

The Cy-près Fund will provide consideration for the full and final settlement and release of all claims and potential claims of PCCs who are not receiving direct compensation payments from the PCC Compensation Plan, and *Létourneau* Class Members who are not receiving direct compensation payments from the Quebec Administration Plan, but will be indirectly benefited by

falling within the scope of the Cy-près Foundation. This broad group of claimants includes the following Persons and any affected family members or estates:

- (a) Smokers suffering from Lung Cancer or Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who are outside the claims period or who smoked less than the requisite Twelve Pack-Years or, in the case of Emphysema/COPD, were not classified as GOLD Grade III or IV or the equivalent;
- (b) Smokers who have tobacco-related harms other than Lung Cancer or Throat Cancer and Emphysema/COPD (GOLD Grade III or IV) or the equivalent; and
- (c) Persons who ~~smoke or have smoked~~use or have used Tobacco Products who have not yet or may never develop a tobacco-related harm.

Rationale

In several cases in Article 9, references to “smoker” are underinclusive and do not include users of smokeless tobacco, nor exposure to secondhand smoke. The definition of “Tobacco Product” includes “smokeless tobacco (including chewing tobacco, nasal snuff and oral snuff)”. The definitions of “Tobacco Claim” and “PCC Claim” refer to the “use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions”. The release provided in Article 18 to the Released Parties is for all Tobacco Claims and for all Tobacco Products. Accordingly, this should be reflected in the establishment of the Cy-près Foundation. Such changes would be administrative in nature. This issue arises in several places in the current text of Article 9, with track changes included in this document where this arises. A proposed new Section 9.11 within Article 9 has been added to include a definition for ease of drafting. This issue also arises in several places in Schedule “S”, “Cy-près Fund: Methodology and Analysis” (Schedule “V” of the RBH and JTIM CCAA Plans).

The guiding principle is that the Cy-près Foundation must maintain a rational connection between the varying circumstances of the diverse group of PCCs and *Létourneau* Class Members covered by the Cy-près Fund and the Cy-près Foundation’s purpose which is to fund research, programs and initiatives focused on improving outcomes in tobacco-related diseases that will provide indirect benefits to such Persons. This guiding principle will apply throughout the duration of the Cy-près Foundation’s existence to the work product generated by the research and the programs and initiatives funded by the Cy-près Foundation.

The payment of the QCAP Cy-près Contribution in the amount of \$131 million shall be the consideration for the full and final settlement and satisfaction of the *Létourneau* Judgment.

Upon the recommendation of the PCC Representative Counsel, the Court-Appointed Mediator and the Monitors and subject to the approval of the CCAA Court, Dr. Robert Bell, MDCM, MSc, FRCSC, FACS, FRCSE (Hon), will be appointed by the CCAA Court to serve as the initial Chair of the Cy-près Foundation. Dr. Bell’s resume and curriculum vitae are attached to the CCAA Plan as Schedule “Q” and Schedule “R” respectively. Should Dr. Bell decline to have his name put forward such other designate as the PCC Representative Counsel, the Court-Appointed Mediator and the Monitors may see fit to recommend will be advanced for consideration by the CCAA Court.

The document entitled “Cy-près Fund: Methodology and Analysis” is attached to the CCAA Plan as Schedule “S”.

9.2 Funding the Cy-près Foundation

The Cy-près Fund shall be paid from the Global Settlement Trust Account and deposited into a segregated interest-bearing trust account or trust accounts (“**Cy-près Trust Account**”) held in the Bank for the benefit of the Cy-près Foundation. The Cy-près Fund shall not be transferred to the Cy-près Foundation until such time as all aspects of the establishment of the Cy-près Foundation as set out in Section 9.4 herein have been given final approval by the CCAA Court, and the Cy-près Trust Account has been duly established in the Bank. Following such time, the Cy-près Fund, including all amounts held in the Cy-près Trust Account, will be transferred to, and held by, the Cy-près Foundation.

9.3 Cy-près Foundation Terms of Reference

The Terms of Reference of the Cy-près Foundation are set out below:

“The Foundation for Improved Outcomes in Tobacco-Related Disease” (FIORD)

Terms of Reference

Introduction: This document describes the terms of reference for the Cy-près Foundation.

Foundation Name: The name of the Cy-près Foundation must relate clearly to the purpose of the Cy-près. The name “**The Foundation for Improved Outcomes in Tobacco-Related Disease**” will serve as the corporate name along with the acronym “FIORD”. This name will be used on the Cy-près Foundation’s website and other presentation materials.

Purpose of the Cy-près Foundation: The Cy-près Foundation’s purpose is to fund research, programs and initiatives focused on improving outcomes in ~~t~~Tobacco-related ~~d~~Diseases. The Cy-près Foundation will indirectly benefit ~~u~~Users of Tobacco Products and their affected family members or estates who are not directly compensated through the Quebec Administration Plan or PCC Compensation Plan. The smokers who are directly compensated (through the Quebec Administration Plan and PCC Compensation Plan) include individuals suffering from Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) as defined in those plans.

The Cy-près Foundation will not make any monetary payments to individuals making claims for tobacco-related harms. Those individuals who are to receive monetary compensation will do so through either the Quebec Administration Plan or PCC Compensation Plan in accordance with the provisions of those plans.

The ~~t~~Tobacco ~~u~~Users who are not directly compensated but will be indirectly benefited by falling within the scope of the Cy-près include the following Persons and any affected family members or estates:

- i) Smokers suffering from Lung Cancer, Throat Cancer or Emphysema/COPD (GOLD Grade III or IV) who are outside the claims period or who smoked less than the requisite Twelve Pack-Years or, in the case of Emphysema/COPD, were not classified as GOLD Grade III or IV or the equivalent.
- ii) Smokers who have tobacco-related harms other than Lung Cancer, Throat Cancer and Emphysema/COPD (GOLD Grade III or IV) or the equivalent.
- iii) Persons who ~~smoke or have smoked~~use or have used Tobacco Products and have not yet or may never develop a tobacco-related harm.

Vision for the Cy-près Foundation: Canadians will experience improved diagnosis, treatment and outcomes for tobacco-related cancers, Emphysema/COPD and other tobacco-related harms.

Mission of the Cy-près Foundation: The Cy-près Foundation will indirectly benefit current, past and future ~~smokers~~Users of Tobacco Products and their families by funding research, programs and initiatives regarding

tobacco-related cancers, Emphysema/COPD and other illnesses and conditions which are reasonably and rationally connected to tobacco-related harms. The research, programs and initiatives that are funded by the Cy-près Foundation will achieve earlier diagnosis, better treatment and improved outcomes for Persons suffering from these diseases.

Values of the Cy-près Foundation: The Cy-près Foundation will focus on: the inherent value of the research, program or initiative from the standpoint of its indirect benefit to Persons covered by the Cy-près and Canadians at large; awareness of the need to maintain a “rational connection” between the work supported by the Cy-près Foundation and the individuals benefitting from the Cy-près; devotion to principles of best evidence and expert peer review; emphasis on collaboration to increase the impact of research funding while limiting Cy-près Foundation overhead costs to maximize the indirect benefit to individuals who fall within the scope of the Cy-près; and, insistence that Cy-près Foundation funded research, programs and initiatives reflect the principles of health equity and opportunity for inclusion of First Nations, Metis and Inuit people.

What Will Be Eligible for Consideration for Support by the Cy-près Foundation: Proposals regarding research, programs and initiatives falling within the scope of the Cy-près will be received by the board of directors of the Cy-près Foundation (“**Foundation Board**”) for consideration for financial or other support from the Cy-près Foundation. ~~Programs and initiatives aimed at reducing or preventing tobacco use in Canada are outside of the scope of the Cy-près because they fall within the purview of the Provinces and Territories, involving policy issues and advocacy. Accordingly, such programs and initiatives will not be considered for funding or other support from the Cy-près Foundation.~~

Rationale

As currently drafted, the mandate of the Cy-près Foundation would be too narrow, and would specifically exclude programs and initiatives to reduce tobacco use. Expanding the mandate would increase the benefit and impact of the Foundation for the PCCs, as well as for Users of Tobacco Products generally.

For the PCCs, not smoking through quitting smoking and preventing relapse back to smoking reduces the risk for cancer, heart disease, stroke, emphysema and many other Tobacco-related Diseases. Smoking not only causes cancer but smoking status can also substantially reduce survivability if a person contracts cancer. Further, for a person who survives smoking-related cancer, not smoking greatly reduces the risk of subsequent disease, such as a second cancer, heart disease, stroke or emphysema. QCAPs who still smoke, or who have quit smoking and may relapse, as well their heirs and other family members would also similarly benefit by not smoking.

An issue in the current CCAA Plans is that tobacco users will through purchases end up paying compensation for past claimants. Yet the Foundation would not be able to fund programs and initiatives to reduce tobacco use.

Reducing tobacco use will benefit Provinces and Territories not only by improving health of the population, but also by reducing future health care costs.

The devastating health effects and health care costs from tobacco are at the origin of provincial HCCR Claims. Tobacco remains the leading preventable cause of disease and death in Canada, causing 46,000 deaths annually.

In the US, state governments filed health care cost recovery lawsuits against the tobacco industry similar to the lawsuits filed by provinces in Canada. The 1998 Master Settlement Agreement involving 46 states created a foundation to reduce tobacco use that continues to this day.

The fact that a proposal requesting funding for research or a program or initiative is received by the Cy-près Foundation for consideration does not mean that it will necessarily be awarded a grant of funding or other support. The decision regarding whether to provide funding for a proposal is within the sole discretion of the Cy-près Foundation. Article 9, Section 9.1 provides that the Cy-près Foundation shall remain under the jurisdiction of the CCAA Court, and is not reviewable once it has received approval by the CCAA Court.

Rationale

This change reflects a proposed change to Article 9, Section 9.6 (outlined below) that the CCAA Court would no longer need to approve the proposed research, programs and initiatives that have been approved by the Foundation. At the same time, it is reiterated that the Foundation is still subject to the jurisdiction of the CCAA Court. This would be an administrative change, as it would modify an administrative change made December 5, 2024.

Early works:

- Establish “**The Foundation for Improved Outcomes in Tobacco-related Disease**” as a tax-exempt charitable public foundation.
- Recruit a neutral and independent board that will provide oversight of the Cy-près Foundation’s strategy for funding research, programs and initiatives supported by the Cy-près Foundation. The Foundation Board will also develop and oversee the financial and investment strategy for the Cy-près Foundation.
- Undertake a process of consultation with interested parties and members of the public across Canada led by the Chair of the Cy-près Foundation to better understand their concerns and gather suggestions for improving outcomes in Tobacco-related Diseases, including improving the present structure for diagnosis, treatment and palliation of Persons suffering from tobacco-related cancers, Emphysema/COPD and other tobacco-related harms.

Rationale

This change regarding the consultation would better reflect the mission of the Foundation. This would be an administrative change as it would modify an administrative change made December 5, 2024.

- Develop a strategic plan for the implementation of the intended activities of the Cy-près Foundation.

Potential Areas of Cy-près Foundation Financial Support:

- Improving methods for screening and diagnosis of tobacco-related cancers.
- Establishing best practices for diagnosis and treatment of tobacco-related cancers, Emphysema/COPD and other tobacco-related harms and increasing the likelihood that Canadians can achieve access to best practice care of these diseases.
- Researching the treatment of nicotine addiction and dependence, and tobacco use in Canada.
- Researching the effective treatment and palliation of tobacco-related diseases.
- Services and supportive health care to reduce the burden on and enhance the health and quality of life of Canadians living with tobacco-related diseases and their families.

Benefit to all Canadians:

- In addition to benefiting Canadians who have ~~smoked~~been Users of Tobacco Products, research funded by the Cy-près Foundation has the potential to determine whether screening of higher risk populations and potentially all Canadians can identify cancers at earlier stages of oncogenesis when treatment is less morbid and potential cure is more likely.
- Expanded learnings from Cy-près Foundation supported research into tobacco-related cancers, Emphysema/COPD and ~~†~~Tobacco-related dDiseases, as well as areas yet to be identified, will provide a collateral benefit to members of the broader Canadian public. In fulfilling the Cy-près Foundation's mandate, it is anticipated that the broader Canadian population will benefit from the knowledge generated by this work.

9.4 CCAA Court Approval of Establishment of Cy-près Foundation

The establishment of the Cy-près Foundation will be subject to the final approval of the CCAA Court after the Cy-près Foundation has been created and the essential requirements have been fulfilled including:

- (a) Drafting the goals, objects and purpose of the Cy-près Foundation;
- (b) Preparing the governing documents which will establish the legal entity that will constitute the Cy-près Foundation in accordance with CRA rules for registered charities;
- (c) Establishing the legal entity of the Cy-près Foundation;
- (d) Drafting the governance structure for the Cy-près Foundation, including matters relating to quorum, voting, frequency of the meetings of the Foundation Board, and other

organizational and governance matters including whether and, if so, to what extent the capital can be encroached upon;

- (e) Pursuant to Article 9, Section 9.5, appointing the requisite Persons who will be responsible for the management and operation of the Cy-près Foundation which, for the sake of ease of reference, shall be referred to herein as the directors of the Cy-près Foundation, who together shall constitute the Foundation Board;
- (f) Applying for and acquiring from the CRA status for the Cy-près Foundation as a registered charity;
- (g) Setting up the requisite management controls and system of books and records; and
- (h) Establishing the Cy-près Trust Account in the Bank.

Once the Sanction Order has been granted, the Cy-près Foundation shall be compliant with all legal, technical and other requirements to enable the establishment of the Cy-près Fund and the registration and operation of the Cy-près Foundation as a charitable public foundation.

It is understood that, after the CCAA Court has rendered the Sanction Order approving the CCAA Plan, the Chair of the Cy-près Foundation may, on an interim basis and consistent with the Terms of Reference of the Cy-près Foundation, proceed to engage in the work of establishing the Cy-près Foundation, including attending to the completion of the essential requirements set out in subparagraphs (a) to (h) above. While undertaking this preliminary interim work, the Chair of the Cy-près Foundation shall keep the Court-Appointed Mediator and the CCAA Plan Administrators apprised of the steps taken and any developments relating to the establishment of the Cy-près Foundation.

The CCAA Plan Administrators will seek an Interim Maintenance Order pertaining to the operation and financial support of the putative Cy-près Foundation pending fulfillment of the above requirements and approval by the CCAA Court.

The Chair of the Cy-près Foundation will be required to seek final approval by the CCAA Court of the Cy-près Foundation once the requisite steps to establish the Cy-près Foundation have been completed. The Chair of the Cy-près Foundation and the CCAA Plan Administrators shall supply reports to the CCAA Court affirming the foregoing.

9.5 Board of Directors of Cy-près Foundation

The Foundation Board shall be comprised of ten neutral and independent directors, including the Chair of the Cy-près Foundation. The directors shall be independent of any proposal submitted to the Cy-près Foundation. In order to provide meaningful representation of the PCCs, the PCC Representative Counsel, in consultation with the Court-Appointed Mediator and the CCAA Plan Administrators, shall nominate five directors (and fill any requisite vacancies thereof) to serve on the Foundation Board. The Chair of the Cy-près Foundation, in consultation with the Court-Appointed Mediator and the CCAA Plan Administrators, shall nominate four directors to serve on the Foundation Board. The appointment of the ten directors to the Foundation Board shall be ~~ratified by the CCAA Plan Administrators and be~~ subject to the approval of the CCAA Court.

Rationale

It is unclear that having the CCAA Plan Administrators approving the directors of the Foundation would be a better approach than consulting with the CCAA Plan Administrators regarding potential directors, the CCAA Plan Administrators having an intermediary role with the CCAA Court, and approval by the CCAA Court. This would be an administrative change as it would modify an administrative change made December 5, 2024.

Foundation Board members shall serve a term of two years as to be further described in the bylaws of the Cy-près Foundation.

9.6 Process for soliciting and selecting proposals for funding by the Cy-près Foundation

The Foundation Board shall establish a secretariat and direct its activities to facilitate the effective and efficient governance, administration and operation of the Cy-près Foundation which will include the solicitation, receipt, review and evaluation of the merits of proposals submitted by individuals and organizations seeking distributions from the Cy-près Fund.

The Foundation Board shall establish the criteria, reflective of the mission of the Cy-près Foundation, for applicants to qualify to receive distributions from the Cy-près Fund. The Foundation Board shall publish requests for proposals soliciting the submission of proposals from interested individuals and organizations seeking financing and support for research, programs and initiatives which fall within the scope of the mission of the Cy-près Foundation. The requests for proposals will specify that a proposal should include, among other things:

- (a) Background information regarding the organization or institution seeking funding, including its history, mission statement, research mandate, strategic plan, goals and objectives;
- (b) The curriculum vitae of the researcher or project manager as applicable to the research, program or initiative to establish that they have the appropriate qualifications and expertise to undertake the research, program or initiative;
- (c) A declaration by the applicant ~~that there is no~~regarding any real or perceived conflict of interest between the applicant's interest in the research, program or initiative and the applicant's private, professional, business and/or public interests;

Rationale

The current wording regarding conflict of interest may in practice be too broad. The current wording might have the unintended effect of rendering a significant proportion of the best researchers ineligible to apply for grants from the Foundation. The best experts are often in high demand. They may be a paid or unpaid member of an expert or advisory committee, such as to a provincial government or to a hospital or other health institution. They may be an occasional consultant or expert witness in court, such as for a provincial government. A researcher may have received travel support to present research results at a conference, or may have received a small honorarium for speaking. A question is even more likely to arise given that very often it is not just an individual researcher who would apply, but a group of researchers. The Foundation Board would be in a position to set a policy as to which interests would render a potential applicant ineligible to apply. For example, a potential applicant receiving funding from a Tobacco Company should be ineligible. A modification here would be an administrative change, given that it would modify an administrative change made December 5, 2024.

- (d) A statement of how the research, program or initiative is aligned with the mission of the Cy-près Foundation;
- (e) A scientific abstract or other description of the research, program or initiative, including methodology and analysis and the expected product or result of the work of the research, program or initiative, together with the expected indirect benefit of the work to the

individuals falling within the scope of the Cy-près and Canadians at large;

- (f) The term (in months/years) for which funding is sought and the proposed start date and end date of the research, program or initiative;
- (g) The amount of funding requested;
- (h) The budget for the expenditure of the funding; and
- (i) Disclosure of the financial accountability policies, administrative systems, procedures and controls in place to ensure the funds distributed from the Cy-près Fund are used appropriately in accordance with the highest ethical and financial standards.

Once proposals are received by the secretariat, the Foundation Board will submit the proposals which it clears to go forward as having met the preliminary requirements to an independent organization for peer review to enable the Foundation Board to determine whether each proposal is sufficiently meritorious to be further advanced in the process for approval. Once cleared through the peer review process, the Foundation Board will ascertain which proposals it wishes to advance, the priority, timing, amounts to be allocated to each successful proposal, and duration or term of a successful proposal to completion, as well as any other pertinent questions. This will include oversight and reporting requirements as well as other conditions attached to a successful grant of funds. The Cy-près Foundation has no duty to grant, nor shall there be any expectation to receive, any financial or other support for any research, program or initiative which is sought from the Cy-près Foundation.

~~Once a proposal is accepted by the Foundation Board, it will be submitted together with supporting materials to the CCAA Plan Administrators for review. The Foundation Board will also provide a copy of the proposal together with supporting materials to the PCC Representative Counsel. If accepted by the CCAA Plan Administrators, the proposal will be submitted with or without a recommendation by the CCAA Plan Administrators to the CCAA Court for approval. Until such time as the final CCAA Court approval is finalized, a proposal shall not be deemed to have been approved.~~

~~The grants submitted by the Foundation Board through the CCAA Plan Administrators for approval by the CCAA Court will be conducted annually. The list of grants shall be prioritized, supported by a strategic plan, a budget and the peer reviews.~~

Rationale

~~This change would remove two paragraphs added by the administrative changes made December 5, 2024, and specifically to remove the newly added provisions that research, programs and initiatives that have been approved by the Foundation Board should subsequently be approved by the Plan Administrators and by the CCAA Court. This would be an administrative change given that it would modify an administrative change made December 5, 2024.~~

~~Respectfully, the Plan Administrators and the CCAA Court may not be well positioned to have the health expertise to review the decisions already made by the Foundation Board following peer review. Further, it would be burdensome, in particular for the CCAA Court.~~

~~The paragraphs at issue here state that all proposed research, programs and initiatives intended to be funded (following peer review and approval by the Foundation Board) would be submitted once per year to the Plan Administrators, and if accepted by the Plan Administrators would in turn be submitted for approval to the CCAA Court. This extended process would create delays and inefficiencies, and would reduce flexibility for the Foundation. There would be delays to have additional layers of approval, and approval could only be done once per year. For example, instead of having different funding streams with different submission and approval timelines, it may be that in order to reduce added delays all research proposals would be subject to internal processes and peer review at the same time, which creates a practical burden instead being spread out over time.~~

~~As part of its work, the Foundation might want to have small grants, for example to do pilots, to prepare larger research proposals, or to replicate previous research approaches with different subpopulations/communities. These might have rolling approvals over the course of the year. It would place an added burden on the CCAA Court to have to review all of these many proposals~~

that would have already been subject to peer review.

9.7 Reporting by approved recipients of distributions from the Cy-près Fund

The approved recipients of distributions from the Cy-près Fund will be required to, among other things:

- (a) Periodically submit financial reports to the Cy-près Foundation regarding the receipts and expenditures on the research, program or initiative;
- (b) Periodically submit written progress reports to the Cy-près Foundation providing details of the progress on the research, program or initiative and future work plans;
- (c) Submit a written final report to the Cy-près Foundation; and
- (d) At the end of the term of the research, program or initiative, will return any unexpended funds to the Cy-près Foundation.

9.8 Reporting by Cy-près Foundation to CCAA Plan Administrators and CCAA Court

Not less frequently than annually, the Chair of the Cy-près Foundation shall prepare a written report for submission to the CCAA Plan Administrators and thereafter for filing with the CCAA Court that includes reports on the financial status of the Cy-près Foundation (including capital, interest earned, distributions made, etc.) and the activities of the Cy-près Foundation for the period covered by the report. A copy of this report shall be provided to PCC Representative Counsel.

9.9 Role of the CCAA Plan Administrators and the CCAA Court

The CCAA Court is responsible for the ultimate supervision of the Cy-près Foundation pursuant to the terms of the CCAA Plan.

The CCAA Plan Administrators ~~are designated in the CCAA Plan to be the overseers of the Cy-près Foundation and~~ will function as the intermediaries relative to the supervisory role of the CCAA Court. In this capacity, the CCAA Plan Administrators will gather the data and information concerning the Cy-près Foundation that will be of significance to the CCAA Court when it approves various functions of the Cy-près Foundation as it will be required to do from time to time.

Rationale

The text proposed to be removed was added as part of the administrative changes made December 5, 2024, and thus removing the text would be an administrative change. With this change, the CCAA Plan Administrators would still have an intermediary/liaison role between the foundation and the CCAA Court.

The CCAA Plan Administrators will report to the CCAA Court regarding the activities of the Cy-près Foundation annually, or more frequently as they deem necessary. Accordingly, the Chair of the Foundation Board shall communicate with the CCAA Plan Administrators when the Cy-près Foundation's reports are ~~put forward for approval by~~ to be submitted to the CCAA Court. Similarly, this process will be adhered to when the Cy-près Foundation seeks the approval of the CCAA Court in advance of proceeding with matters, other than purely administrative matters, which entail financial expenditures or commitments, and where approval of the CCAA Court is required. All reports provided by the Chair of the Foundation Board to the CCAA Plan Administrators and all reports provided by the CCAA Plan Administrators to the CCAA Court in relation to the Cy-près Foundation shall be provided to the PCC Representative Counsel.

Rationale

Article 9, Section 9.8. provides that the annual or other periodic reports of the Foundation will be filed with the CCAA Court, but does not state that these reports would be subject to the approval of the CCAA Court. Similarly, it was proposed above to remove the change made December 5, 2024, that the CCAA Court would approve all research, programs and initiatives already approved by the Foundation. With such a change, the CCAA Court would not be approving all financial expenditures and commitments, though there would be some expenditures/commitments related to the establishment of the Foundation to be approved, as outlined in Article 9, Section 9.4. The proposed changes in this paragraph would be an administrative change given that the changes would modify an administrative change made December 5, 2024.

9.10 Term of Operation of Cy-près Foundation

The Cy-près Foundation shall not be dissolved, nor shall its work be terminated until such time as specified by the CCAA Court in the Sanction Order or such further Order of the CCAA Court.

9.11 Definition

In this Article and in Schedule "S" [Schedule "V" of the RBH and JTIM CCAA Plans], "Tobacco Users" and "Users of Tobacco Products" and similar terms include the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions.

Rationale

The rationale for this added definition was outlined above. The text the "use of or exposure

(whether directly or indirectly) to Tobacco Products or their emissions” is copied from the definition of “Tobacco Claim” as well as the definition of “PCC Claim”.

ARTICLE 11. COVENANTS AND OTHER PAYMENT ASSURANCE

11.1 Covenants

During the Contribution Period, Imperial and, as applicable, members of its Tobacco Company Group shall be subject to the following covenants, subject to Imperial's right to engage in its Ordinary Course Operational Activities:

- (a) Imperial shall use commercially reasonable efforts to operate and carry on business in a manner consistent with its Business Plan, subject to any changes to such operations or business that are not inconsistent with the Definitive Documents, and as may be necessary or required in the Ordinary Course of Business of Imperial, or in response to prevailing material market changes affecting Imperial, that are not contemplated by its Business Plan;
- (b) In accordance with Article 10, Section 10.10 herein, Imperial shall continue on a regular and timely basis to provide to its CCAA Plan Administrator for deposit into its Virtual Data Room all financial records and information required to be produced to the CCAA Plan Administrators pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 herein, and to which the CCAA Plan Administrators, Provinces, Territories and any Impacted Claimants shall be permitted continued access during the Contribution Period provided that they have executed an NDA. The CCAA Plan Administrators may request and, upon receipt of such request, Imperial shall produce to the CCAA Plan Administrators and, through the Virtual Data Rooms, to the Provinces, Territories and any Impacted Claimants all financial records and information necessary to, among other things:
 - (i) Assess the financial performance of Imperial;
 - (ii) Determine whether the Annual Contributions and Reserved Amounts have been calculated and paid in compliance with the Definitive Documents;
 - (iii) Assess the rates, prices and any adjustments to such rates and prices as may be made in respect of any Intercompany Transaction by Imperial's Parent and the relevant

Affiliates within its Tobacco Company Group in compliance with the requirements set out in Article 5, Section 5.14 herein; and

- (iv) Assess whether Imperial is operating in accordance with the Definitive Documents.

Any Province, Territory or Impacted Claimant may request additional financial records and information from Imperial by submitting a request for same to the CCAA Plan Administrators, and the CCAA Plan Administrators shall make that request to Imperial. Notwithstanding the foregoing responsibility, the CCAA Plan Administrators may, in their discretion, decline to send to Imperial an Information Request which, in the reasonable view of the CCAA Plan Administrators, is improper or irrelevant;

- (c) Imperial shall fulfill its obligations to provide to the CCAA Plan Administrator regular quarterly, annual and, if requested by the CCAA Plan Administrator, *ad hoc* reporting of all information enumerated in Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 herein at the specified times including information regarding:
- (i) Any non-compliance with any of the Definitive Documents or non-compliance with its Business Plan, including any issue, event or condition which caused or would reasonably be expected to cause a Material Adverse Effect on Imperial or that constitutes a Breach or an Event of Default;
- (ii) Confirmation of the amounts of the Annual Contributions to be made by it; and
- (iii) Confirmation of the Reserved Amounts received or realized by it;
- (d) Imperial shall apply any available Tax Attribute to its earliest taxation year permitted by Applicable Law to reduce taxable income in such taxation year, provided for greater certainty, that there shall be no requirement to reduce taxable income to an amount that is less than \$100 in a taxation year;
- (e) Imperial shall diligently pursue any Tax Matter raised by a Tax Authority to establish a positive outcome for Imperial, keep the CCAA Plan Administrators reasonably informed of the progress of any Tax Matter with the relevant Tax Authority, and provide the CCAA Plan Administrators with reasonable opportunity to review and comment upon any submissions, objections or appeals lodged by Imperial in respect of any Tax Matter;
- (f) The chief financial officer of Imperial shall certify that the information provided to the CCAA Plan Administrator by Imperial pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 herein is true and correct to the best of their knowledge, information and belief, and consistent with the information and data provided by Imperial to its Tobacco Company Group. Any such certification shall not give rise to any personal liability on the part of the applicable certifying officer;
- (g) Imperial and its Material Subsidiaries shall conduct their businesses in good faith with a view to fulfilling their obligations pursuant to the Definitive Documents, and shall not conduct their businesses and operations, divest assets, rearrange ownership, and/or alter their corporate structures, and/or operational practices, in any manner that circumvents or

is adverse to the ability of Imperial to satisfy its obligations under the CCAA Plan including, the ability of Imperial to pay the Upfront Contributions, Tax Refund Cash Payments and/or Annual Contributions within the Contribution Period;

- (h) Except: (i) for the transfer of all of Imperial's Alternative Products Business to Newco pursuant to Article 4, Section 4.1 herein, (ii) for an Ordinary Course Divestiture made in accordance with Article 11, Section 11.4 herein, or (iii) with the consent of the Provinces and Territories and any Impacted Claimants, which consent shall not be unreasonably withheld (collectively, "**Permitted Transfers**"), in the event that Imperial or its Material Subsidiary seeks to transfer any or all of its assets and business to any other entity including an unrelated company, a Canadian Affiliate of its Parent, or a Canadian Subsidiary of any other company within its Tobacco Company Group ("**Canada Newco**"), pursuant to its CCAA Plan or otherwise (except, for greater certainty, its assets, Indebtedness, liabilities and business relating to its Alternative Products), then upon the effective date of any such transfer, the balance then remaining owing by Imperial in respect of its share of the Annual Contributions and Reserved Amounts shall accelerate and become due and payable in full upon such effective date without any further action being required to be taken by the Claimants. In the event that an Impacted Claimant seeks to invoke the acceleration clause and any other Impacted Claimant or any Tobacco Company, including the defaulting Tobacco Company, take exception to such action, then the Impacted Claimant seeking to invoke the acceleration clause or the Tobacco Company may bring the issue before the CCAA Court for determination;
- (i) Neither Imperial nor any of its Material Subsidiaries shall create, incur, assume or suffer to exist or otherwise become liable for any Indebtedness, otherwise than in the Ordinary Course of Business;
- (j) Neither Imperial nor any of its Material Subsidiaries shall create, incur, assume, suffer to exist or otherwise become bound by or subject to any Encumbrance upon any of its properties and assets other than a Permitted Encumbrance;
- (k) Imperial shall not, and shall not permit any of its Material Subsidiaries to, merge into or amalgamate or consolidate or reorganize with any other Person, or permit any other Person to merge into or amalgamate or consolidate with it, or wind up, liquidate or dissolve;
- (l) Imperial shall not, and shall not permit any of its Material Subsidiaries to, change its name, type of organization, jurisdiction of organization or incorporation, chief executive office or registered office;
- (m) Imperial shall not, and shall not permit any of its Material Subsidiaries to, Dispose of (including pursuant to a dissolution) any of their respective property or assets, except for Permitted Transfers and Dispositions consisting of:
 - (i) Inventory sold in the Ordinary Course of Business upon customary credit terms;
 - (ii) Sales of worn-out, scrap or obsolete material or equipment which are not material in the aggregate; and

- (iii) Licenses granted to third parties in the Ordinary Course of Business; and
- (n) Imperial shall not, and shall not permit any of its Material Subsidiaries to, assign any of its income to any other Person, and Imperial's Parent and any member of its Tobacco Company Group shall not cause Imperial to assign any of its income to any other Person.

11.2 Ordinary Course Operational Activities

Decisions made by Imperial's directors, officers and management, as applicable, pertaining to operational matters, including the matters enumerated in subparagraphs (a) through (n) herein ("**Ordinary Course Operational Activities**"), shall be considered to be within the reasonable exercise of Imperial's directors' and officers' business judgment, provided that such decisions are made in the Ordinary Course of Business, are consistent with Imperial's covenants and the terms of the CCAA Plan, and are in compliance with all Applicable Laws:

- (a) Product mix, pricing, volume and distribution of Tobacco Products;
- (b) Brands of Tobacco Products, provided that Imperial does not directly or indirectly:
 - (i) Transfer a Tobacco Product brand with a profitable gross margin out of Canada to another company within its Tobacco Company Group, or
 - (ii) Exit a Tobacco Product brand with a profitable gross margin such that Imperial is arbitrarily affected in a negative manner, as compared to other members of its Tobacco Company Group;
- (c) Customer rebates and trade allowances in regard to the sale of Tobacco Products;
- (d) Tobacco Products sales and promotional activities;
- (e) Sustaining capital expenditures to maintain Imperial's cash flows, operating capacity and earning capacity and maintain and preserve its assets in good working order. For greater certainty, activities undertaken and decisions made pertaining to investment CapEx are not Ordinary Course Operational Activities and are subject to the terms of Article 11, Section 11.3 herein;
- (f) Payment of expenses reasonably necessary for the preservation of Imperial's assets and business including payments on account of insurance (including directors and officers insurance), maintenance and security services;
- (g) Administration of Imperial's payroll including the payment of wages, salaries, commissions, compensation, vacation pay, bonuses, incentive and share compensation plan payments, reimbursement expenses (including amounts charged to corporate credit cards) and severance pay;
- (h) Administration of Imperial's benefit programs including expenses related to the employee and retiree medical insurance, dental insurance, disability insurance, life insurance and similar benefit plans or arrangements, and employee assistance programs;

- (i) Administration of Imperial's pension and retirement programs;
- (j) Remittance of statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province or Territory or any other taxation authority which Imperial is required to deduct from employees' wages, including amounts in respect of employment insurance, Canada Pension Plan, Quebec Pension Plan and income taxes;
- (k) Payment, withholding, or remittance of all Taxes required to be paid, withheld, or remitted by Imperial to a Governmental Authority under Applicable Law;
- (l) Posting of bonding collateral to satisfy regulatory or administrative requirements imposed on Imperial to provide security in relation to the collection and remittance of federal excise taxes and customs and import duties and federal, provincial and territorial tobacco taxes; and
- (m) Cash management, cash investment and treasury transactions including, payment of accounts payable, collection of accounts receivable, management of cash and liquidity, purchase of short term investment vehicles, issuing of letters of credit, funding of payroll, and management of foreign exchange positions.

11.3 CapEx Thresholds

During the Contribution Period, Imperial may make capital expenditures, in addition to those reasonably necessary for the preservation of its assets, undertakings and properties or its business (including payments on account of insurance, maintenance and security services), to replace or supplement its assets, undertakings or properties, or that are otherwise of benefit to the business, provided that any single such expenditure is less than \$1 million, or the aggregate of such expenditures in a calendar year is less than \$10 million ("**CapEx Thresholds**"). The CapEx Thresholds shall be adjusted for inflation as appropriate. In the event that Imperial wishes to exceed the CapEx Thresholds for a valid business reason, it shall make a request in writing to the CCAA Plan Administrator in that regard and the CCAA Plan Administrator shall determine whether any increase is permitted.

11.4 Ordinary Course Divestitures Thresholds

During the Contribution Period, Imperial may permanently or temporarily cease, downsize or shut down any of its business or operations that is redundant and non-material, or dispose of redundant or non-material assets (collectively, "**Ordinary Course Divestitures**") not exceeding \$5 million in any one transaction or \$10 million in any calendar year in the aggregate ("**Ordinary Course Divestitures Thresholds**"). The Ordinary Course Divestitures Thresholds may be adjusted for inflation as appropriate. In the event that Imperial wishes to exceed the Ordinary Course Divestitures Thresholds for a valid business reason, it shall make a request in writing to the CCAA Plan Administrator in that regard and the CCAA Plan Administrator shall determine whether any increase is permitted.

11.5 Public Disclosure of Documents

Ontario and New Brunswick shall provide to the Industry Documents Library at the University of California at San Francisco for public use the documents obtained in the discovery process in the litigation advancing their respective Provincial HCCR Claims. Where available, these documents

shall be provided in electronic format, including optical character recognition (OCR), and including metadata and objective coding.

Ontario and New Brunswick may obtain from the Cy-près Foundation reimbursement for any costs incurred.

11.6 Release Not Extended

For greater certainty, nothing in this Article extends, in whole or in part, the Release for the Released Parties contained in Article 18, including beyond the Effective Time.

11.7 Promotion

A Released Company shall not, in Canada, sell or supply a Tobacco Product

(a) at a reduced price based on the quantity sold or periodic or temporary discounts;

(b) to a retailer at a price that is different than the price at which the same product is sold, directly or indirectly, to another retailer in the same municipality;

(c) to a consumer at a price that is different than the price at which the same product is sold, directly or indirectly, to another consumer in the same retail establishment or, in the case of a sale under paragraph 13(2)(b), in the same municipality;

(d) at a price that is less than the total of all taxes on the product under the laws of the applicable Province or Territory and Canada, including taxes on taxes.

A Released Company, or their employee or agent, shall not

(a) provide a retailer or other seller of Tobacco Products, or their employee or agent, any rebate, gratuity, benefit, payment, incentive or consideration related to a Tobacco Product other than a Tobacco Product at the regular price that is available to all other retailers in the municipality, or, for a place outside a municipality, in the closest municipality; or

(b) provide a consumer any rebate, gratuity, benefit, payment, incentive or consideration other than a Tobacco Product at the regular price that is available to all other consumers in that Province or Territory.

Rationale for new proposed new Section 11.5 – Public Disclosure of Documents

In the provincial lawsuits, extensive tobacco industry documentation has been provided as part of pre-trial discovery. In its factum for its lift stay motion filed March 29, 2019, Ontario indicated that it received 8 million documents on discovery from the tobacco industry.¹

The CCAA Plans are currently silent regarding these documents. The CCAA Plans should include a provision for Provinces to provide such documents to the Industry Documents Library at the University of California at San Francisco. This library provides online public access to extensive documentation arising from tobacco litigation. Hundreds of academic articles by researchers have been published regarding tobacco documents. These documents are beneficial for the further development and effectiveness of tobacco control policies and programs.

Internal documents of Tobacco Companies from three Canadian tobacco cases are now accessible through the Industry Documents Library website: constitutional challenge to the federal *Tobacco Products Control Act* (1988-1995); constitutional challenge to the federal *Tobacco Act* (1997-2007); and the *Blais/Létourneau* Quebec class actions.

As a result of the US state government health care litigation against tobacco companies, and other US tobacco litigation, more than 40 million pages of tobacco company documents have become public.

In the US, the foundation created by the health care cost recovery settlement between state governments and the tobacco industry has funded the Industry Documents Library to support public disclosure of tobacco documents. This foundation was initially called the American Legacy Foundation, and is now called the Truth Initiative.

The tobacco company documents provided to Ontario and other provinces are an asset. If these documents are destroyed, or are returned to tobacco companies to destroy, the documents will be lost forever. In the CCAA context, an asset of a company should not be simply destroyed. If a debtor in CCAA proceedings had inventory or a functioning factory, it would not be acceptable for these assets to simply be destroyed.

Tobacco Companies have engaged in a decades-long cover-up. This cover-up should not be maintained.

The Plan would establish a Foundation to conduct research. But at the same time, the CCAA Plan as currently worded would allow the extensive research by tobacco companies regarding smoking knowledge, attitudes, and behaviour, as well as tobacco marketing, among other tobacco-related aspects, to be destroyed. This is not coherent. Given their resources, the tobacco companies have carried out the best and most comprehensive tobacco-related research in Canada. Public disclosure of tobacco company documents would very much advance the purpose and mission of the Cy-près Foundation, and benefit the PCCs, as well as Canadians generally.

It is in the public interest for these documents to be made public. Further, it is in the interest of Provinces and Territories for these documents to be in the public domain. The documents will

¹ Factum of the Moving Party, Her Majesty the Queen in Right of Ontario, Motions to Lift Stays, dated March 29, 2019, returnable April 4-5, 2024, p. 61, para. 60.
<http://cfcanda.fticonsulting.com/ImperialTobacco/docs/Factum%20of%20Ontario.pdf>

benefit government interests including public health within their jurisdictions.

For example, public disclosure of Tobacco Company documents will help Provinces and Territories defend future legal challenges. Examples of constitutional challenges that have been filed against provincial tobacco control legislation include banning advertising (BC), banning visible tobacco displays at retail (Nova Scotia, Alberta), requiring public disclosure of additives in cigarettes (BC; case abandoned), banning menthol cigarettes (Nova Scotia, New Brunswick, Quebec, Alberta; cases abandoned) requiring public places to be smoke-free (Ontario), and minimum sales age of 19 (Nova Scotia). There have also been constitutional challenges to federal laws; examples include advertising and promotion, package health warnings, and reporting requirements.

In the years ahead, Provinces and Territories and the federal government can be expected to adopt further tobacco control laws. For example, in 2024, PEI and Newfoundland and Labrador each have initiated public consultations regarding implementation of a tobacco-free generation policy, that is prohibiting the sale of tobacco products to anyone born after a certain date, such as January 1, 2009. One objection that has been raised regarding such legislation is the assertion that the legislation would be unconstitutional.

As the Supreme Court of Canada recognized in *RJR-MacDonald* (1995), “perhaps the most compelling evidence” regarding the impact of tobacco advertising on consumption came from tobacco company documents.

The text provided above for the proposed new Section 11.5 refers to Ontario and New Brunswick and the documents obtained on discovery during their respective HCCR cases. Ontario and New Brunswick were the two provinces most advanced in terms of trial preparation when the CCAA process began in March 2019. Instead of both Ontario and New Brunswick providing documents to the Industry Documents Library, one option may be for just Ontario to do so. Ontario is the largest claimant in the tobacco CCAA proceedings.

Rationale for Proposed New Section 11.6 – Release Not Extended

The relevant excerpts on the issue related to the proposed new Section 11.6 are from the definitions in Article 1, Section 1.1, and Article 11, first sentence and Paragraphs 11.1(a) and 11.1(g), as follows:

In Article 1, Section 1.1, “Ordinary Course of Business” is defined to mean “[...] the ordinary course of day-to-day business activities and operations of that company consistent with *past practices* [...]” (emphasis added).

Under Article 11, the first sentence refers to “[the company’s] “*right* to engage in its Ordinary Course Operational Activities” (emphasis added)

Under Article 11, “Covenants and Other Payment Assurance”, s.11.1(a) states that “[the company] shall use commercially reasonable efforts to operate and carry on business in a manner consistent with its Business Plan [...] and as may be necessary or required in the Ordinary Course of Business of [the company].”

Article 11, Section 11.1(g) provides that “[the company]” [...] shall not conduct their businesses and operations [...], and/or alter their [...] operational practices, in any manner that circumvents or is adverse to the ability of [the company] to satisfy its obligations under the CCAA Plan including [...] Annual Contributions.”

Article 11 in the CCAA Plans deals with “Covenants and Other Payment Assurance” but the effect of the current wording seems to give tobacco companies the right or the obligation to continue past practices, which have been extremely detrimental. To paraphrase, Article 11 provides that the companies shall operate their business in a reasonable manner that is not adverse to making their annual contributions, and consistent with *past practices*. Are the companies to continue past practices of misinformation to the public and to governments, marketing to non-smokers, deceptive marketing, advertising that undermines health warnings, lobbying against legislation, and engaging in many other types of tortious and other detrimental activity?

The wrongful past practices of the Tobacco Companies, as outlined in the Statements of Claim of the Provinces in their HCCR Claims, are extensive.

The wording of Article 11, which seems extremely problematic, should be modified. A clarification to Article 11 is necessary for public protection, thus the proposed new Section 11.5. The proposed new Section 11.5 would ensure that Article 11 would not protect companies from civil liability for future wrongful conduct. Protecting Tobacco Companies from civil liability for future conduct would not be in the public interest.

Paragraph 12 of the Notice of Motion for the Claims Procedure Order and Meeting Order, dated Oct. 17, 2024, states that the CCAA Plans “eliminate liability for all Tobacco Claims up to the Effective Time”. There should not be protection from liability beyond the Effective Time.

The change of adding a proposed new Section 11.5 could be considered an administrative change, given that it could be considered to clarify the original intent.

Rationale for Proposed New Section 11.7 - Promotion

The Plans contain no restrictions on remaining tobacco promotion. Such remaining promotion is extensive. Many of the earlier Monitor reports for JTI-Macdonald (but not the other two Tobacco Companies) provide specific information on promotional expenditures. For example, in the February 13, 2020, Seventh Report of the Monitor for JTI-Macdonald (the smallest company by market share), \$78.4 million in promotions and marketing expenditure was forecasted to be spent in the 35-week period ending October 2, 2020.²

Restricting tobacco promotion would reduce tobacco use. Moreover, this would reduce tobacco company expenditures and increase company profitability, and thus increase payments to Provinces and Territories through tobacco company annual contributions.

In the US, tobacco promotion restrictions were included in settlements between state governments and tobacco companies.

The text for the proposed new Section 11.7 restricting promotion is based on s.17 of the Nunavut Tobacco and Smoking Act, C.S.Nu., c.T-40, s.17, which states:

17. (1) A person shall not sell tobacco or a smoking product

- (a) at a reduced price based on the quantity sold or periodic or temporary discounts;
- (b) to a retailer at a price that is different than the price at which the same product is sold, directly or indirectly, to another retailer in the same municipality;
- (c) to a consumer at a price that is different than the price at which the same product is sold, directly or indirectly, to another consumer in the same retail establishment or, in the case of an online or remote sale, in the same municipality;
- (d) at a price that is less than the total of all taxes on the product under the laws of Nunavut and Canada, including taxes on taxes; or
- (e) at a price that does not otherwise meet the conditions prescribed by regulation.

(2) A cultivator, producer, manufacturer, seller or other provider of tobacco or smoking products, or their employee or agent, shall not provide a retailer or other seller of tobacco or smoking products, or their employee or agent, any rebate, gratuity, benefit, payment, incentive or consideration other than

- (a) tobacco or a smoking product at the regular price that is available to all other retailers in the municipality, or, for a place outside a municipality, in the closest municipality; or
- (b) a rebate, gratuity, benefit, payment, incentive or consideration that is prescribed by regulation.

(3) A cultivator, producer, manufacturer, seller or other provider of tobacco or smoking products, or their employee or agent, shall not provide a consumer any rebate, gratuity, benefit, payment, incentive or consideration other than

- (a) tobacco or a smoking product at the regular price that is available to all other consumers; or
- (b) a rebate, gratuity, benefit, payment, incentive or consideration that is prescribed by regulation.

² Seventh Report of the Monitor for JTI-Macdonald, March 19, 2021, p.15 (“promotions and marketing” was not defined).

<https://documentcentre.ey.com/api/Document/download?docId=33166&language=EN>

This is Exhibit “E” referred to in the Affidavit of Kelly Wilson Cull sworn by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to be 'K. Parker', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**



Canadian Cancer Society
Société canadienne
du cancer

December 30, 2024

BY EMAIL

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto, Ontario M5V 3J7
Attention: Natasha MacParland and Chanakya A. Sethi

CASSELS BROCK & BLACKWELL LLP

40 Temperance St. – Suite 3200
Toronto, Ontario M5H 0B4
Attention: Shayne Kukulowicz and Joseph Bellisimo

BLAKE, CASSELS & GRAYDON LLP

199 Bay Street, Suite 4000
Commerce Court West
Toronto Ontario M5L 1A9
Attention: Pamela L J. Huff and Linc Rogers

Re: Proposed Tobacco CCAA Plans

Dear Counsel for the Monitors:

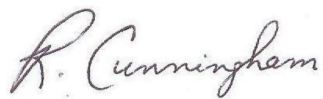
On behalf of the Canadian Cancer Society (“CCS”), I am writing further to my letter of December 27, 2024, regarding proposed changes to the CCAA Plans.

Enclosed please find proposed changes to Schedule “S” of the Imperial CCAA Plan [Schedule “V” of the RBH and JTIM CCAA Plans], as outlined in track changes made to the First Amended and Restated Plan for Imperial dated December 5, 2024 (the same changes are proposed for the CCAA Plans regarding RBH and JTIM). These changes are administrative in nature, and mirror administrative changes made on December 5, 2024, or included as part of the CCS proposed changes to Article 9 sent to you December 27, 2024.

116 Albert Street, Suite 500, Ottawa, Ontario K1P 5G3

I am also writing to request an opportunity to meet with you to discuss the changes that have been proposed by CCS to the CCAA Plans. We would be pleased to meet at your convenience.

Yours truly,

A handwritten signature in cursive script that reads "R. Cunningham".

Robert Cunningham
613-762-4624

cc. counsel for the Court-Appointed Mediator
Vern DaRe, Fogler, Rubinoff LLP

encl.

**Canadian Cancer Society Proposed Changes in Track Changes to Schedule
“S” of the First Amended and Restated Court-Appointed Mediator’s and
Monitors’ CCAA Plan of Compromise and Arrangement Concerning Imperial
Tobacco Canada Ltd. [Schedule “V” of the RBM and JTIM CCAA Plans]**

December 30, 2024

SCHEDULE "S"

CY-PRÈS FUND: METHODOLOGY AND ANALYSIS

Court File No. CV-19-615862-00CL
Court File No. CV-19-616077-00CL
Court File No. CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OF ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED**
AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

THE CY-PRÈS FUND:
METHODOLOGY AND ANALYSIS

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EXECUTIVE SUMMARY

The global settlement of the Tobacco Claims in Canada settles all claims and potential claims against the Applicant Canadian Tobacco Companies (“**Applicants**”) and their parent and affiliated companies in respect of: (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products; (ii) the historical or ongoing use of or exposure to Tobacco Products; and/or (iii) any representation in respect of Tobacco Products.

The global settlement includes compensation for Pan-Canadian Claimants, or PCCs, suffering from certain Tobacco-related Diseases who meet prescribed criteria, as well as funding for research, programs and initiatives focused on improving outcomes in Tobacco-related Diseases.

The Pan-Canadian Claimants’ Compensation Plan (“**PCC Compensation Plan**”) is an integral part of the global settlement. A fundamental principle underlying the PCC Compensation Plan is that PCCs across Canada will be subject to the same system for determining compensation. It provides for the payment of compensation to eligible individuals in every Province and Territory who have been diagnosed with a primary lung cancer (“**lung cancer**”), squamous cell carcinoma of the larynx, the oropharynx or the hypopharynx (“**throat cancer**”), or Emphysema/COPD (GOLD Grade III or IV) attributable to smoking the Applicants’ cigarettes, and are not covered by the judgment rendered against the Applicants in the Quebec Class Action by smokers.¹ The PCC Compensation Plan is designed to achieve parity among the PCCs in all of the Provinces and Territories and, where appropriate, parity or consistency with the Quebec Class Action class members.

¹ *Létourneau v. JTI-Macdonald Corp.*, 2015 QCCS 2382; affirmed *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé et al*, 2019 QCCA 358.

The second Pan-Canadian component of the global settlement is a cy-près distribution (the “**Cy-près Fund**”) which will be administered by a public charitable foundation (“**Foundation**”) to be established as part of the implementation of the global settlement. The Foundation shall be independent and free from any influence or interference by any of the Claimants, Tobacco Companies, Tobacco Company Groups, or any potential or actual beneficiary of the Foundation. There is a rational connection between the varying circumstances of the diverse group of PCCs and *Létourneau* Class Members² the Foundation’s purpose which is to fund research, programs and initiatives focused on improving outcomes in Tobacco-related Diseases. The Terms of Reference of the Foundation are set out in Article 9, Section 9.4 of the CCAA Plan of each Tobacco Company.

The direct benefits provided by the PCC Compensation Plan and the indirect benefits provided by the Cy-près Fund cover individuals who have claims and potential claims that are unascertained and unquantifiable, as well as individuals whose claims were not advanced beyond the filing of a statement of claim. The Court appointed The Law Practice of Wagner & Associates, Inc. as the PCC Representative Counsel to represent the interests of all PCCs in the Applicants’ proceedings under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) and the Court-supervised mediation. The PCC Representative Counsel’s mandate included “... participating in and negotiating on behalf of the [PCCs] in the Mediation”,³ and “... working with the Court-Appointed Mediator and the Tobacco Monitors to develop a process for the identification of valid and provable claims of [PCCs] and as appropriate, addressing such claims in the Mediation or the CCAA Proceedings”.⁴

² See Section H of this document which explains that the Cy-près Fund also provides consideration for the settlement of the *Létourneau* Judgment.

³ Order of Justice McEwen dated December 9, 2019 at para. 5(a).

⁴ Order of Justice McEwen dated December 9, 2019 at para. 5(b).

With the facilitation of the Court-appointed Mediator, the Honourable Warren K. Winkler, K.C. (“**Justice Winkler**”) and the Monitors, the PCC Representative Counsel, Quebec Class Counsel, and counsel for the Provinces and Territories worked together over a period of several years to develop the terms of the comprehensive plan pursuant to which the Applicants will provide consideration in the global settlement in the form of the PCC Compensation Plan and the Cy-près Fund for the full and final settlement and release of the PCCs’ claims and potential claims. This document presents to the Court the terms of the settlement of the PCCs’ claims and potential claims which are fair, reasonable and in the best interests of the PCCs as a whole. The “class as a whole” encompasses both the group of PCCs who will receive direct compensation from the PCC Compensation Plan and all persons who will benefit from the Cy-près Fund. The proposed settlement will balance the diverse interests and circumstances of the PCCs across all Canadian jurisdictions and will advance the administration of justice.

The PCC Compensation Plan was developed, in part, based upon:

- (i) the analysis of the underlying factual circumstances and demographics of the PCCs;
- (ii) the factual findings and legal analysis of the Superior Court of Quebec and the Court of Appeal for Quebec in the Quebec Class Action;
- (iii) the applicable legislation and case law in the Provinces and Territories, including analyses examining the application of limitation periods and principles of causation to the claims and circumstances of the PCCs;

- (iv) the epidemiological analysis by Dr. Prabhat Jha that identified the compensable Tobacco-related Diseases and quantified the PCCs who may qualify to receive direct compensation under the PCC Compensation Plan; and
- (v) consultation with Daniel Shapiro, K.C. who, pursuant to an Order dated September 15, 2020, the Honourable Justice McEwen appointed as the Consultant to Justice Winkler. Mr. Shapiro has extensive expertise in the administration of class action settlements gained through his work on some of Canada's most complex cases, including serving as an arbitrator/referee of disputes involving the Hepatitis C Class Actions Settlement and the Chief Adjudicator of the Independent Assessment Process, Indian Residential Schools Adjudication Secretariat.

A. PCC Compensation Plan

The PCC Compensation Plan will provide direct compensation in the form of monetary payments to individuals who fulfill the following criteria ("**PCC Eligibility Criteria**"):

- (a) on the date that a claimant submits their claim to the PCC Compensation Plan:
 - (i) if the claimant is alive, they must reside in a Province or Territory in Canada, or
 - (ii) if the claimant is deceased, they must have resided in a Province or Territory in Canada on the date of their death;
- (b) the claimant was alive on March 8, 2019;

- (c) between January 1, 1950 and November 20, 1998 (“**Breach Period**”), the claimant smoked a minimum of twelve pack-years of cigarettes sold by the Applicants (“**Critical Tobacco Dose**”);
- (d) between March 8, 2015 and March 8, 2019 inclusive of those dates (“**PCC Claims Period**”), the claimant was diagnosed with:
 - (i) lung cancer,
 - (ii) throat cancer, or
 - (iii) Emphysema/COPD (GOLD Grade III and IV) (collectively, the “**PCC Compensable Diseases**”); and
- (e) on the date of the diagnosis with a PCC Compensable Disease the claimant resided in a Province or Territory in Canada.

During extensive discussions in the mediation, the development of the PCC Eligibility Criteria was informed and guided by consideration of principled rationale including:

- (a) the PCC Compensation Plan is intended to provide compensation to residents of Canada who have claims or potential claims against the Applicants and their parent and affiliated companies;
- (b) the Breach Period and Critical Tobacco Dose are the same as those approved by the Quebec Courts in the Quebec Class Action;
- (c) the PCC Claims Period was informed by an analysis of the limitations law applicable in each Province and Territory as well as relevant historical background and the desire to

achieve parity among the PCCs residing in all the Provinces and Territories by choosing a uniform four year limitation period for all jurisdictions; and

- (d) the PCC Compensable Diseases are the same as those approved by the Quebec Courts in the Quebec Class Action with the diagnoses of Emphysema and COPD (GOLD Grade III or IV) being treated as sufficiently equivalent.

In the Quebec Class Action, the Quebec Courts awarded the following moral damages to qualified class members who meet all of the class criteria: \$100,000 if diagnosed with lung cancer or throat cancer; and \$30,000 if diagnosed with Emphysema. The compensation payable to eligible PCCs for each PCC Compensable Disease was determined by an analysis which concluded that it is appropriate to apply a 40% discount to the quanta of damages payable to qualified class members in the Quebec Class Action. The difference in individual compensation between the Quebec Class Action and the PCC Compensation Plan recognizes the applicable law and distinct legal status of the Quebec judgments, as well as the duration of their proceedings, accrued interest and legal fees. Outside of Quebec, the potential claims of PCCs, including claims that were not advanced beyond the filing of a statement of claim, are unascertained and unquantifiable, have not been adjudicated and may be statute-barred. The PCCs' claims are being addressed in the CCAA Proceedings in order to achieve a comprehensive global settlement of all claims and potential claims against the Applicants in Canada.

To achieve parity with the Quebec Class Action class members in regard to contributory negligence, the findings of the Quebec Courts were applied to conclude that the quantum of compensation (see Table below) available to a PCC who meets all of the PCC Eligibility Criteria will depend upon the date on which that individual started smoking the Applicants' cigarettes:

- (a) a PCC who started to smoke *before* January 1, 1976 will be entitled to receive 100% of the compensation available under the PCC Compensation Plan; and
- (b) a PCC who started smoking *on or after* January 1, 1976 will be designated as being 20% contributorily negligent and entitled to receive 80% of the compensation available under the PCC Compensation Plan.

PCC Compensation Plan		
Column 1 PCC Compensable Disease	Individual Payment (or such lesser amount as may be determined by the Claims Administrator to be available for the subclass of claimants; quantum will vary based upon the actual take-up rate and other factors and shall not exceed the maximum amounts specified in this table)	
	Column 2 Compensation for PCCs who started to smoke before January 1, 1976 (60% of damages awarded to Quebec Class Action Plaintiffs)	Column 3 Compensation for PCCs who started smoking on or after January 1, 1976 (80% of Column 2)
Lung cancer	\$60,000	\$48,000
Throat cancer	\$60,000	\$48,000
Emphysema/COPD (GOLD Grade III or IV)	\$18,000	\$14,400

The estimated number of Canadians in each Province and Territory who were alive as of March 8, 2019 and were diagnosed with one of the PCC Compensable Diseases during the PCC Claims Period was determined based on epidemiological evidence provided by Dr. Jha. The estimated

number of PCCs was used together with the estimated take-up rate⁵ to calculate that **\$2,520,544,055** is required to fund the PCC Compensation Plan.

Legal principles and practical considerations necessitate the limiting of estate claims to the estates of those individuals who were diagnosed with a PCC Compensable Disease during the PCC Claims Period, were alive on March 8, 2019, and resided in one of the Provinces or Territories at the time of their death which occurred on or after March 8, 2019, such that they qualified to receive direct compensation under the PCC Compensation Plan. To the extent possible, parity is achieved with the Quebec Class Action class members whose heirs are entitled to be paid in accordance with the terms of the judgments. Claims by estates of individuals who died prior to March 8, 2019 are excluded from the PCC Compensation Plan. The estate of an individual who died on or after March 8, 2019 would qualify to receive direct compensation under the PCC Compensation Plan.

The non-uniformity of the legislation governing claims by Surviving Family Members creates a disparity across the thirteen Canadian jurisdictions in regard to the scope of the family members who may be entitled to claim damages for loss of guidance, care and companionship in respect of individuals diagnosed with a PCC Compensable Disease who fulfilled all of the PCC Eligibility Criteria. It would be impractical to attempt to administer a plan that includes compensation for the very high number of potential Surviving Family Members, particularly since conventional awards for loss of guidance, care and companionship are widely variable across the country. Therefore, in order to achieve parity among the PCCs in all Provinces and Territories, the PCC Compensation Plan excludes all claims by Surviving Family Members. Parity is achieved with

⁵ “Take-up rate” is a term used in class actions to refer to the percentage of claimants who submit claims and receive compensation out of the estimated total number of potentially eligible persons. As discussed herein, the nature and scope of the PCCs’ claims are strongly analogous to claims that could be advanced in a multi-jurisdictional class action; therefore, it was appropriate to utilize the concept of a take-up rate in the analysis followed to cost the PCC Compensation Plan.

the Quebec Class Action class members whose Surviving Family Members similarly are not entitled to receive any damages under the judgments.

Pursuant to section 19(1)(a)(i) of the CCAA, only claims relating to debts or liabilities, present or future, to which the Applicants were subject on March 8, 2019, may be dealt with by a compromise or arrangement of the Applicants. A foundational principle underlying the PCC Compensation Plan is that the Tobacco-related Wrongs committed by the Tobacco Companies and Tobacco Company Groups which gave rise to the claims and potential claims of individuals in Canada were known as at March 8, 2019. Therefore, the PCCs' claims and potential claims constitute claims relating to debts or liabilities to which the Applicants were subject on March 8, 2019. It follows that future claims relating to Tobacco-related Wrongs⁶ committed by the Tobacco Companies and their parent and affiliated companies up to March 8, 2019 will be fully and finally released in the global settlement.

B. The Cy-près Fund

The Cy-près Fund is intended to provide consideration for the full and final settlement and release of all claims and potential claims of PCCs who are not receiving direct compensation payments from the PCC Compensation Plan but will be indirectly benefited by falling within the scope of the Foundation. This broad group of claimants includes the following persons and any affected family members or estates:

⁶ The term "tobacco-related wrong" is the defined term that is used in the Provincial tobacco damages and health care costs recovery legislation. For example, in section 1(1) of the Ontario *Tobacco Damages and Health Care Costs Recovery Act, 2009*, S.O. 2009. C. 13, a "tobacco-related wrong" means "(a) a tort committed in Ontario by a manufacturer which causes or contributes to tobacco related disease; or (b) in an action under subsection 2(1), a breach of a common law, equitable or statutory duty or obligation owed by a manufacturer to persons in Ontario who have been exposed or might become exposed to a tobacco product".

- (a) Smokers suffering from lung or throat cancer or Emphysema/COPD Gold Grade III or IV who are outside the claims period or who smoked less than the requisite twelve pack years or, in the case of Emphysema/COPD, were not classified as Gold Grade III or IV or the equivalent;
- (b) Smokers who have tobacco-related harms other than lung or throat cancer and Emphysema/COPD Gold Grade III or IV or the equivalent; and
- (c) Persons who smokeuse or have smokedused Tobacco Products who have not yet or may never contract a tobacco-related harm.

Such PCCs do not have a legal entitlement in the form of a judgment, membership in a class in a certified class action, or an individual claim that would likely be successful on a balance of probabilities, or any other practicable means to recover direct compensation for Tobacco-related Diseases caused by smoking the Applicants' cigarettes. The Cy-près Fund will provide indirect benefits to the PCCs that are rationally connected to Tobacco-related Diseases and the varying circumstances of the diverse group of PCCs and *Létourneau* Class Members covered by the Cy-près Fund. The establishment of the Cy-près Fund will be consistent with the legislation and case law developed in Canada to make provision for indirect prospective benefits to a class of persons for whom direct compensation is impracticable, and who would not otherwise receive monetary relief as a result of a class proceeding.

Pursuant to Article 16, Section 16.1 and 16.2 of the CCAA Plan, the sum of **\$1.0 billion** shall be allocated from the Global Settlement Amount to the Cy-près Fund which shall be administered by the Cy-près Foundation.

This document sets out the full particulars of and provides the detailed rationale for each of the parameters of the Cy-près Fund which are fair, reasonable and in the best interests of the PCCs as a whole.

THE CY-PRÈS FUND: METHODOLOGY AND ANALYSIS

I. OVERVIEW

1. In this document, unless otherwise defined herein, all capitalized terms shall have the meanings specified in the Glossary attached as **Appendix “A”** and in the CCAA Plans.
2. The Applicants desire to enter into a global settlement of all claims and potential claims against them in Canada which will include the settlement and release of the claims and potential claims of the Pan-Canadian Claimants (“PCCs”) who are defined to be all individuals resident in the Provinces and Territories, excluding the Quebec Class Action Plaintiffs (“QCAPs”)⁷, who have either advanced or may be entitled to advance a claim or cause of action against one or more of the Tobacco Companies and/or Tobacco Company Groups in respect of: (i) the development, manufacture, importation, production, marketing, advertising, distribution, purchase or sale of Tobacco Products; (ii) the historical or ongoing use of or exposure to Tobacco Products; and/or (iii) any representation in respect of Tobacco Products.

A. **MANDATE OF REPRESENTATIVE COUNSEL FOR PCCs**

3. By an Order dated December 9, 2019, the Honourable Justice McEwen appointed The Law Practice of Wagner & Associates, Inc. as the PCC Representative Counsel to represent the interests of all PCCs⁸ in the Applicants’ proceedings under the CCAA and the Court-supervised mediation. The PCC Representative Counsel’s mandate included “... participating in and negotiating on behalf of the [PCCs] in the Mediation”,⁹ and “... working with the Court-Appointed Mediator and

⁷ See Appendix “C”: Certified Quebec Class Actions with Judgment.

⁸ In the Order dated December 9, 2019, the PCCs are referred to as the “TRW Claimants”.

⁹ Order of Justice McEwen dated December 9, 2019 at para. 5(a).

the Tobacco Monitors to develop a process for the identification of valid and provable claims of [the PCCs] and as appropriate, addressing such claims in the Mediation or the CCAA Proceedings”.¹⁰

4. Over several years, with the facilitation of the Court-appointed Mediator, the Honourable Warren K. Winkler, K.C. (“**Justice Winkler**”) and the Monitors, the PCC Representative Counsel, Quebec Class Counsel and counsel for the Provinces and Territories engaged in the intensive Court-supervised mediation process to work through the myriad of challenging issues that needed to be addressed to develop a principled and pragmatic plan that will achieve the goal of providing fair consideration in the form of the PCC Compensation Plan and the Cy-près Fund for the full and final settlement and release of the PCCs’ claims and potential claims.

B. TEST FOR COURT’S APPROVAL OF PCC COMPENSATION PLAN AND THE CY-PRÈS FUND

5. The PCC Compensation Plan and the Cy-près Fund are unique in their scope and magnitude, and are based on sound legal principles and empirical evidence. As discussed in more detail in Section D at paragraphs 19 to 21, in *Western Canadian Shopping Centres Inc. v. Dutton* (“**Dutton**”), the Supreme Court of Canada held that courts may apply established legal principles to analogous situations in order to achieve a just resolution.¹¹ Following the approach in *Dutton*, and given that the PCCs in the CCAA Proceedings are analogous to a class within a class proceeding, it is appropriate to apply the test for Court approval of a proposed settlement of a class

¹⁰ Order of Justice McEwen dated December 9, 2019 at para. 5(b).

¹¹ *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at para. 34; see also paras. 35-37 and 43.

proceeding to the determination of whether this Court should approve the PCC Compensation Plan and the Cy-près Fund as part of the global settlement of the Tobacco Claims in Canada.

6. As stated by Justice Winkler in *Parsons v. Canadian Red Cross Society*, the test for approval of a class action settlement is whether the settlement is fair, reasonable and in the best interests of the class as a whole, not whether it meets the demands of a particular member. The exercise of settlement approval does not lead the court to a dissection of the settlement with an eye to perfection in every aspect. Rather, the settlement must fall within a zone or range of reasonableness.¹² Justice Winkler explained that the range of reasonableness is a flexible standard as follows:

The court must remain flexible when presented with settlement proposals for approval. However, the reasonableness of any settlement depends on the factual matrix of the proceeding. Hence, the “range of reasonableness” is not a static valuation with an arbitrary application to every class proceeding, but rather it is an objective standard which allows for variation depending upon the subject matter of the litigation and the nature of the damages for which the settlement is to provide compensation.¹³

7. In *Robertson v. ProQuest Information and Learning Company*, Justice Pepall noted that “although the CCAA and class proceeding tests for approval are not identical, a certain symmetry exists between the two”.¹⁴ To obtain approval of a settlement under the CCAA, the debtor company must establish that: the transaction is fair and reasonable; the transaction will be beneficial to the debtor company and its stakeholders generally; and the settlement is consistent with the purpose and spirit of the CCAA.¹⁵ To approve the settlement of a class proceeding, the Court must find that in all of the circumstances the settlement is fair, reasonable and in the best

¹² *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at para. 69.

¹³ *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at para. 70.

¹⁴ *Robertson v. ProQuest Information and Learning Company*, 2011 ONSC 1647 at para. 24.

¹⁵ *Robertson v. ProQuest Information and Learning Company*, 2011 ONSC 1647 at para. 22.

interests of those affected by it. In making this determination, the Court should consider, amongst other things:

- (a) the likelihood of recovery or success at trial;
- (b) the recommendation and experience of class counsel; and
- (c) the terms of the settlement.¹⁶

8. In the global settlement, the Tobacco Companies will provide the consideration for the settlement and release of the claims and potential claims of all PCCs. As illustrated in the chart in **Appendix “B”**, the consideration will have two components:

- (a) The Pan-Canadian Claimants’ Compensation Plan (“**PCC Compensation Plan**”) which will provide direct compensation in the form of monetary payments made to individuals who fulfill all the PCC Eligibility Criteria; and
- (b) A cy-près distribution (the “**Cy-près Fund**”) which will provide the consideration for the full and final settlement and release of all claims and potential claims of PCCs who do not qualify to receive compensation payments from the PCC Compensation Plan. The consideration provided by the Cy-près Fund will take the form of funding to establish a public charitable foundation (“**Foundation**”) will provide indirect benefits to the PCCs that are rationally connected to Tobacco-related Diseases and the varying circumstances of the diverse group of PCCs and *Létourneau* Class Members covered by the Cy-près Fund.

¹⁶ *Robertson v. ProQuest Information and Learning Company*, 2011 ONSC 1647 at para. 24.

9. This document presents to the Court the terms of the settlement of the PCCs' claims and potential claims which this Court will be requested to approve, as part of the Applicants' CCAA Plans which effect the global settlement of the Tobacco Claims in Canada, on the basis that the settlement of the PCCs' claims and potential claims is fair, reasonable and in the best interests of the PCCs as a whole. In the present context, the "class as a whole" encompasses both the group of PCCs who will receive direct compensation from the PCC Compensation Plan and all persons who will benefit from the Cy-près Fund. The PCC Compensation Plan and the Cy-près Fund are critically important to the global settlement of the Tobacco Claims because, together, they identify those persons who will be bound by the settlement of the PCC Claims in accordance with the terms of the CCAA Plan.

10. The approach in *Dutton* informs the Court's identification of the persons who have a potential claim as PCCs by the application of the PCC Eligibility Criteria which are analogous to the class definition in a class action. In class actions, the class must be defined by reference to objective criteria such that a person can be identified to be a class member without reference to the merits of the action.¹⁷ In *Bywater v. Toronto Transit Commission* ("**Bywater**"), Justice Winkler held that the class definition has the following three purposes: "... (a) it identifies those persons who have a potential claim for relief against the defendant; (b) it defines the parameters of the lawsuit so as to identify those persons who are bound by its result; and lastly, (c) it describes who is entitled to notice pursuant to the Act".¹⁸ Citing *Bywater*, in *Dutton* the Supreme Court of Canada emphasized that the "Class definition is critical because it identifies the individuals entitled

¹⁷ *Bywater v. Toronto Transit Commission*, [1998] O.J. No. 4913, 27 C.P.C. (4th) 172 at para. 11; Warren K. Winkler et al., *The Law of Class Actions in Canada* (Toronto: Canada Law Book, 2014) at 96-98.

¹⁸ *Bywater v. Toronto Transit Commission*, [1998] O.J. No. 4913, 27 C.P.C. (4th) 172 at para. 10; see also Warren K. Winkler et al., *The Law of Class Actions in Canada* (Toronto: Canada Law Book, 2014) at 89-90.

to notice, entitled to relief (if relief is awarded), and bound by the judgment”.¹⁹ The Supreme Court of Canada also affirmed its agreement with this principle in *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*.²⁰ In *Hollick v. Toronto (City)*,²¹ the Ontario Court of Appeal endorsed the dictum articulated in *Bywater*.

11. The proposed settlement of the PCCs’ claims and potential claims through the PCC Compensation Plan and the Cy-près Fund will balance the diverse interests and circumstances of the PCCs across all Canadian jurisdictions and will advance the administration of justice. Furthermore, the proposed settlement will:

- (a) Afford litigation efficiency and serve judicial economy by enabling the Court to deal efficiently with the very large number of claims and potential claims of PCCs arising from the Tobacco Companies’ Tobacco-related Wrongs, and freeing judicial resources that can be directed at resolving other conflicts;²²
- (b) Allow PCCs to have access to justice through a fair, efficient and cost-effective claims process. For the PCCs, apart from pursuing individual actions which would be less practical, less efficient and too costly to prosecute, there is no feasible alternative avenue for redress than submitting a claim to the PCC Compensation Plan, or receiving indirect benefits that are rationally connected to Tobacco-related Diseases and the varying

¹⁹ *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at para. 38.

²⁰ *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58 at para. 57.

²¹ *Hollick v. Toronto (City)* (1999), 46 O.R. (3d) 257 at para. 11 (C.A.).

²² *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at para. 27; *Ford v. F. Hoffmann-La Roche Ltd.* (2005), 74 O.R. (3d) 758 (S.C.J.) at para. 38.

circumstances of the diverse group of PCCs and *Létourneau* Class Members covered by the Cy-près Fund;²³ and

- (c) Promote behaviour modification on the part of the Tobacco Companies and their respective Tobacco Company Groups by ensuring that they do not ignore their obligations to the public.²⁴

II. THE CY-PRÈS FUND

C. OVERVIEW

12. The global settlement of the claims against the Applicants includes compensation for PCCs suffering from certain Tobacco-related Diseases who meet the prescribed PCC Eligibility Criteria, as well as funding to establish the Cy-près Fund that will be administered by a public charitable foundation to be established as part of the implementation of the global settlement. The Cy-près Fund is intended to serve the interests of the PCCs by providing them with access to justice through the provision of indirect benefits in Canada as an approximation of remedial compensation for those PCCs not eligible to receive direct compensation from the PCC Compensation Plan.

13. The Cy-près Fund is an essential component of the global settlement of the claims against the Applicants. In respect of PCCs who do not fulfill the PCC Eligibility Criteria to be eligible to receive direct compensation under the PCC Compensation Plan there is a high probability that their claims would not succeed against the Applicants for several reasons including: (i) their claims are likely statute-barred or subject to the defence of laches; and (ii) they were diagnosed

²³*Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at para. 28; *Ford v. F. Hoffmann-La Roche Ltd.* (2005), 74 O.R. (3d) 758 (S.C.J.) at paras. 38, 40, 41 and 145.

²⁴*Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at para. 29; *Pearson v. Inco Ltd.* (2005), 78 O.R. (3d) 641 at paras. 87-88 (C.A.).

with Tobacco-related Diseases which fall below the threshold to identify diseases which were presumptively caused by smoking the Applicants' cigarettes, such that they would be required to prove entitlement to direct compensation by establishing medical causation and legal causation in an individual trial. Such PCCs do not have a legal entitlement in the form of a judgment, membership in a class in a certified class action, or an individual claim that has a high probability of success, or any other practicable means to recover direct compensation for Tobacco-related Diseases caused by smoking the Applicants' cigarettes.

14. The establishment of the Cy-près Fund will be consistent with the class action legislation and case law developed in Canada to make provision for indirect prospective benefits to a class of persons for whom direct compensation is impracticable, and who would not otherwise receive monetary relief.

15. It is intended that the Cy-près Fund will generate significant value for the indirect benefit of the PCCs as well as the general public in Canada. Through the funding of research, programs and initiatives focused on improving outcomes in Tobacco-related Diseases, the Cy-près Fund will provide an essential component of the consideration required for the full and final settlement and release of the claims and potential claims against the Applicants by Canadians who may have been affected by smoking the Applicants' cigarettes and/or by using other tobacco products.

16. Pursuant to Article 16, Section 16.1 and 16.2 of the CCAA Plan, the sum of **\$1.0 billion** shall be allocated from the Global Settlement Amount to the Cy-près Fund which shall be administered by the Cy-près Foundation.

D. LEGAL PRINCIPLES SUPPORTING CY-PRÈS REMEDY FOR PCCs

(i) Court may apply Class Action Principles to achieve Redress for PCCs

17. Class actions are brought on behalf of, or for the benefit of, numerous persons who have a common interest. They provide an efficient procedural mechanism to access justice and achieve legal redress for widespread harm or injury by allowing one or more persons to bring an action on behalf of many persons who have suffered a common wrong and may not have the means to seek redress.²⁵

18. In class actions, where it is impracticable to identify each individual class member, or residual funds from an award or settlement amount remain after completion of the distribution to the class members, the courts have the authority pursuant to class proceedings legislation to order that the judgment or settlement funds be distributed on a cy-près basis.²⁶

19. In *Dutton*, the Supreme Court of Canada held that courts may apply established legal principles to analogous situations in order to achieve a just resolution. That case involved an investors' class action commenced in Alberta before that Province enacted its *Class Proceedings Act*.²⁷ The Supreme Court of Canada looked to the comprehensive class action legislation in British Columbia, Ontario and Quebec and cases decided thereunder to inform its decision regarding whether the Alberta class action should be permitted to proceed. In endorsing this approach, McLachlin, C.J. held that, in the absence of comprehensive legislation, "the courts must

²⁵ Warren K. Winkler et al., *The Law of Class Actions in Canada* (Toronto: Canada Law Book, 2014) at 1-2.

²⁶ Warren K. Winkler et al., *The Law of Class Actions in Canada* (Toronto: Canada Law Book, 2014) at 322.

²⁷ *Class Proceedings Act*, SA 2003, c. C-16.5.

fill the void under their inherent power to settle the rules of practice and procedure as to disputes before them”.²⁸

20. The claims of the vast majority of the PCCs have not been asserted against the Tobacco Companies in individual actions or class actions. Although the PCCs include subsets of claimants who may fall within the uncertified proposed class definitions in the seven actions²⁹ commenced between 2009 and 2014 under class proceedings legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia, such actions have not been certified as class actions and have not advanced past the issuance of the statement of claim.

21. The nature and scope of the PCCs’ claims are strongly analogous to claims that potentially could be advanced in a multi-jurisdictional class action, in that: (i) the PCCs are an identifiable class of persons; (ii) their claims raise common issues of fact and law; and (iii) it would be preferable to resolve the common issues through a global settlement.³⁰ Therefore, following the approach endorsed in *Dutton*, analogies may be drawn to relevant legal principles articulated in Canadian class proceedings legislation and the cases decided thereunder in order to construct a cy-près remedy in the form of the Cy-près Fund that will provide just and fair consideration for the settlement of the claims of PCCs who do not meet the PCC Eligibility Criteria.

22. In particular, the statutory provisions in class proceedings legislation authorizing the court to order a distribution of an award or settlement amount on a cy-près basis support the creation and definition of the parameters of the Cy-près Fund.

²⁸ *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at para. 34; see also paras. 35-37 and 43.

²⁹ The proposed class definitions in these seven actions are set out in Appendix “D” herein.

³⁰ See, for example, *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 5(1).

(ii) **Paramountcy of Jurisdiction of CCAA Court to approve PCC Compensation Plan and Cy-près Fund and Settlement of Class Actions**

23. The authorities discussed below establish that the CCAA Court has paramount jurisdiction in the Applicants' CCAA Proceedings to approve the terms of the PCC Compensation Plan and the Cy-près Fund which are integral components of the global settlement and the Applicants' CCAA Plans. As noted by Chief Justice Morawetz in *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation* ("**Sino-Forest**"):

The CCAA is a "flexible statute", and the court has "jurisdiction to approve major transactions, including settlement agreements, during the stay period defined in the Initial Order". The CCAA affords courts broad jurisdiction to make orders and "fill in the gaps in legislation so as to give effects to the objects of the CCAA". [*Re Nortel Networks Corp.*, 2010 ONSC 1708, paras. 66-70 ("*Re Nortel*"); *Re Canadian Red Cross Society* (1998), 5 C.B.R. (4th) 299, 72 O.T.C. 99, para. 43 (Ont. C.J.)]³¹

24. In *Sino-Forest*, Chief Justice Morawetz also cited the following confirmation of the paramountcy of the jurisdiction of the CCAA Court that was articulated by the Supreme Court of Canada in *Century Services Inc. v. Canada (Attorney General)* ("**Century Services**"):

CCAA decisions are often based on discretionary grants of jurisdiction. The incremental exercise of judicial discretion in commercial courts under conditions one practitioner aptly described as "the hothouse of real time litigation" has been the primary method by which the CCAA has been adapted and has evolved to meet contemporary business and social needs ... When large companies encounter difficulty, reorganizations become increasingly complex. CCAA courts have been called upon to innovate accordingly in exercising their jurisdiction beyond merely staying proceedings against the Debtor to allow breathing room for reorganization.

³¹ *Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, 2013 ONSC 1078 at para. 44; leave to appeal denied 2013 ONCA 456; application for leave to appeal to SCC denied [2013] S.C.C.A. No. 395.

They have been asked to sanction measures for which there is no explicit authority in the *CCAA*.³²

25. In *Century Services*, the Supreme Court of Canada noted that “Judicial innovation during *CCAA* proceedings has not been without controversy”,³³ and then articulated the following explanation of the sources of the court’s authority during *CCAA* proceedings:

The first question concerns the boundary between a court's statutory authority under the *CCAA* and a court's residual authority under its inherent and equitable jurisdiction when supervising a reorganization. In authorizing measures during *CCAA* proceedings, courts have on occasion purported to rely upon their equitable jurisdiction to advance the purposes of the Act or their inherent jurisdiction to fill gaps in the statute. Recent appellate decisions have counselled against purporting to rely on inherent jurisdiction, holding that the better view is that courts are in most cases simply construing the authority supplied by the *CCAA* itself

In this regard, though not strictly applicable to the case at bar, I note that Parliament has in recent amendments changed the wording contained in s. 11(1), making explicit the discretionary authority of the court under the *CCAA*. Thus, in s. 11 of the *CCAA* as currently enacted, a court may, “subject to the restrictions set out in this Act, ... make any order that it considers appropriate in the circumstances” (S.C. 2005, c. 47, s. 128). Parliament appears to have endorsed the broad reading of *CCAA* authority developed by the jurisprudence.

... Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* -- avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.³⁴

³² *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras. 58 and 61, cited in *Labourers’ Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, 2013 ONSC 1078 at para. 4545; leave to appeal denied 2013 ONCA 456; application for leave to appeal to SCC denied [2013] S.C.C.A. No. 395.

³³ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 63.

³⁴ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at paras. 64, 68 and 70.

26. The PCC Eligibility Criteria and the proposed plan for the administration of the distribution of Individual Payments to Eligible Claimants under the PCC Compensation Plan are analogous to a class definition and claims process typically employed in a class action settlement. The Cy-près Fund is analogous to a cy-près distribution of an undistributed amount of an award or settlement amount in a class action. In *Sino-Forest*, Chief Justice Morawetz confirmed that the CCAA Court has jurisdiction to approve the settlement of class actions by holding:

I do not accept that the class action settlement should be approved solely under the [*Class Proceedings Act*]. The reality facing the parties is that [*Sino-Forest Corporation*] is insolvent; it is under CCAA protection, and stakeholder claims are to be considered in the context of the CCAA regime.³⁵

(iii) Distributions on a Cy-près Basis

27. The cy-près doctrine is the vehicle by which a court may give effect “as nearly as possible” to the intentions of a donor of property in circumstances where literal compliance with the donor’s stated intention cannot be effected.³⁶ It enables a court to order that the property be applied for some other charitable purpose “as near as possible” to the purpose designated by the donor.³⁷

28. Canadian courts have applied the cy-près doctrine in class actions where a judgment has been rendered or a settlement has been negotiated, the distribution of the award or settlement amount to the class of plaintiffs is impracticable, and non-payment or a reversion of the funds back to the defendant would be inappropriate or unjust. In such a case, the damages may be distributed in the next best manner, as nearly as possible, to approximate the purpose for which they were

³⁵ *Labourers’ Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, 2013 ONSC 1078 at para. 72; leave to appeal denied 2013 ONCA 456; application for leave to appeal to SCC denied [2013] S.C.C.A. No. 395.

³⁶ Rachael P. Mulheron, *The Modern Cy-Près Doctrine: Applications and Implications* (Oxon: UCL Press, 2006) at 1.

³⁷ Rachael P. Mulheron, *The Modern Cy-Près Doctrine: Applications and Implications* (Oxon: UCL Press, 2006) at 53.

awarded.³⁸ The result of a *cy-près* distribution is that the damages or settlement monies, whose original purpose was to compensate plaintiffs harmed by the defendant's conduct, are distributed for the indirect benefit of the class members.

(iv) Class Proceedings Legislation in Canada permits *Cy-près* Distributions

29. All Canadian jurisdictions, except the Yukon, Northwest Territories and Nunavut, have class action legislation which permits a court to order that all or part of an award made in a judgment, or a settlement amount approved by the court, may be distributed to class members on a *cy-près* basis. Only Ontario's *Class Proceedings Act, 1992*, specifically uses the term "*cy-près*" as follows:

27.2(1) The court may order that all or part of an award under section 24 that has not been distributed to class or subclass members within a time set by the court be paid to the person or entity determined under subsection (3) on a *cy-près* basis, if the court is satisfied that, using best reasonable efforts, it is not practical or possible to compensate class or subclass members directly.

(2) In approving a settlement under section 27.1, the court may approve settlement terms that provide for the payment of all or part of the settlement funds to the person or entity determined under subsection (3) on a *cy-près* basis, if the court is satisfied that, using best reasonable efforts, it is not practical or possible to compensate class or subclass members directly.

(3) For the purposes of subsections (1) and (2), payment may be made on a *cy-près* basis to,

(a) a registered charity within the meaning of the *Income Tax Act* (Canada) or non-profit organization that is agreed on by the parties, if the court determines that payment of the amount to the registered charity or non-profit organization would reasonably be expected to directly or indirectly benefit the class or subclass members; or

³⁸ Rachael P. Mulheron, *The Modern Cy-Près Doctrine: Applications and Implications* (Oxon: UCL Press, 2006) at 215.

(b) Legal Aid Ontario, in any other case.³⁹

30. *Sorenson v. Easyhome Ltd.* was decided under the now repealed section 26(4) of the *Class Proceedings Act, 1992* which was the means by which the legislature originally granted the courts statutory authority to make a *cy-près* distribution in a class action in Ontario; however, the court's explanation of the intention of the class proceedings legislation in permitting *cy-près* distributions remains valid and compelling:

The Act contemplates that the *cy prè*s distribution will indirectly benefit the class. This is an important, indeed vital, point. The Ontario Law Reform Commission in its *Report on Class Actions*, said the purpose of a *cy prè*s distribution was compensation for class members through a benefit that "approaches as nearly as possible some form of recompense for injured class members." Ontario Law Reform Commission, *Report on Class Actions*, 3 vols. (Toronto: Ministry of the Attorney General, 1982) vol. 2 at p. 572.

Where in all the circumstances an aggregate settlement recovery cannot be economically distributed to individual class members, the court will approve a *cy prè*s distribution to credible organizations or institutions that will benefit class members:

As a general rule, *cy prè*s distributions should not be approved where direct compensation to class members is practicable However, where the expense of any distribution among the class members individually would be prohibitive in view of the limited funds available and the problems of identifying them and verifying their status as members, a *cy prè*s distribution of the settlement proceeds is appropriate:

....

*Cy prè*s relief should attempt to serve the objectives of the particular case and the interests of the class members. It should not be forgotten that the class action was brought on behalf of the class members and a *cy prè*s distribution is meant to be an indirect benefit for the class members and an approximation of remedial compensation for them⁴⁰

³⁹ *Class Proceedings Act, 1992*, S.O. 1992, c.6, s. 27.2.

⁴⁰ *Sorenson v. Easyhome Ltd.*, 2013 ONSC 4017 at paras. 25-27 and 30.

31. The approaches to cy-près distributions in the class proceedings legislation of the common law Provinces other than Ontario are substantively very similar. The class proceedings acts of Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador empower the courts in those jurisdictions to order that all or any undistributed part of an award “be applied in any manner that, in the opinion of the Court, may reasonably be expected to benefit class members or subclass members, even if the order does not provide for monetary relief to individual class members or subclass members”.⁴¹ Such an order may be made “whether or not all of the class members or subclass members can be identified or all their shares can be exactly determined”.⁴²

32. The class proceedings statutes of Saskatchewan, Manitoba, and Newfoundland and Labrador include the options that the court may order that an undistributed part of an award be applied against the costs of the class proceeding, forfeited to the Crown or returned to the party against whom the award was made.⁴³

33. The British Columbia *Class Proceedings Act* provides that if all or any part of an award for monetary relief or settlement funds has not been distributed within the time set by the court, 50% of the undistributed amount shall be distributed to the Law Foundation of British Columbia, and 50% of the undistributed amount shall be “applied in any manner that may reasonably be

⁴¹ *Class Proceedings Act*, SA 2003, c. C-16.5, ss. 34(1); *The Class Actions Act*, SS 2001, c. C-12.01, s. 37(1); *The Class Proceedings Act*, CCSM, c. C130, s. 34(1); *Class Proceedings Act*, RSNB 2011 c. 125, s. 36(1)(a); *Class Proceedings Act*, SNS 2007 c. 28, s. 37(1)(a); *Class Proceedings Act*, R.S.P.E.I. 1988, c. C-9.01, s. 37(1); *Class Proceedings Act*, SNL 2001, c. C-18.1, s. 34(1);

⁴² *Class Proceedings Act*, SA 2003, c. C-16.5, s. 34(3); *The Class Actions Act*, SS 2001, c. C-12.01, s. 37(3); *The Class Proceedings Act*, CCSM, c. C130, s. 34(3); *Class Proceedings Act*, SNS 2007 c. 28, s. 37(3); *Class Proceedings Act*, R.S.P.E.I. 1988, c. C-9.01, s. 37(3); *Class Proceedings Act*, SNL 2001, c. C-18.1, s. 34(3);

⁴³ *The Class Actions Act*, SS 2001, c. C-12.01, s. 37(5); *The Class Proceedings Act*, CCSM, c. C130, s. 34(5); *Class Proceedings Act*, RSNB 2011 c. 125, s. 36(3); *Class Proceedings Act*, RSNB 2011 c. 125, ss. 36(1)(b), (c) and (d); *Class Proceedings Act*, SNS 2007 c. 28, s. 37(1)(b), (c) and (d); *Class Proceedings Act*, R.S.P.E.I. 1988, c. C-9.01, ss. 37(5)(a), (b) and (d); *Class Proceedings Act*, SNL 2001, c. C-18.1, s. 34(5);

expected to benefit class or subclass members, including, if appropriate, distribution to the Law Foundation of British Columbia”.⁴⁴

34. In Quebec, Courts have routinely ordered *cy-près* distributions pursuant to Articles 596 and 597 of the *Code of Civil Procedure of Quebec*⁴⁵ in particular where, similar to section 27.2 of the Ontario *Class Proceedings Act, 1992*, it was determined that direct distributions are impractical, inappropriate or too costly.

(v) Principles guiding *Cy-près* Distributions by Courts

35. In *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, Justice Rothstein, writing for the majority of the Supreme Court of Canada, recognized that the precedent for *cy-près* distribution in class actions is well established as a method of distributing settlement proceeds or damage awards.⁴⁶ Justice Rothstein held that “... while its very name, meaning ‘as near as possible’, implies that it is not the ideal mode of distribution, it allows the court to disburse money to an appropriate substitute for the class members”.⁴⁷ In the dissent, Justice Karakatsanis noted that class proceedings legislation in British Columbia and Ontario has been interpreted to authorize *cy-près* awards to charities in situations where some class members cannot be identified.⁴⁸ Justice Karakatsanis expressly approved of the comment by Justice Winkler in *Gilbert v. Canadian Imperial Bank of Commerce* that a situation where it would be impractical or inefficient to identify

⁴⁴ *Class Proceedings Act*, RSBC 1996, c. 50, ss. 36.1 and 36.2.

⁴⁵ *Code of Civil Procedure*, CQLR c C-25.01.

⁴⁶ *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58 at para. 25.

⁴⁷ *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58 at para. 26.

⁴⁸ *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58 at para. 101.

class members entitled to share in an award “could be addressed with a settlement that is entirely *Cy pres*”.⁴⁹

36. In *Slark (Litigation guardian of) v. Ontario*, Justice Perell articulated the following principles that are relevant to the Court’s consideration of whether to approve a *cy-près* distribution in a class action settlement:

- (a) A *cy-près* distribution must be fair, reasonable and in the best interests of the class;⁵⁰
- (b) A reasonable number of class members who would not otherwise receive monetary relief must benefit from the *cy-près* distribution;⁵¹
- (c) *Cy-près* distributions are generally intended to meet at least two of the principal objectives of class actions, namely to enhance access to justice by directly or indirectly benefiting class members, and provide behaviour modification by ensuring that the unclaimed portion of an award or settlement is not reverted to the defendant;⁵²
- (d) A *cy-près* distribution should be justified within the context of the particular class action for which settlement approval is being sought, and there should be some rational connection between the subject matter of a particular case, the interests of class members, and the recipient or recipients of the *cy-près* distribution;⁵³ and
- (e) A *cy-près* distribution should not be used by class counsel, defence counsel, the defendant, or a judge as an opportunity to benefit charities with which they may be associated or which

⁴⁹ *Gilbert v. Canadian Imperial Bank of Commerce* (2004), 3 C.P.C. (6th) 35 at para. 15 (ONSC).

⁵⁰ *Slark (Litigation guardian of) v. Ontario*, 2017 ONSC 4178 at para. 36.

⁵¹ *Slark (Litigation guardian of) v. Ontario*, 2017 ONSC 4178 at para. 36.

⁵² *Slark (Litigation guardian of) v. Ontario*, 2017 ONSC 4178 at para. 38.

⁵³ *Slark (Litigation guardian of) v. Ontario*, 2017 ONSC 4178 at para. 39.

they may favour. To maintain the integrity of the class action regime, the indirect benefits of the class action should be exclusively for the class members.⁵⁴

37. In *Sorenson v. Easyhome Ltd.*, Justice Perell held that “Where in all the circumstances an aggregate settlement recovery cannot be economically distributed to individual class members, the court will approve a *cy près* distribution to credible organizations or institutions that will benefit class members”.⁵⁵ Justice Perell reiterated this principle in *Carom v. Bre-X Minerals Ltd.*⁵⁶ and, more recently, in *Cappelli v. Nobilis Health Corp.*⁵⁷

38. In *Sutherland v. Boots Pharmaceutical PLC*, Justice Winkler approved a \$2.25 million class action settlement that consisted entirely of a *cy-près* distribution to several organizations and institutions. The 520,000 class members claimed damages for misrepresentation in the marketing and sale of the drug Synthroid used to treat hypothyroidism. The large class size, small dollar per claim damages available from the settlement and costs to administer a claims process would have made individual distribution of the settlement impracticable and not in the interests of the class as a whole; therefore, Justice Winkler held that:

... the proper approach was to distribute the aggregate amount of the settlement by way of a *Cy-pres* distribution to selected recipient organizations, hospitals and universities conducting research into hypothyroidism which will likely serve the interests of the class members. To this effect the agreement provides that after deduction of fees, disbursements and compensation for representative plaintiffs as determined by the court, the balance of the settlement funds shall be distributed, on an agreed formula, among the five recipients: the University Health Network; the Hospital for Sick Children; Dalhousie University and the University of Alberta; the Centre for Research into Women's Health; and the Thyroid Foundation of Canada.

⁵⁴ *Slark (Litigation guardian of) v. Ontario*, 2017 ONSC 4178 at para. 40.

⁵⁵ *Sorenson v. Easyhome Ltd.*, 2013 ONSC 4017 at para. 26.

⁵⁶ *Carom v. Bre-X Minerals Ltd.*, 2014 ONSC 2507 at para. 124.

⁵⁷ *Cappelli v. Nobilis Health Corp.*, 2019 ONSC 4521 at para. 45.

The monies are to be used for specific research projects, education and outreach having to do with thyroid disease.⁵⁸

39. In *Ford v. F. Hoffmann-La Roche Ltd.*, the Court approved the settlement of the national classes in several class actions alleging a multi-party, price-fixing and market-sharing conspiracy relating to the sale of vitamins in Canada. Since there were tens of thousands of “Intermediate Purchasers” and millions of consumers of the vitamins, the Court concluded that “the complexity and administrative costs associated with any direct distribution to each Intermediate Purchaser and Consumer would be prohibitive”.⁵⁹ The Court approved two cy-près distributions of settlement monies to carefully selected and well-recognized industry and consumer organizations which would provide benefits to the Intermediate Purchasers and consumers and be held accountable for the moneys they received through compliance with strict governing rules.⁶⁰

40. In *Ford v. F. Hoffmann-La Roche Ltd.*, the Court stressed the importance of the parties explaining to the Court the basis for the selection and the process employed to select the recipients of cy-près distributions. The Court’s approval of the cy-près distributions was based upon evidence which satisfied the Court that the recipient industry and consumer organizations were selected based upon objective criteria, and the funds would be used for legitimate purposes that were rationally connected to the underlying cause of action as follows:

- (a) Class Counsel identified potential recipient organizations by Internet research and discussions with various industry organizations.⁶¹ Class counsel recognized that selecting regional or provincial organizations would make equal treatment across Canada difficult, so they concentrated on selecting Canadian-wide organizations that had a presence in most, if not all, provinces and territories;⁶²

⁵⁸ *Sutherland v. Boots Pharmaceutical PLC* (2002), 21 C.P.C. (5th) 196 at para. 9 (ONSC).

⁵⁹ *Ford v. F. Hoffmann-La Roche Ltd.*, (2005), 74 O.R. (3d) 758 (S.C.J.) at para. 80 (SCJ).

⁶⁰ *Ford v. F. Hoffmann-La Roche Ltd.*, (2005), 74 O.R. (3d) 758 (S.C.J.) at para. 49 (SCJ); see also paras. 79-86,

⁶¹ *Ford v. F. Hoffmann-La Roche Ltd.*, (2005), 74 O.R. (3d) 758 (S.C.J.) at paras. 84 and 94 (SCJ).

⁶² *Ford v. F. Hoffmann-La Roche Ltd.*, (2005), 74 O.R. (3d) 758 (S.C.J.) at para. 95.

- (b) Each potential recipient was evaluated against established criteria including:
- (i) the organization's membership base;
 - (ii) the organization's history of advocacy, service delivery, research or education relevant to the subject matter of the settlement;
 - (iii) whether the organization had a charitable or non-profit designation;
 - (iv) whether the organization was national in scope;
 - (v) the organization's ability to deliver benefits in each Province or Territory;
 - (vi) the organization's ability to deliver benefits to a particular group or target age of beneficiaries; and
 - (vii) the organization's financial stability and budget;⁶³
- (c) Each proposed recipient prepared a detailed proposal that was filed with the Court, delivered a resolution from its board of directors or governing body authorizing the submission of a proposal for funding and confirming that it would comply with the rules and procedures governing cy-près distribution, and agreed to use the funds in a manner that will deliver an identifiable benefit to its respective membership;⁶⁴
- (d) The proposed recipients agreed to comply with the rules governing cy-près distributions which were developed by class counsel with the assistance of the administrator. The rules sought to ensure that all recipient organizations accounted to the court for the settlement funds they received;⁶⁵ and
- (e) Each cy-près recipient had an established record of providing not-for-profit services, with transparency in respect of their activities and accounting which provided the greatest level of confidence and assurance that the monies distributed would be responsibly used.⁶⁶

⁶³ *Ford v. F. Hoffmann-La Roche Ltd*, (2005), 74 O.R. (3d) 758 (S.C.J.) at paras. 84 and 96.

⁶⁴ *Ford v. F. Hoffmann-La Roche Ltd*, (2005), 74 O.R. (3d) 758 (S.C.J.) at para. 86.

⁶⁵ *Ford v. F. Hoffmann-La Roche Ltd*, (2005), 74 O.R. (3d) 758 (S.C.J.) at para. 85.

⁶⁶ *Ford v. F. Hoffmann-La Roche Ltd*, (2005), 74 O.R. (3d) 758 (S.C.J.) at para. 158.

E. RATIONALE FOR MAKING A CY-PRÈS DISTRIBUTION IN THE GLOBAL SETTLEMENT

41. The four factors discussed below explain the principal rationale for making a cy-près distribution by means of the Cy-près Fund as part of the global settlement of the Tobacco Claims in Canada.

42. First, following the approach endorsed in *Dutton*,⁶⁷ the inclusion of the Cy-près Fund in the global settlement is consistent with the jurisprudence and practice which has developed since the enactment of class proceedings legislation in Canada. The harms suffered by PCCs, beyond the PCC Compensable Diseases for which direct compensation will be provided under the PCC Compensation Plan, are indeterminable on an individual basis. The Cy-près Fund will achieve a reasonable measure of justice through the provision of meaningful remedial benefits for individuals suffering from Tobacco-related Diseases.

43. Second, the Cy-près Fund will provide consideration for the settlement of the potential claims against the Tobacco Companies by a conceptual group of individuals who may have been affected by smoking the Applicants' cigarettes and/or using other tobacco products. It is highly unlikely that such potential claimants would qualify to receive direct compensation from the PCC Compensation Plan; however, the Applicants and the claimants desire to provide an indirect benefit to this potential claimant group through distributions made from the Cy-près Fund to fund research, programs and initiatives focused on improving outcomes in Tobacco-related Disease the purpose of which are rationally connected to the varying circumstances of the diverse group of PCCs covered by the Cy-près Fund. The Cy-près Fund effectively is the "final piece of the puzzle" which will enable the Applicants to provide

⁶⁷ *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at para. 34; see also paras. 35-37 and 43.

consideration for the provision of a broad release in favour of the Applicants of the claims of all individuals in Canada relating to harm caused by their Tobacco-related Wrongs. The release will cover all past and future PCC Claims.

44. Third, the claims of this potential claimant group do not fall within the class definition in the *Blais* Class Action such that no direct compensation is available to them pursuant to the judgment in the *Blais* Class Action.

45. Fourth, it is submitted that there is a high probability that the claims of this potential claimant group would not succeed against the Applicants for several reasons including:

- (a) the individuals cannot be identified;
- (b) the claims are statute-barred;⁶⁸
- (c) the claims are subject to the defence of laches;
- (d) the individuals were diagnosed with Tobacco-related Diseases which fall below the hazard ratio that Dr. Jha opined is the reasonable threshold to identify diseases which were presumptively caused by smoking;⁶⁹
- (e) each claim would require an individual trial to have a judicial determination; and
- (f) the *Blais* class members were able to use section 15 of the TRDA to bring their action on a collective basis and prove causation based solely on “statistical information or

⁶⁸ See “Pan-Canadian Claimants’ Compensation Plan: Methodology and Analysis at Section I, Schedule “N” to Imperial’s CCAA Plan and Schedule “Q” to the CCAA Plans for RBH and JTIM.

⁶⁹ See “Pan-Canadian Claimants’ Compensation Plan: Methodology and Analysis at Section M, Schedule “N” to Imperial’s CCAA Plan and Schedule “Q” to the CCAA Plans for RBH and JTIM.

information derived from epidemiological, sociological or any other relevant studies”, thereby avoiding the requirement to prove the moral damages of each *Blais* class member on an individual basis. All individuals within the potential claimant group to be covered by the Cy-près Fund, other than residents of Quebec, would be required to prove medical causation and legal causation in accordance with common law principles.⁷⁰

46. Individuals not eligible for compensation under the PCC Compensation Plan do not have any other available remedy for the reasons stated in the document entitled “Pan-Canadian Compensation Plan: Methodology and Analysis” at Section E at paragraphs 38 to 41 (attached as a Schedule to the CCAA Plans) which discussed the evidentiary impediments and legal barriers facing individual PCCs. It is submitted that these impediments are insurmountable for individuals suffering from non-PCC Compensable Diseases due to the passage of time (see the limitations law analysis in Section G below as well as the equitable defence of laches) and available medical and epidemiological evidence. Tobacco-related Diseases encompass a great expanse of diseases, including many forms of cancer, respiratory disease, cardiovascular disease, stroke, and other diseases, as well as a host of medical complications, the origins of which often are multi-factorial. On a population basis, the extent to which such diseases and their health care costs are attributable to smoking-use of Tobacco Products can be estimated on a balance of probabilities. On an individual basis, however, such claims have not been advanced in Canada, because to do so would be cost prohibitive.

47. If individual claims were pursued, it would be exceedingly difficult to prove any individual case on a balance of probabilities, both in relation to a defendant’s conduct and the plaintiff’s personal health history. It is submitted that greater good can be accomplished without the necessity

⁷⁰ See Pan-Canadian Claimants’ Compensation Plan: Methodology and Analysis at Section O, Schedule “N” to Imperial’s CCAA Plan and Schedule “Q” to the CCAA Plans for RBH and JTIM.

of a forensic analysis and assessment of damages for each individual, through the Cy-près Fund which will confer indirect benefits on both individuals as well as the population who will derive benefits from the research, programs and initiatives focused on improving outcomes in Tobacco-related Disease funded by the Cy-près Fund.

F. THE CY-PRÈS FUND PROVIDES CONSIDERATION FOR RELEASE OF CLAIMS OF PCCs WHO DO NOT MEET PCC ELIGIBILITY CRITERIA

48. It is the Tobacco Companies' position that, to achieve a global settlement, all Claims that are compromised and settled in the CCAA Proceedings must be satisfied from the Global Settlement Amount which they shall pay through Upfront Contributions and Annual Contributions that they deposit into the Global Settlement Trust Account as part of the global settlement. The Tobacco Companies seek to eliminate any risk that creditors may possibly seek to assert Claims for compensation against them after the Plan Implementation Date. Thus, a foundational principle of the global settlement is that the Released Claims shall be fully, finally, irrevocably and unconditionally released as against the Released Parties and, more particularly, all recovery in respect thereof shall be limited solely to payment from the Global Settlement Amount.

49. The Cy-près Fund will provide the consideration for the compromise, full and final settlement and release of all claims and potential claims of Pan-Canadian Claimants who do not fulfill the PCC Eligibility Criteria to be eligible to receive direct compensation payments under the PCC Compensation Plan but will be indirectly benefited by falling within the scope of the Foundation. This broad group of claimants includes the following persons and any affected family members or estates:

- (a) Smokers suffering from lung or throat cancer or Emphysema/COPD Gold Grade III or IV who are outside the claims period or who smoked less than the requisite twelve pack years or, in the case of Emphysema/COPD, were not classified as Gold Grade III or IV or the equivalent;
- (b) Smokers who have tobacco-related harms other than lung or throat cancer and Emphysema/COPD Gold Grade III or IV or the equivalent; and
- (c) Persons who smokeuse or have smokedused tobacco products who have not yet or may never contract a tobacco-related harm.

G. RATIONAL CONNECTION BETWEEN PCCs' CLAIMS AND THE CY-PRÈS FUND

50. In determining whether to approve a cy-près distribution of an undistributed amount of an award or settlement amount in a class action, the Courts have held that there should be “some rational connection between the subject matter of a particular case, the interests of the class members and the cy-près recipient.”⁷¹

51. The PCCs whose potential claims will be released in consideration for the sum that the Tobacco Companies will pay to fund the Cy-près Fund include the persons and any affected family members or estates described in paragraph 49 herein. Such Persons are not eligible to receive direct compensation from the PCC Compensation Plan for various reasons including: (i) they do not have a legal entitlement to compensation in the form of a judgment or membership in a class in a certified class action; (ii) their claims are likely statute-barred or subject to the defence of laches;

⁷¹ *Sutherland v. Boots Pharmaceutical PLC* (2002), 21 C.P.C. (5th) 196 at para. 16; *Slark v. Ontario*, 2017 ONSC 4178 at para. 39; *Markson v. MBNA Canada Bank*, 2012 ONSC 5891 at para. 43; *Sorenson v. Easyhome Ltd.*, 2013 ONSC 4017 at paras. 26-29; *O'Neil v. Sunopta, Inc.*, 2015 ONSC 6213 at para. 16.

and (iii) they were diagnosed with Tobacco-related Diseases which fall below the threshold to identify diseases which were presumptively caused by smoking the Applicants' cigarettes, such that they would be required to prove entitlement to direct compensation by establishing medical causation and legal causation in an individual trial.

52. It is of paramount importance that, in the administration of the distributions from the Cy-près Fund, the governing principle (“**Cy-près Principle**”) shall be that a rational connection is established and maintained between the subject matter of the varying circumstances of this diverse group of PCCs and the Foundation's purpose which is to fund research, programs and initiatives focused on improving outcomes in Tobacco-related ~~d~~Diseases.

H. THE CY-PRÈS FUND ALSO PROVIDES CONSIDERATION FOR SETTLEMENT OF LÉTOURNEAU JUDGMENT

53. The plaintiffs in the *Létourneau* Class Action recovered punitive damages on behalf of Quebec residents who, as a result of smoking the Applicants' cigarettes, developed a nicotine dependence. The trial judge did not award moral damages to the class members in the *Létourneau* Class Action because, despite findings of fault, damages and causality, the *Létourneau* class members failed to establish that all class members suffered substantially similar injuries such that the trial judge could award moral damages on a collective basis.⁷² In dismissing the claim for moral damages, the trial judge held that “The inevitable and significant differences among the hundreds of thousands of *Létourneau* Class Members with respect to the nature and degree of the

⁷² *Létourneau v. JTI-Macdonald Corp.*, 2015 QCCS 2382 at paras. 946-950.

moral damages claimed make it impossible to establish with sufficient accuracy the total amount of the claims of the Class”.⁷³

54. The payment of the QCAP Cy-près Contribution in the amount of \$131 million shall be the consideration for the full and final settlement and satisfaction of the *Létourneau* Judgment. The QCAP Cy-près Contribution shall be deposited into the Cy-près Trust Account from the Global Settlement Trust Account for the benefit of the Cy-près Foundation.

I. THE CY-PRÈS FUND WILL BE ADMINISTERED THROUGH A PUBLIC CHARITABLE FOUNDATION

55. The share of the Global Settlement Amount allocated to the Cy-près Fund shall be administered through a public charitable foundation (“**Foundation**”) which shall be established as part of the implementation of the global settlement in accordance with the Definitive Documents. The Foundation shall seek registration with the Canada Revenue Agency (“**CRA**”) as a charity under the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.).

56. The Foundation shall be entirely separate and independent from, and free from any influence or interference by, any of the Claimants, Tobacco Companies, Tobacco Company Groups, or any potential or actual beneficiary of the Foundation.

57. The Terms of Reference of the Foundation are set out in Article 9, Section 9.3 of the CCAA Plan of each Tobacco Company.

⁷³ *Létourneau v. JTI-Macdonald Corp.*, 2015 QCCS 2382 at para. 950.

58. Upon the recommendation of the Court-Appointed Mediator and the Monitors and subject to the approval of the CCAA Court, Dr. Robert Bell, MDCM, MSc, FRCSC, FACS, FRCSE (Hon), will be appointed by the CCAA Court to serve as the Chair of the Cy-près Foundation.

59. All professional fees, other fees, costs, disbursements, expenses and other expenditures, and all applicable sales taxes thereon charged and incurred in relation to the establishment and administration of the Foundation shall be paid from the share of the Global Settlement Amount allocated to the Cy-près Fund.

60. Not less frequently than annually, the Foundation shall prepare a written report for submission to the CCAA Plan Administrators and thereafter for filing with the CCAA Court and distribution to the public that includes reports on the financial status of the Foundation (including capital, interest earned, distributions made, etc.) and the activities of the Foundation for the period covered by the report.

J. QUANTUM OF THE CY-PRÈS FUND AND TIMING OF PAYMENT

(i) Adequacy of the Cy-près Amount

61. Courts and authorities have emphasized the importance of the amount of a cy-près settlement being adequate to fulfill its purpose of indirectly benefiting those whose claims will be settled. Notably, in *Ford v. F. Hoffmann-La Roche Ltd.* the Court held that “In reviewing the terms of a settlement, a court must be assured that the settlement secures an adequate advantage for the class in return for the compromise of litigation rights” which would include the quantum of any cy-près component of a settlement.⁷⁴

⁷⁴ *Ford v. F. Hoffmann-La Roche Ltd.*, (2005), 74 O.R. (3d) 758 at para. 128 (S.C.J.).

62. Justice Winkler identified two serious potential ethical problems relating to the quantum of cy-près distributions which must be guarded against. First, since the corpus of the cy-près distribution will not be paid to the class members, “there is always the overriding concern as to the adequacy of the settlement”.⁷⁵ Secondly, “there is a growing concern about lobbying of counsel, and even courts, by hopeful beneficiaries of cy-près settlements ... This must be forbidden”.⁷⁶

63. Thus, the Court must be satisfied that the amount of the Cy-près Fund is adequate to provide the consideration for the full and final release of the claims and potential claims of all Pan-Canadian Claimants who do not fulfill the PCC Eligibility Criteria to be eligible to receive direct compensation payments under the PCC Compensation Plan.

(ii) Amount allocated from Global Settlement Amount to the Cy-près Fund

64. Pursuant to Article 16, Section 16.1 and 16.2 of the CCAA Plans, the sum of **\$1.0 billion** shall be allocated from the Global Settlement Amount to the Cy-près Fund which shall be administered by the Cy-près Foundation.

K. CONCLUSION

65. For all of the reasons set out above, the settlement of the PCCs’ claims and potential claims via the Cy-près Fund, which is part of the Applicants’ CCAA Plans that effect the global settlement of the Tobacco Claims in Canada, is fair, reasonable and in the best interests of the PCCs as a whole.

DATED as of the 5th day of December, 2024.

⁷⁵ The Honourable Chief Justice W.K. Winkler & S.D. Matthews, “Caught in a Trap – Ethical Considerations for the Plaintiff’s Lawyer in Class Proceedings” (see section on “Cy-près Distributions”), Paper delivered at the 5th Annual Symposium on Class Actions, April 11, 2008.

⁷⁶ The Honourable Chief Justice W.K. Winkler & S.D. Matthews, “Caught in a Trap – Ethical Considerations for the Plaintiff’s Lawyer in Class Proceedings”, (see section on “Cy-près Distributions”), Paper delivered at the 5th Annual Symposium on Class Actions, April 11, 2008.

APPENDIX “A”**GLOSSARY**

“**Applicants**” means, collectively, Imperial Tobacco Canada Limited, Imperial Tobacco Company Limited, Rothmans, Benson & Hedges Inc. and JTI-Macdonald Corp.

“**Alternative Product**” means (i) any device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol without burning of (a) a substance; or (b) a mixture of substances; (ii) any substance or mixture of substances, whether or not it contains tobacco or nicotine, that is intended for use with or without those devices to produce emissions in the form of an aerosol without burning; (iii) any non-combustible tobacco (other than smokeless tobacco) or nicotine delivery product; or (iv) any component, part, or accessory of or used in connection with any such device or product referred to above.

“**Blais Class Action**” means *Conseil québécois sur le tabac et la santé et al. v. JTI-Macdonald Corp. et al.*, Court File No. 500-06-000076-980 (Montreal, Quebec).

“**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

“**CCAA Court**” means the Ontario Superior Court of Justice (Commercial List) at Toronto.

“**CCAA Plan**”, or “**Plan**”, means, in respect of each Tobacco Company, the Court-Appointed Mediator’s and Monitors’ plan of compromise and arrangement pursuant to the CCAA concerning, affecting and involving such Tobacco Company, including all Schedules thereto.

“**CCAA Plan Administrators**” has the meaning given in Article 14, Section 14.1 of the CCAA Plan.

“**CCAA Proceeding**” means, in respect of each Tobacco Company, the proceeding commenced by such Tobacco Company pursuant to the CCAA, namely Application No. CV-19-616077-00CL in respect of Imperial, Application No. CV-19-616779-00CL in respect of RBH, and Application No. CV-19-615862-00CL in respect of JTIM, collectively the “**CCAA Proceedings**”.

“**Certificate**” means the certificate filed by the Monitor with the CCAA Court confirming that the full amount of the Upfront Contributions has been received from the Tobacco Companies and deposited into the Global Settlement Trust Account.

“**Claims**” means any and all manner of requests, demands, complaints, claims (including claims for contribution or indemnity), actions, causes of action, class actions, cross-claims, counterclaims, applications, proceedings, appeals, arbitrations, suits, debts, sums of money, liabilities, accounts, covenants, damages, losses, injuries, judgments, orders (including orders for injunctive relief or specific performance and compliance orders), interest, additional indemnity, expenses, executions, encumbrances, and recoveries on account of any liability, duty, obligation, demand or cause of action of whatever nature, in each case, of any kind, character or nature whatsoever, asserted or unasserted, whether known or unknown, suspected or unsuspected,

liquidated or unliquidated, matured or unmatured, contingent or actual, disputed or undisputed, foreseen or unforeseen, and direct, indirect, or derivative, at common law, in equity, or under statute, and “**Claim**” means any one of them.

“**Claims Administrator**” means the claims administrator approved and appointed by the CCAA Court to (i) manage the overall administration of the individual claims process and perform all other duties and responsibilities assigned to it in regard to the PCC Compensation Plan, and (ii) manage the overall administration of the individual claims process and perform all other duties and responsibilities assigned to it in regard to the Quebec Administration Plan. The appointment of Epiq as the Claims Administrator will be upon the recommendation of the Court-Appointed Mediator and the Monitors and subject to the approval of the CCAA Court.

“**COPD**” means chronic obstructive pulmonary disease (GOLD Grade III or IV). The Global Initiative for Chronic Obstructive Lung Disease (“**GOLD**”) developed a four grade classification system based upon severity of airflow limitation and other diagnostic parameters. The GOLD Grade III (severe) and GOLD Grade IV (very severe) classifications represent the two most severe categories of disease.

“**Cy-près Fund**” means the aggregated amount allocated from the Global Settlement Amount payable into the Cy-près Trust Account which shall be administered by the Cy-près Foundation.

“**Emphysema**” means the condition of the lung that is marked by distension and eventual rupture of the alveoli with progressive loss of pulmonary elasticity, that is accompanied by shortness of breath with or without cough, and that may lead to impairment of heart action. For the purpose of the PCC Compensation Plan, “Emphysema” includes COPD (GOLD Grade III or IV).

“**Epiq**” means Epiq Class Actions Services Canada, Inc.

“**Global Settlement Trust Account**” has the meaning given in Article 5, Section 5.3 of the CCAA Plan.

“**HCCR Legislation**” means, collectively, the *Crown’s Right of Recovery Act*, SA 2009, c C-35, Part 2, Sections 41-50 only, *Tobacco Damages and Health Care Costs Recovery Act*, SBC 2000, c 30, *The Tobacco Damages and Health Care Costs Recovery Act*, SM 2006, c 18, *Tobacco Damages and Health Care Costs Recovery Act*, SNB 2006, c T-7.5, *Tobacco Health Care Costs Recovery Act*, SNL 2001, c T-4.2, *Tobacco Damages and Health-Care Costs Recovery Act*, SNS 2005, c 46, *Tobacco Damages and Health Care Costs Recovery Act*, SNWT 2011, c 33 (proclaimed but not yet in force), *Tobacco Damages and Health Care Costs Recovery Act*, SNU 2010, c 31 (proclaimed but not yet in force), *Tobacco Damages and Health Care Costs Recovery Act, 2009*, SO 2009, c 13, *Tobacco Damages and Health Care Costs Recovery Act*, SPEI 2009, c 22, *Tobacco-related Damages and Health Care Costs Recovery Act, 2009*, CQLR c R-2.2.0.0.1, and *The Tobacco Damages and Health Care Costs Recovery Act*, SS 2007, c T-14.2.

“**Imperial**” means, collectively, ITCAN and ITCO.

“**ITCAN**” means Imperial Tobacco Canada Limited.

“**ITCO**” means Imperial Tobacco Company Limited.

“**JTIM**” means JTI-Macdonald Corp.

“***Knight Class Action***” means *Kenneth Knight v. Imperial Tobacco Canada Limited* (Supreme Court of British Columbia, Court File No. L031300).

“***Knight Class Action Plaintiffs***” means Individuals who meet the criteria of the certified class definition in the *Knight Class Action*. The fact that an Individual is a *Knight Class Action Plaintiff* does not thereby disqualify that Individual from being a Pan-Canadian Claimant.

“***Létourneau Class Action***” means *Cecilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec).

“***Létourneau Judgment***” means the judgment rendered by the Honourable Justice Brian Riordan on May 27, 2015 as rectified on June 8, 2015, and the judgment of the Court of Appeal of Quebec dated March 1, 2019 in the class action commenced in the Quebec Superior Court in Court File No. 500-06-000070-983 (*Cecilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*).

“**Pan-Canadian Claimants**”, or “**PCCs**” means individuals, excluding *Blais Class Members* and *Létourneau Class Members* in relation to QCAP Claims, who have asserted or may be entitled to assert a PCC Claim.

“**Parent**” means:

- (i) in the case of Imperial, British American Tobacco p.l.c.;
- (ii) in the case of RBH, Philip Morris International Inc.; and
- (iii) in the case of JTIM, JT International Holding B.V.

“**Parties**” means the Claimants, the Tobacco Companies and the Tobacco Company Groups, and “**Party**” means any one of them.

“**PCC Claims Period**” means the four-year period from March 8, 2015 to March 8, 2019 inclusive of those dates.

“**PCC Compensation Plan Amount**” means the aggregate amount payable pursuant to the Global Settlement by the Tobacco Companies into the PCC Trust Account in respect of compensation for Eligible Pan-Canadian Claimants.

“**PCC Representative Counsel**” means The Law Practice of Wagner & Associates, Inc.

“**Plan Implementation Date**” means the date upon which all of the Plan Implementation Conditions and the conditions to other Definitive Documents have been satisfied or waived and the transactions contemplated by the CCAA Plans, the Sanction Orders and the other Definitive Documents are to be implemented, as evidenced by the Monitors’ Certificates to be delivered to the Tobacco Companies and filed with the CCAA Court.

“**Provinces**” means, collectively, His Majesty the King in right of British Columbia (“**British**

Columbia”), His Majesty the King in right of Alberta (“**Alberta**”), His Majesty the King in right of Saskatchewan (“**Saskatchewan**”), His Majesty the King in right of Manitoba (“**Manitoba**”), His Majesty the King in right of Ontario (“**Ontario**”), the Attorney General of Quebec (“**Quebec**”), His Majesty the King in right of New Brunswick (“**New Brunswick**”), His Majesty the King in right of Nova Scotia (“**Nova Scotia**”), His Majesty the King in right of Prince Edward Island (“**Prince Edward Island**”) and His Majesty the King in right of Newfoundland and Labrador (“**Newfoundland and Labrador**”).

“**QCAP Claim**” means any Claim that has been advanced, could have been advanced or could be advanced in the following class actions or in any other similar proceedings, whether before or after the Effective Time:

- (a) *Conseil québécois sur le tabac et la santé et Jean-Yves Blais c. Imperial Tobacco Ltée, Rothmans, Benson & Hedges Inc. et JTI-MacDonald Corp.* (Quebec Superior Court, Court File No. 500-06-00076-980); and
- (b) *Létourneau c. Imperial Tobacco Ltée, Rothmans Benson & Hedges Inc. et JTI MacDonald Corp.* (Quebec Superior Court, Court File No. 500-06-000070-983),

including the judgment of the Honourable Justice Brian Riordan dated May 27, 2015 as rectified on June 9, 2015, and the judgment of the Court of Appeal of Quebec dated March 1, 2019, and any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

“**QCAP Cy-près Contribution**” means the sum of \$131.0 million forming part of the QCAP Settlement Amount that shall be contributed by the QCAPs to the Cy-près Fund and paid into the Cy-près Trust Account. The QCAP Cy-près Contribution is the consideration for the full and final settlement and satisfaction of the *Létourneau* Judgment.

“**QCAP Settlement Amount**” means the amount allocated from the Global Settlement Amount and paid for the benefit of the QCAPs in settlement of the Tobacco Companies’ liability pursuant to the judgments rendered in the Quebec Class Actions, as set forth in Article 16, Sections 16.1, 16.2 and 16.3 of the CCAA Plans.

“**QCAP Trust Account**” means the designated trust account or trust accounts held in the Bank for the benefit of the Quebec Class Action Plaintiffs and into which the QCAP Settlement Amount shall be paid and deposited from the Global Settlement Trust Account.

“**Quebec Class Action Administration Plan**”, or “**Quebec Administration Plan**”, means the document (with attached appendices) that is subject to the approval of the CCAA Court setting out the process by which the Quebec Class Action Plaintiffs may submit claims for a Compensation Payment pursuant to the *Blais* Judgment, the process of administering such claims, and the joint oversight and supervision thereof by the CCAA Court and the Superior Court of Quebec.

“**Quebec Class Actions**” means, collectively, (i) *Conseil québécois sur le tabac et la santé et al. v. JTI-Macdonald Corp. et al.*, Court File No. 500-06-000076-980 (Montreal, Quebec), and (ii) *Cecilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al.*, Court File No. 500-06-000070-983 (Montreal, Quebec).

“**Quebec Class Action Plaintiffs**” or “**QCAPs**”, means individuals who meet the criteria of the certified class definitions in the Quebec Class Actions.

“**RBH**” means Rothmans, Benson & Hedges Inc.

“**Released Claims**” has the meaning given in Article 1, Section 1.1 of the CCAA Plan. “**Released Parties**” has the meaning given in Article 1, Section 1.1 of the CCAA Plan.

“**Surviving Family Members**” means, collectively the Individuals who are eligible to recover damages for loss of guidance, care and companionship pursuant to the applicable legislation in each jurisdiction which governs surviving family members’ claims for damages, namely: *Family Compensation Act*, RSBC 1996, c. 126; *Fatal Accidents Act*, RSA 2000, c. F-8; *The Fatal Accidents Act*, RSS 1978, c. F-11; *The Fatal Accidents Act*, CCSM, c. F50; *Family Law Act*, RSO 1990, c. F.3; *Civil Code of Quebec*, chapter CCQ-1991; *Fatal Accidents Act*, RSNB 2012, c.104; *Fatal Injuries Act*, RSNS 1989, c. 163; amended 2000, c. 29, ss. 9-12; *Fatal Accidents Act*, RSPEI 1988, c. F-5; *Fatal Accidents Act*, RSNL 1990, c F-6; *Fatal Accidents Act*, RSY 2002, c 86; and *Fatal Accidents Act*, RSNWT (Nu) 1988, c F-3. For greater certainty, “Surviving Family Members” does not include the estates of Individuals who fulfill the criteria to receive compensation as a Pan-Canadian Claimant.

“**Territories**” means, collectively, the Government of Yukon (“**Yukon**”), the Government of the Northwest Territories (“**Northwest Territories**”) and the Government of Nunavut (“**Nunavut**”).

“**Tobacco Claim**” has the meaning given in Article 1, Section 1.1 of the CCAA Plan.

“**Tobacco Companies**” means, collectively, Imperial, RBH and JTIM, and “**Tobacco Company**” means any one of them.

“**Tobacco Company Group**” means, in respect of a Tobacco Company, the applicable Parent and all other current or former affiliates, direct or indirect subsidiaries or parents, of such Tobacco Company, and their respective indemnitees.

“**Tobacco Product**” means any product made in whole or in part of tobacco that is intended for human consumption or use, including any component, part, or accessory of or used in connection with a tobacco product, including cigarettes, tobacco sticks (intended for smoking and requiring further preparation before they are smoked), loose tobacco intended for incorporation into cigarettes, cigars, cigarillos, pipe tobacco, kreteks, bidis and smokeless tobacco (including chewing tobacco, nasal snuff and oral snuff), but does not include any Alternative Product.

“**Tobacco-related Disease**” means a disease or other illness or harm caused or contributed to by the use of or exposure (whether directly or indirectly) to a Tobacco Product.

“**Tobacco Users**” and “**Users of Tobacco Products**” and similar terms include the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions.

APPENDIX “B”

CONSIDERATION PROVIDED BY APPLICANTS IN GLOBAL SETTLEMENT TO SETTLE CLAIMS AND POTENTIAL CLAIMS OF INDIVIDUALS RESIDENT IN CANADA

PCC COMPENSATION PLAN

The PCC Compensation Plan will provide direct compensation to individuals who fulfill the following PCC Eligibility Criteria:

- (a) on the date that a claimant submits their claim to the PCC Compensation Plan:
 - (i) if the claimant is alive, they must reside in a Province or Territory in Canada, or
 - (ii) if the claimant is deceased, they must have resided in a Province or Territory in Canada on the date of their death;
- (b) the claimant was alive on March 8, 2019;
- (c) between January 1, 1950 and November 20, 1998, the claimant smoked a minimum of twelve pack-years of cigarettes manufactured by the Applicants;
- (d) between March 8, 2015 and March 8, 2019 (inclusive of those dates), the claimant was diagnosed with:
 - (i) a primary lung cancer,
 - (ii) squamous cell carcinoma of the larynx, oropharynx or hypopharynx, or
 - (iii) chronic obstructive pulmonary disease (GOLD Grades III and IV); and
- (e) on the date of the diagnosis with a PCC Compensable Disease the claimant resided in a Province or Territory in Canada.

THE CY-PRÈS

The Cy-près will provide the consideration for the full and final settlement and release of all claims and potential claims of PCCs who do not qualify to receive compensation payments from the PCC Compensation Plan. The group of claimants who will be covered by the Cy-près includes the following Persons and any affected family members or estates:

- (a) Smokers suffering from lung or throat cancer or Emphysema/COPD Gold Grade III or IV who are outside the claims period or who smoked less than the requisite twelve pack years or, in the case of Emphysema/COPD, were not classified as Gold Grade III or IV or the equivalent;
- (b) Smokers who have tobacco-related harms other than lung or throat cancer and Emphysema/COPD Gold Grade III or IV or the equivalent; and
- (c) Persons who ~~smoke~~use or have ~~smoked~~used tobacco products who have not yet or may never contract a tobacco-related harm.

APPENDIX “C”
CERTIFIED QUEBEC CLASS ACTIONS WITH JUDGMENT

Action	Jurisdiction Year Commenced	Certified Class Definition	Status
<p><i>Conseil québécois sur le tabac et la santé et al. v. JTI-Macdonald Corp. et al.</i> (“Blais”)</p>	<p>Quebec 1998</p>	<p>All persons residing in Quebec who satisfy the following criteria:</p> <ol style="list-style-type: none"> 1) To have smoked, between January 1, 1950 and November 20, 1998, a minimum of 12 pack/years of cigarettes manufactured by the defendants (that is, the equivalent of a minimum of 87,600 cigarettes, namely any combination of the number of cigarettes smoked in a day multiplied by the number of days of consumption insofar as the total is equal or greater than 87,600 cigarettes) ... 2) To have been diagnosed before March 12, 2012 with: <ol style="list-style-type: none"> (a) Lung cancer or (b) Cancer (squamous cell carcinoma) of the throat, that is to say of the larynx, the oropharynx or the hypopharynx, or (c) Emphysema. <p>This group also includes the heirs of the persons deceased after November 20, 1998 who satisfied the criteria mentioned herein.⁷⁷</p>	<p>Quebec Superior Court granted judgment in favour of QCAPs on May 27, 2015; Quebec Court of Appeal upheld trial judgment on March 1, 2019</p>

⁷⁷ *Imperial Tobacco Canada liée c. Conseil québécois sur le tabac et la santé et al.*, 2019 QCCA 358 at para. 1282.

Action	Jurisdiction Year Commenced	Certified Class Definition	Status
<p><i>Cecilia Létourneau et al. v. Imperial Tobacco Canada Ltd., et al. (“Létourneau”)</i></p>	<p>Quebec 1998</p>	<p>All persons residing in Quebec who, as of September 30, 1998, were addicted to the nicotine contained in the cigarettes made by the defendants and who otherwise satisfy the following criteria:</p> <ol style="list-style-type: none"> 1) They started to smoke before September 30, 1994 and since that date have smoked principally cigarettes manufactured by the defendants; 2) Between September 1 and September 30, 1998, they smoked on a daily basis an average of at least 15 cigarettes manufactured by the defendants; and 3) On February 21, 2005, or until their death if it occurred before that date, they were still smoking on a daily basis an average of at least 15 cigarettes manufactured by the defendants. The group also includes the heirs of the members who satisfy the criteria described herein.⁷⁸ 	<p>Quebec Superior Court granted judgment in favour of QCAPs on May 27, 2015; Quebec Court of Appeal upheld trial judgment on March 1, 2019</p>

⁷⁸ *Létourneau v. JTI-Macdonald Corp.*, 2015 QCCS 2382 at para. 1233.

APPENDIX “D”
UNCERTIFIED CLASS ACTIONS – NO JUDGMENTS

Action	Jurisdiction Year Commenced	Proposed Class Definition	Status
<i>Barbara Bourassa on behalf of the Estate of Mitchell David Bourassa v. Imperial Tobacco Canada Limited et al.</i> (Plaintiff commenced two actions: Court File No. 10-2780 and Court File No. 14-4722)	British Columbia 2010 and 2014	All individuals including their estates, who were alive on June 12, 2007, and suffered or currently suffer from chronic respiratory diseases, after having smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants.	Certification motion has not been brought. No trial has been held and no judgment has been rendered.
<i>Roderick Dennis McDermid v. Imperial Tobacco Canada Limited et al.</i>	British Columbia 2010	All individuals including their estates, who were alive on June 12, 2007, and suffered or currently suffer from heart disease, after having smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants.	Certification motion has not been brought. No trial has been held and no judgment has been rendered.
<i>Linda Dorion v. Canadian Tobacco Manufacturers’ Council et al.</i>	Alberta 2009	All individuals including their estates, who purchased and smoked cigarettes designed, manufactured, marketed or distributed by the defendants, and their dependents and family members.	Certification motion has not been brought. No trial has been held and no judgment has been rendered.

Action	Jurisdiction Year Commenced	Proposed Class Definition	Status
<i>Theima Adams v. Canadian Tobacco Manufacturers' Council et al.</i>	Saskatchewan 2009	All individuals who were alive on July 10, 2009, and suffered or currently suffer from chronic pulmonary disease, emphysema, heart disease or cancer, after having smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants.	Certification motion has not been brought. No trial has been held and no judgment has been rendered.
<i>Deborah Kunta v. Canadian Tobacco Manufacturers' Council et al.</i>	Manitoba 2009	All individuals, including their estates, who purchased or smoked cigarettes manufactured by the defendants, and their dependants and family members.	Certification motion has not been brought. No trial has been held and no judgment has been rendered.
<i>Suzanne Jacklin v. Canadian Tobacco Manufacturers' Council</i>	Ontario 2012	All individuals including their estates, who were alive on June 12, 2007, and suffered or currently suffer from chronic obstructive pulmonary disease, heart disease or cancer, after having smoked a minimum of 25,000 cigarettes designed, manufactured, imported, marketed or distributed by the defendants.	Certification motion has not been brought. No trial has been held and no judgment has been rendered.
<i>Ben Semple v. Canadian Tobacco Manufacturers' Council et al.</i>	Nova Scotia 2009	All individuals, including their estates, their dependants and family members, who purchased or smoked cigarettes designed, manufactured, marketed or distributed by the defendants, for the period January 1, 1954 to the expiry of the opt out period as set by the Court.	Certification motion has not been brought. No trial has been held and no judgment has been rendered.

This is Exhibit “F” referred to in the Affidavit of Kelly Wilson Cull sworn by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**



Canadian Cancer Society
Société canadienne du cancer

January 3, 2025

BY EMAIL

Re: Sanction Hearing for Tobacco CCAA Plans

Dear counsel for participants in the Meetings of Creditors, Tobacco Companies, and companies related to the Tobacco Companies:

On behalf of the Canadian Cancer Society (“CCS”), attached please find proposed changes dated December 27, 2024, to Articles 9 and 11 of the CCAA Plans as well as proposed changes dated December 30, 2024, to Schedule “S” of the Imperial CCAA Plan [Schedule “V” of the RBH and JTIM CCAA Plans].

These CCS proposed changes elaborate on the issues identified by CCS during submissions at the hearing held October 31, 2024. Further, there are some proposed changes regarding the administrative changes to the CCAA Plans made December 5, 2024.

While CCS intends to raise these proposed changes at the Sanction Hearing, it would be beneficial if as many of the proposed changes as possible could be made, or could be agreed to be made, prior to the Sanction Hearing.

Yours truly,

A handwritten signature in black ink that reads "R. Cunningham".

Robert Cunningham
613-762-4624

cc. counsel for the Provinces and Territories, PCCs, QCAPs, *Knight* class action, Tobacco Producers
counsel for the Tobacco Companies, British American Tobacco p.l.c., B.A.T. Industries p.l.c., British American Tobacco (Investments) Limited, JT Canada LLC Inc. and PricewaterhouseCoopers Inc. in its capacity of receiver of JTI-Macdonald TM Corp, Philip Morris International, R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International Inc.
counsel for the Court-Appointed Mediator, and Monitors
Vern DaRe, Fogler, Rubinoff LLP

encl.

116 Albert Street, Suite 500, Ottawa, Ontario K1P 5G3

This is Exhibit “G” referred to in the Affidavit of Kelly Wilson Cull sworn by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**



Canadian
Cancer
Society



Heart
&Stroke™



LUNG
SASK

B R E A T H E
the lung association

January 6, 2023

The Hon. Paul Merriman
Minister of Health
Room 204, Legislative Building, 2405 Legislative Drive
Regina, SK, S4S 0B3
email: he.minister@gov.sk.ca

The Hon. Everett Hindley
Minister of Mental Health and Addictions, Seniors and Rural and Remote Health
Room 208, Legislative Building, 2405 Legislative Drive
Regina, SK, S4S 0B3
email: minister.rrhe@gov.sk.ca

The Hon. Donna Harpauer
Minister of Finance
Room 312, Legislative Building, 2405 Legislative Drive
Regina, SK, S4S 0B3
email: fin.minister@gov.sk.ca

The Hon. Bronwyn Eyre
Minister of Justice and Attorney General
Room 355, Legislative Building, 2405 Legislative Drive
Regina, SK, S4S 0B3
email: jus.minister@gov.sk.ca

OPEN LETTER

Dear Ministers Merriman, Hindley, Harpauer and Eyre:

We are writing once more on behalf of the Canadian Cancer Society, Heart & Stroke, Lung Saskatchewan, and the Canadian Lung Association regarding the continuing settlement negotiations between provincial governments and tobacco companies over the tobacco health care cost recovery lawsuits. Our previous letters of March 2020 and August 2021 are enclosed for ease of reference.

We reiterate the need for the Saskatchewan Government to make public health measures the top priority in the tobacco settlement negotiations. There is a once-in-a-lifetime, historic opportunity to reduce tobacco use, protect youth, prevent disease, save lives, and reduce ongoing costs to the healthcare system.

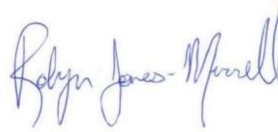
Tobacco products remain the leading preventable cause of disease and death in Canada, killing almost 48,000 Canadians each year. Significant measures must be implemented to reduce this devastating toll on human life. We urge that Saskatchewan demonstrate its leadership with other provinces by ensuring that the outcome of the tobacco settlement negotiations maximizes the benefit for public health.

We would be pleased to provide more information. Please do not hesitate to contact Angeline Webb at angeline.webb@cancer.ca or 780-239-5295.

Yours truly,



Kelly Masotti
Vice President, Advocacy
Canadian Cancer Society



Robyn Jones-Murrell
Senior Vice President, Western
Canada
Heart & Stroke



Erin Kuan
President & CEO
Lung Saskatchewan



Terry Dean
President and CEO
Canadian Lung Association

Enclosures

- cc. The Hon. Scott Moe, Premier
- Ms. Tracey Smith, Deputy Minister of Health
- Mr. Max Hendricks, Deputy Minister of Finance
- Ms. Linda Zarzeczny, Deputy Minister of Justice and Deputy Attorney General
- Dr. Saqib Shahab, Chief Medical Health Officer
- Members of the Legislative Assembly



B R E A T H E
the lung association

August 24, 2021

The Hon. Paul Merriman
Minister of Health
Room 204, Legislative Building, 2405 Legislative Drive
Regina, SK, S4S 0B3
email: he.minister@gov.sk.ca

The Hon. Everett Hindley
Minister of Mental Health and Addictions, Seniors and Rural and Remote Health
Room 208, Legislative Building, 2405 Legislative Drive
Regina, SK, S4S 0B3
email: minister.rrhe@gov.sk.ca

The Hon. Donna Harpauer
Minister of Finance
Room 312, Legislative Building, 2405 Legislative Drive
Regina, SK, S4S 0B3
email: fin.minister@gov.sk.ca

The Hon. Gordon Wyant
Minister of Justice and Attorney General
Room 355, Legislative Building, 2405 Legislative Drive
Regina, SK, S4S 0B3
email: jus.minister@gov.sk.ca

OPEN LETTER

Dear Ministers Merriman, Hindley, Harpauer and Wyant:

We are writing once more on behalf of the Canadian Cancer Society, The Lung Association of Saskatchewan, and Heart & Stroke regarding the ongoing settlement negotiations between provincial governments and tobacco companies over the tobacco medicare cost recovery lawsuits.

We again urge the Saskatchewan government to make public health measures the top priority in the tobacco settlement negotiations. Enclosed please find the March 2, 2020, letter from our organizations outlining specific measures that should be included in an agreement. These measures continue to be valid and essential to be pursued in the negotiations.

Provinces have a historic opportunity to ensure that any settlement includes significant measures to reduce tobacco use. These measures include measures to reform tobacco industry behaviour and a requirement that at least 10% of the proceeds from any arrangement be allocated to an independent fund to carry out tobacco control initiatives.

Tobacco use remains the leading preventable cause of disease and death in Canada, killing almost 48,000 Canadians each year. Significant measures must be implemented to achieve the objective of under 5% tobacco use by 2035. The settlement negotiations provide the opportunity to obtain such measures.

There is very strong public support for settlement measures to reduce tobacco use. A national Ipsos poll conducted in January-February 2021 found that 88% of Canadians (including 89% of Saskatchewan residents) support “a requirement that a significant proportion of the funds from the lawsuit be used for initiatives to reduce smoking among both adults and youth.”¹ These poll results are enclosed. The full question was “*All provinces are pursuing lawsuits against tobacco companies to recover the costs of smoking to the health care system. If your provincial government is awarded a cash settlement, to what extent would you support or oppose a requirement that a significant proportion of the funds from the lawsuit be used for initiatives to reduce smoking among both adults and youth?*”

In the U.S., the 1998 *Master Settlement Agreement* between state governments and tobacco companies contained payments by tobacco companies to state governments that were in effect disguised tobacco tax increases. These payments have been made not only by the major tobacco companies that were defendants in the lawsuits, but also by all other tobacco companies, including companies that had not been sued, and companies that did not yet exist and that were established in the future.

In the U.S. political culture, tobacco tax increases and indeed any tax increases have been very difficult to achieve. Thus, there was a policy rationale to obtain a disguised tobacco tax increase in the 1998 U.S. settlement. However, in Canada all provinces increase tobacco taxes over time. In general, the only impediment to the amount of tobacco tax increases by provinces is a perceived contraband concern. As a result, in Canada, it would not make sense for a settlement to include a disguised ongoing tobacco tax increase, given that provinces can simply increase tobacco taxes at any time (going forward, regular provincial tobacco tax increases would be even more likely than normal as governments will have to manage COVID-related deficits and debts).

The need to avoid a disguised tobacco tax increase is especially the case given that 8 of 10 provinces have contingency fee agreements with law firms, including U.S. law firms, whereby the law firms obtain a percentage of settlement proceeds. The percentages can be substantial, with the contingency fees having been publicly indicated at 18% for New Brunswick and 30% for Newfoundland and Labrador. This means that 8 provinces could be worse off financially – instead of receiving 100% of the revenue in perpetuity from future tobacco tax increases, provinces would have to give 18%-30% of such revenue to contingency fee law firms where disguised tobacco tax increases are involved (Ontario and Quebec are using in-house lawyers and are the two provinces that do not have contingency fee agreements).

Tobacco companies and their international parent companies must be held responsible. We urge you to carefully review the public health measures outlined in our March 2, 2020, letter and to instruct your lawyers to pursue these measures as the priority in the settlement negotiations. The result of any settlement cannot be “business as usual” for tobacco companies. In the U.S., state governments demanded and obtained public health measures in the 1998 Master Settlement Agreement. If U.S.

states can obtain public health measures in a 1998 settlement, then Canadian provinces can do far better in a settlement in 2021.

Our respective organizations would oppose any settlement and any liability releases against tobacco companies and related parties, or purported releases of future claims against the companies, unless there are significant public health measures included in the settlement proportional to the health damage these companies have inflicted and will continue to inflict on Canadians.

We would be pleased to provide more information. Please do not hesitate to contact Angeline Webb at angeline.webb@cancer.ca.

Yours truly,



Kelly Masotti
Vice President, Advocacy
Canadian Cancer Society



Donna Hastings
Senior Vice President, Western Canada
Heart & Stroke



Erin Kuan
President & CEO
The Lung Association, Saskatchewan

cc. The Hon. Scott Moe, Premier
Mr. Max Hendricks, Deputy Minister of Health
Mr. Rupen Pandya, Deputy Minister of Finance
Mr. J. Glen Gardner Q.C., Deputy Minister of Justice and Deputy Attorney General
Dr. Saqib Shahab, Chief Medical Health Officer
Members of the Legislative Assembly

encl.

¹For the national Ipsos opinion poll, the poll had a sample size of 2000, online, and was conducted Jan. 29 – Feb. 1, 2021, for the Canadian Cancer Society, margin of error +/- 2.5%, 19 times out of 20.



Canadian
Cancer
Society



B R E A T H E
the lung association

March 2, 2020

The Hon. Jim Reiter
Minister of Health
Legislative Building
2405 Legislative Drive,
Regina, SK
he.minister@gov.sk.ca

Dear Minister:

We are writing on behalf of our respective organizations regarding the ongoing tobacco lawsuit settlement negotiations. We urge you to place the highest priority on ensuring that any settlement contains effective measures to significantly reduce tobacco use and protect the public.

All 10 provinces have filed medicare cost recovery lawsuits, collectively seeking more than \$500 billion in damages from the tobacco industry. In addition to compensation that provinces will receive for health care costs, it is essential that any settlement contains measures to significantly reduce tobacco use, and prevent tobacco companies from engaging in future behaviour that is harmful to public health.

In the United States, medicare cost recovery lawsuit settlements between state governments and tobacco companies contained a series of public health measures to reduce tobacco use. These measures were incorporated into settlements several decades ago in a different context. Canadian provinces can learn from this experience. If tobacco settlements with U.S. states can contain tobacco control measures, Canadian provinces can do even better.

Tobacco is the leading preventable cause of disease and death in Saskatchewan and in Canada. Tobacco causes suffering and devastation on a massive scale, killing 45,000 Canadians every year. A settlement must contain effective measures, whose ultimate goal is to reduce tobacco use.

At least 10% of the proceeds from any arrangement should be allocated to an independent fund to carry out tobacco control initiatives. The settlement should also ban tobacco promotional spending; prohibit tobacco industry lobbying or legal challenges against tobacco control measures; require public disclosure of more than 8 million pages of internal tobacco company documents; and establish mechanisms on the tobacco industry that are in the interests of public health, among other measures. Attached is a more detailed list of measures that should, at a minimum, form the core of any settlement.

In addition to our organizations, other health organizations are also urging that any settlement contain effective public health measures. There is overwhelming support for public health to be prioritized in settlement negotiations, and for any settlement to significantly advance the objective of under 5% tobacco use by 2035.

ensuring that any settlement contains effective measures to significantly reduce tobacco use and protect the public.

The Government of Saskatchewan has a historic opportunity to demonstrate leadership and to ensure that a settlement maximizes public health protection. The tobacco industry cannot be allowed to continue its wrongful behaviour in the future. Because settlement negotiations are taking place now, we strongly urge you and your government to give this issue your immediate, highest attention.

For further enquiries or information, please do not hesitate to contact Donna Pasiechnik at dpasie@sk.cancer.ca 306-790-9871, Nicole Ferguson at Nicole.ferguson@heartandstroke.ca or 306-531-8425 or Jennifer May at jennifer.may@sk.lung.ca or 306-667-3005.

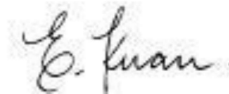
Yours truly,



Chelsea Drager
V.P. of Regional Operations
Canadian Cancer Society



Diego Marchese
Western Canada
Heart & Stroke Foundation



Erin Kuan
President and CEO
The Lung Association

encl.

cc. The Hon. Scott Moe, Premier of Saskatchewan
The Hon. Don Morgan Q.C. Minister and Attorney General of Saskatchewan
The Hon. Donna Harpauer, Minister of Finance
The Hon. Warren Kaeding, Minister of Rural and Remote Health
Max Hendricks, Deputy Minister of Health

Tobacco Settlement Measures

A non-exhaustive list of measures to be included in a settlement between provincial governments and tobacco companies should include at least the following:

- Substantial, sustained, long-term funding for tobacco control.
- Funds to be operated by an independent foundation, which would receive 10% of all distributions pursuant or related to the arrangement.
- Ban on all tobacco promotional spending, and support for legislation to ban promotional spending for vaping products.
- Ban on direct or indirect lobbying against government tax, legislative, regulatory, programme or other measure regarding tobacco products, vaping products or other nicotine-containing products.
- Ban on funding lobby groups (e.g. convenience store associations, contraband front groups).
- Ban on legal challenges to tobacco control measures, or direct or indirect support for such legal challenges.
- Public disclosure in electronic form, at industry expense, of all documents provided on pre-trial discovery by tobacco companies, including 8 million documents provided to the Ontario Government, and public disclosure of all additional research, including market research, and data in electronic form going back to the 1950's. In the U.S., more than 40 million pages of previously secret industry documents were made publicly accessible as a result of tobacco settlements.
- Independent review of all tobacco industry documents for which privilege has been claimed, and public disclosure of all documents for which privilege has been improperly claimed, at industry expense.
- A new structure on the industry such that tobacco companies cannot repeat behaviour to expand, or to forestall the decline of, the market for tobacco or nicotine-containing products. In the U.S., the company Purdue, which has marketed opioids, now operates as a trust as a result of lawsuits against it.
- Targets for reduction in tobacco use over time, with the tobacco companies required to make financial payments if targets are not achieved. In the U.S., in the 1996 Proposed Settlement that was agreed to by tobacco companies (but in the end did not receive congressional approval), there was a "look back" provision such that if targets to reduce youth smoking were not achieved, the companies would make additional financial payments.

Ipsos national survey conducted January 29 – February 1, 2021

Online survey, sample size 2000, margin of error +/- 2.5%, 19 times out of 20

Survey conducted for the Canadian Cancer Society

11. All provinces are pursuing lawsuits against tobacco companies to recover the costs of smoking to the health care system. If your provincial government is awarded a cash settlement, to what extent would you support or oppose a requirement that a significant proportion of the funds from the lawsuit be used for initiatives to reduce smoking among both adults and youth?

	Total	REGION								HOUSEHOLD INCOME					HOUSEHOLD COMPOSITION	
		BC	AB	SK/MB	Ontario	Quebec	Atlantic	<\$40K	\$40K - <\$60K	\$60K - <\$100K	\$100K+	Kids	No Kids			
		A	B	C	D	E	F	G	H	I	J	K	L			
Base: All Respondents (unwtd)	2000	240	201	197	702	460	200	490	340	523	407	512	1488			
Base: All Respondents (wtd)	2000	268	226	124	770	478	134	588	343	484	336	469	1531			
Top 2 Box (Net)	1762	237	199	111	668	429	117	499	312	429	309	394	1367			
	88%	88%	88%	89%	87%	90%	88%	85%	91%	89%	92%	84%	89%			
Strongly support	935	158	97	54	343	217	66	261	165	221	181	206	728			
	47%	59%	43%	44%	45%	45%	49%	44%	48%	46%	54%	44%	48%			
		BCDE									GI					
Somewhat support	827	79	102	57	325	212	52	238	147	208	128	188	639			
	41%	30%	45%	46%	42%	44%	39%	41%	43%	43%	38%	40%	42%			
		A	A	A	A	A										
Bottom 2 Box (Net)	238	31	27	13	102	49	17	88	31	55	27	75	164			
	12%	12%	12%	11%	13%	10%	12%	15%	9%	11%	8%	16%	11%			
								HJ				L				
Somewhat oppose	154	19	17	9	68	33	9	53	22	39	19	49	105			
	8%	7%	7%	7%	9%	7%	7%	9%	6%	8%	6%	10%	7%			
												L				
Strongly oppose	84	12	10	4	35	16	7	35	9	16	7	25	58			
	4%	5%	4%	3%	4%	3%	5%	6%	3%	3%	2%	5%	4%			
								J								
Sigma	2000	268	226	124	770	478	134	588	343	484	336	469	1531			
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%			

Statistics:

Overlap formulae used

- Column Proportions:

Columns Tested (5%): A/B/C/D/E/F/G/H/I/J,K/L

Minimum Base: 30 (**), Small Base: 100 (*)

- Column Means:

Columns Tested (5%): A/B/C/D/E/F/G/H/I/J,K/L

Minimum Base: 30 (**), Small Base: 100 (*)

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11. All provinces are pursuing lawsuits against tobacco companies to recover the costs of smoking to the health care system. If your provincial government is awarded a cash settlement, to what extent would you support or oppose a requirement that a significant proportion of the funds be used for initiatives to reduce smoking among both adults and youth?

	Total	Gender		AGE					EDUCATION				AGE GROUP			
		Male	Female	18-34	35-54	55+	<HS	HS	Post Sec	Univ Grad	Gen Z	Millennial	Gen X	Boomer		
Base: All Respondents (unwtd)	2000	967	1033	541	768	691	91	366	911	632	176	605	541	678		
Base: All Respondents (wtd)	2000	978	1022	562	692	746	292	552	670	486	218	558	496	727		
Top 2 Box (Net)	1762	827	934	465	610	687	237	485	596	443	178	471	441	671		
	88%	85%	91%	83%	88%	92%	81%	88%	89%	91%	82%	84%	89%	92%		
Strongly support	935	421	514	226	309	400	99	254	333	249	76	232	231	395		
	47%	43%	50%	40%	45%	54%	34%	46%	50%	51%	35%	42%	47%	54%		
			A		C	CD	*	F	F	F			J	JK		
Somewhat support	827	406	421	239	301	287	139	232	263	194	102	239	210	276		
	41%	42%	41%	43%	43%	39%	48%	42%	39%	40%	47%	43%	42%	38%		
							*									
Bottom 2 Box (Net)	238	151	88	97	82	59	55	67	74	43	40	87	55	56		
	12%	15%	9%	17%	12%	8%	19%	12%	11%	9%	18%	16%	11%	8%		
		B		DE	E		HI*				LM	M				
Somewhat oppose	154	91	64	64	51	40	22	54	51	27	20	61	36	37		
	8%	9%	6%	11%	7%	5%	7%	10%	8%	6%	9%	11%	7%	5%		
		B		DE			*	I				M				
Strongly oppose	84	60	24	33	32	19	33	13	23	16	20	26	19	19		
	4%	6%	2%	6%	5%	2%	11%	2%	3%	3%	9%	5%	4%	3%		
		B		E			GHI*				LM					
Sigma	2000	978	1022	562	692	746	292	552	670	486	218	558	496	727		
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%		

Statistics:

Overlap formulae used

- Column Proportions:

Columns Tested (5%): A/B,C/D/E/F/G/H/I/J/K/L/M

Minimum Base: 30 (**), Small Base: 100 (*)

- Column Means:

Columns Tested (5%): A/B,C/D/E/F/G/H/I/J/K/L/M

Minimum Base: 30 (**), Small Base: 100 (*)

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This is Exhibit “H” referred to in the Affidavit of Kelly Wilson Cull sworn by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**



Canadian
Cancer
Society

B R E A T H E
the lung association



AN OPEN LETTER TO PROVINCIAL PREMIERS
MAY 29, 2023

It must not be “business as usual” for tobacco companies

Dear Premiers:

Your provinces have filed health care cost recovery lawsuits against Canada’s three major tobacco companies and their foreign parents. Now all provinces are in historic settlement negotiations with these companies. We urge you to ensure that your governments make reducing tobacco use and improving public health the top priority in these negotiations.

Tobacco causes a devastating toll in disease and death, a toll that is contributing to the ongoing crisis in the health care system. Everything possible must be done to reduce tobacco use.

An unparalleled history of wrongdoing

The tobacco industry’s behaviour in Canada over decades is shocking. The tobacco industry has advertised to children; marketed to women with images of slimness and fashion; concealed internal research; failed to warn consumers adequately; and used public relations campaigns to deny the negative health effects. The industry has also deceived the public through misleading advertising, including about “light” and “mild” cigarettes, and aggressively lobbied against tobacco control measures.

In response, your provinces filed lawsuits against the three biggest tobacco companies to recover health care costs caused by industry negligence and fraud. How negligent? Quebec Superior Court Justice Brian Riordan described the industry’s behaviour as “particularly reprehensible,” saying it “must be denounced and punished in the sternest of fashions.”

What a settlement should include

The three major Canadian tobacco companies are currently in bankruptcy protection as a result of these lawsuits, with total claims exceeding \$500 billion. The companies can only get out of bankruptcy protection with a settlement if the provinces agree. Thus, provinces have leverage to insist on strict measures. A settlement could forever change industry behaviour.

It cannot be “business as usual” for Big Tobacco moving forward. A settlement should include both significant funding for tobacco control as well as policy measures to control the industry and to reduce tobacco use, including:

- **Allocating substantial long-term funding – at least 10% of the distributions from the settlement – to a fund, independent of government, to reduce tobacco use.**
- **Ending all remaining tobacco promotion.**
- **Requiring tobacco companies to make substantial additional payments if targets to reduce tobacco use in Canada are not achieved.**
- **Requiring public disclosure of all secret internal tobacco company documents.**

Given that in 1998 U.S. state governments included measures to control the tobacco industry in similar settlements, Canadian provinces in 2023 can – and must – do much better. Provinces have a once-in-a-lifetime opportunity, an opportunity that should be pursued aggressively. Tobacco remains the leading preventable cause of disease and death in every province, killing 46,000 Canadians each year.

Canadians support strong action. A national Ipsos poll conducted in March 2023 found that 87% of Canadians support a requirement that a significant proportion of the funds from a settlement be used for initiatives to reduce smoking among both adults and youth.

Premiers, a settlement that prioritizes public health means that your governments will protect kids, save lives, and reduce health care costs. We appeal to your leadership to stop Big Tobacco and counter its wrongdoing, thus benefitting generations to come.



Andrea Seale
CEO
Canadian Cancer Society



Terry Dean
President and CEO
Canadian Lung Association



Doug Roth
CEO
Heart & Stroke

For more information, visit
StopBigTobacco.ca

This is Exhibit "I" referred to in the Affidavit of Kelly Wilson Cull sworn by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**

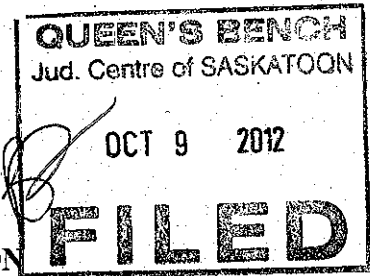
AMENDED STATEMENT OF CLAIM

(Amended October 5, 2012)

CANADA

PROVINCE OF SASKATCHEWAN

**IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON**



BETWEEN:

THE GOVERNMENT OF SASKATCHEWAN

PLAINTIFF

- and -

ROTHMANS, BENSON & HEDGES INC., ROTHMANS INC., ALTRIA GROUP, INC., PHILIP MORRIS U.S.A. INC., PHILIP MORRIS INTERNATIONAL, INC., JTI-MACDONALD CORP., R.J. REYNOLDS TOBACCO COMPANY, R.J. REYNOLDS TOBACCO INTERNATIONAL INC., IMPERIAL TOBACCO CANADA LIMITED, BRITISH AMERICAN TOBACCO P.L.C., B.A.T INDUSTRIES P.L.C., BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED, CARRERAS ROTHMANS LIMITED, and CANADIAN TOBACCO MANUFACTURERS' COUNCIL

DEFENDANTS

NOTICE TO DEFENDANTS

1 The plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as may be granted pursuant to the Rules of Court

within 20 days if you were served in Saskatchewan;

within 30 days if you were served elsewhere in Canada or in the United States of America;

within 40 days if you were served outside Canada and the United States of America.

(excluding the day of service) you serve a Statement of Defence on the plaintiff and file a copy thereof in the office of the local registrar of the Court for the judicial centre above-named.

2 In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult his lawyer as to his rights.

3 This Statement of Claim is to be served within six months from the date on which it is issued.

4 This Statement of Claim is issued at the above-named judicial centre the 8th day of June, 2012.

R. Robertson, Deputy Local Registrar
Local Registrar

AMENDED STATEMENT OF CLAIM

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I. INTRODUCTION

A. The Plaintiff and the Nature of the Claim

1. The Plaintiff, the Government of Saskatchewan, provides health care benefits for insured persons. Pursuant to the provisions of *The Tobacco Damages and Health Care Costs Recovery Act*, S.S. 2007, c.T-14.2 (the "Act"), the Government of Saskatchewan brings this action against the Defendants to recover the cost of health care benefits, on an aggregate basis, for a population of insured persons as a result of exposure to cigarettes.

In particular, the Government of Saskatchewan seeks to recover:

- (a) the present value of the total expenditure by the Government of Saskatchewan since 1953 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 of Saskatchewan 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,

caused or contributed to by the tobacco-related wrongs of the Defendants as described below. The Government of Saskatchewan pleads and relies on sections 3 and 4 of the Act.

2. The Government of Saskatchewan brings this action as a direct and distinct action for the recovery of health care benefits caused or contributed to by a tobacco-related wrong as defined in the Act, and the Government of Saskatchewan does so in its own right and not

on the basis of a subrogated claim. The Government of Saskatchewan pleads and relies on subsections 3(1) and 3(2) of the Act.

3. The Government of Saskatchewan also pleads and relies on the presumptions and population-based evidence provisions under the Act, including subsections 3(5), 4(2) and 4(3) and section 6.
4. The words and terms used in this Statement of Claim including, "cost of health care benefits," "disease," "exposure," "health care benefits," "insured person," "manufacture," "manufacturer," "market share," "promote," "promotion," "tobacco product," "tobacco-related disease" and "tobacco-related wrong," have the meanings ascribed to them in the Act. The Government of Saskatchewan pleads and relies on the provisions of section 2 of the Act.
5. Also in this Statement of Claim:
 - (a) "cigarette" includes loose tobacco intended for incorporation into a cigarette, and
 - (b) "to smoke" or "smoking" means the ingestion, inhalation or assimilation of a cigarette, including any smoke or other by-product of the use, consumption or combustion of a cigarette and includes exposure to cigarette smoke.
6. Throughout the Statement of Claim, reference to a defendant includes both its predecessors in interest and its predecessors in name as identified in Part C. Reference to the Defendants means all of the Defendants unless otherwise stated.
7. The Defendants' tobacco-related wrongs began in 1950 and continue to the present, unless otherwise stated.

B. Overview of the Government of Saskatchewan's Claim

8. Each of the Defendants is a Manufacturer of tobacco products (referred to herein as cigarettes), as defined in the Act. At all times material to this action, cigarettes manufactured and promoted by the Defendants were offered for sale in Saskatchewan. The Defendants owed a duty to persons in Saskatchewan who have been exposed or might become exposed to cigarettes.
9. By 1950, the Defendants knew or ought to have known that nicotine is addictive and that smoking cigarettes could cause or contribute to disease. By 1960, the Defendants also knew or ought to have known that exposure to cigarette smoke could cause or contribute to disease.
10. From 1950, all of the Defendants have committed tobacco-related wrongs by breaching duties and obligations to persons in Saskatchewan, particularly their duties and obligations not to misrepresent the risks of smoking, to warn of the risks of smoking, not to promote cigarettes to children and adolescents, to design and manufacture a reasonably safe product, and other common law, equitable and statutory duties and obligations, as pleaded.
11. The Defendants have breached these duties and obligations by misrepresenting the risks of smoking and exposure to smoke, failing to warn the public that cigarettes are addictive and cause disease, engaging in promotional activities to neutralize the effectiveness of the warnings on cigarette packaging, targeting children and adolescents in promotional and marketing activities, suppressing information and scientific and medical data about the risks of smoking and exposure to smoke, manipulating the level and bio-availability of

nicotine in their cigarettes and misrepresenting that filters reduce the risks of smoking and that filtered, "mild," "low tar" and "light" cigarettes are healthier and safer than other cigarettes.

12. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes manufactured and promoted by the Defendants, or were exposed to cigarette smoke, and have suffered, or will suffer, tobacco-related disease or an increased risk of tobacco-related disease.
13. In committing these tobacco-related wrongs, the Defendants have conspired or acted in concert. From the 1950s, the Defendants have been members of multinational tobacco enterprises or "Groups" whose companies engaged in the manufacture and promotion of cigarettes in Saskatchewan and throughout the world. The four Groups were:
 - (a) the Philip Morris Group
 - (b) the R.J. Reynolds or RJR Group
 - (c) the British American Tobacco or BAT Group
 - (d) the Rothmans Group.
14. Beginning in 1953, these Groups agreed to disseminate false and misleading information, to suppress research and information on the risks of smoking and to orchestrate a false and misleading public relations program on smoking and health issues.
15. From 1953, the Defendants, both within each Group and with each other, have continued to conspire or to act in concert to distort research and to publicize misleading information about smoking and disease. They collectively agreed not to make any statement or

admission that smoking caused disease and not to issue cigarette warnings unless they were forced to do so by government action. Since 1960, the Defendants have conspired or acted in concert to misrepresent the risk of exposure to smoke.

16. Beginning in 1953, this conspiracy was implemented in Saskatchewan and throughout Canada through the defendants Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited, Rothmans Inc., and the Canadian Tobacco Manufacturers' Council.
17. The Defendants have conspired or acted in concert to prevent the Government of Saskatchewan and persons in Saskatchewan from acquiring knowledge of the harmful and addictive properties of cigarettes and in committing tobacco-related wrongs.
18. Particulars of the Government of Saskatchewan's claim are provided below.

C. The Defendants

19. In 1950 and for several decades thereafter, the four tobacco Groups were the Philip Morris Group, the RJR Group, the BAT Group and the Rothmans Group. Within each Group, certain companies (referred to herein as the Lead Companies) were responsible for the direction, control, coordination and implementation of the common policies on smoking and health described below.

(i) The Philip Morris Group

1. Altria Group, Inc.

20. The defendant Altria Group, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in

the United States of America. Altria Group, Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Companies Inc. Altria Group, Inc. is a Lead Company of the Philip Morris Group.

2. Philip Morris U.S.A. Inc.

21. The defendant Philip Morris U.S.A. Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 6601 West Broad Street, Richmond, Virginia, in the United States of America. Philip Morris U.S.A. Inc. is responsible in law for the actions and conduct of its predecessor in name, Philip Morris Incorporated. Philip Morris U.S.A. Inc. is a Lead Company of the Philip Morris Group.

3. Philip Morris International, Inc.

22. The defendant Philip Morris International, Inc. is a company incorporated pursuant to the laws of Virginia and has a registered office at 120 Park Avenue, New York, New York, in the United States of America. Philip Morris International, Inc. is responsible in law for the actions and conduct of its predecessor in interest, Philip Morris Overseas, a division of Philip Morris Incorporated. In 1987, Philip Morris International, Inc. was incorporated as a subsidiary of Altria Group, Inc. Philip Morris International, Inc. remained a subsidiary of Altria Group, Inc. until 2008. Philip Morris International, Inc. is a Lead Company of the Philip Morris Group.

4. Rothmans, Benson & Hedges Inc.

23. The defendant Rothmans, Benson & Hedges Inc. is a company incorporated pursuant to the laws of Canada and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans, Benson & Hedges Inc. is responsible in law for the actions and

conduct of its predecessors in interest, Benson & Hedges (Canada) Limited, Benson & Hedges (Canada) Inc., and Rothmans of Pall Mall Limited.

24. Benson & Hedges (Canada) Limited was incorporated in 1934. In 1958, Benson & Hedges (Canada) Limited became a subsidiary of Philip Morris International, Inc. and an integral part of the Philip Morris Group. In 1979, Benson & Hedges (Canada) Limited changed its name to Benson & Hedges (Canada) Inc.
25. Rothmans, Benson & Hedges Inc. was formed in 1986 by the amalgamation of Benson & Hedges (Canada) Inc. and Rothmans of Pall Mall Limited. In 2009, Rothmans, Benson & Hedges Inc. and the defendant Rothmans Inc. amalgamated and continued to operate as Rothmans, Benson & Hedges Inc. Rothmans, Benson & Hedges Inc. is a wholly owned subsidiary of Philip Morris International, Inc.

5. The Philip Morris Group Lead Companies Control and Direct Rothmans, Benson & Hedges Inc.

26. At all times material to this action, the Canadian company, Rothmans, Benson & Hedges Inc., has been controlled and directed by the Lead Companies of the Philip Morris Group. The control and direction by Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. has extended to the manufacture and promotion of their cigarettes.
27. The means by which the Philip Morris Group Lead Companies have exercised control and direction include:
 - i. Overseeing board meetings of Rothmans, Benson & Hedges Inc.

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- ii. Placing board members of the Lead Companies on the board of directors of Rothmans, Benson & Hedges Inc.
- iii. Placing senior executives of the Lead Companies as senior executives of Rothmans, Benson & Hedges Inc.
- iv. Providing technical expertise, smoking and health materials, financial support and direction to Rothmans, Benson & Hedges Inc., including information on the relationship between smoking and health and technical knowledge for the manufacture of cigarettes, the levels of tar and nicotine and the type of tobacco to be used
- v. Organizing Philip Morris Group smoking and health conferences to set common policies for key tobacco companies in the Philip Morris Group, including Rothmans, Benson & Hedges Inc.
- vi. Developing and implementing Philip Morris Group positions and policies through committees, including the Corporate Issues Management Committee, the Corporate Products Committee and the Committee on Smoking Issues and Management
- vii. Creating a Public Affairs branch designed to manage smoking and health issues and government relations
- viii. Orchestrating marketing and promotional campaigns

- ix. Approving the deployment of funds for subsidiary operations, research into smoking and health, the promotion of cigarettes and smoker reassurance campaigns.
28. The control and direction by the Lead Companies of the Philip Morris Group have involved the implementation of the Philip Morris Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Philip Morris Group has maintained a policy that members of the Philip Morris Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the Philip Morris Group was to create doubt and controversy regarding the adverse health consequences of smoking and to defeat or delay anti-smoking legislation that would impose restrictions on the formulation, marketing, sale or use of cigarettes.
 29. From 1960, it has been the Philip Morris Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
 30. The Lead Companies of the Philip Morris Group have communicated and directed these policies for Rothmans, Benson & Hedges Inc. by a variety of means, including:
 - i. Establishing directives and communications such as "Smoking and Health Quick Reference Guides" and "Issues Alerts" to the Regions, including Canada
 - ii. Providing training, technical expertise and support
 - iii. Convening conferences, including the Conference on Smoking and Health and the Corporate Affairs World Conference

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- iv. Forming committees, such as the Committee on Smoking Issues Policy and Management and the Scientific Research and Review Committee for Worldwide Tobacco
 - v. Establishing Corporate Affairs and Public Affairs departments of the Lead Companies
 - vi. Conspiring or acting in concert as particularized in Part IV below.
31. These common policies of the Philip Morris Group have continued notwithstanding changes in the corporate structure of the Philip Morris Group. These common policies on smoking and health in the Philip Morris Group have been maintained in Canada under the control and direction of Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. from 1950 to the present, such that these defendants are responsible in law for the Philip Morris Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
32. In particular, the Government of Saskatchewan states that:
- i. By reason of the facts pleaded, Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans, Benson & Hedges Inc.
 - ii. Rothmans, Benson & Hedges Inc. has acted as agent for Altria Group, Inc., Philip Morris U.S.A. Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada

- iii. As described in Part IV, Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

6. The Philip Morris Group Defendants are Manufacturers under the Act

33. Each of Altria Group, Inc., Philip Morris U.S.A. Inc., Philip Morris International, Inc. and Rothmans, Benson & Hedges Inc. (collectively, "the Philip Morris Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the Philip Morris Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the Philip Morris Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the Philip Morris Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
- iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the Philip Morris Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants,

associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

34. From 1950 and continuing to the present, cigarettes manufactured or promoted by the Philip Morris Defendants have been offered for sale in Saskatchewan. The brand names of the cigarettes of the Philip Morris Defendants offered for sale in Saskatchewan and the rest of Canada include *Benson & Hedges, Belvedere, Marlboro, Marlboro Lights, Rothmans, Alpine* and *Parliament*.

(ii) **The RJR Group**

1. **R.J. Reynolds Tobacco Company**

35. The defendant R.J. Reynolds Tobacco Company is a company currently incorporated pursuant to the laws of ~~New Jersey~~ North Carolina and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco Company is a Lead Company of the RJR Group.

36. R.J. Reynolds Tobacco Company was incorporated in 1922. In 2004~~3~~, the U.S. assets, liabilities and operations of R.J. Reynolds Tobacco Company (at the time, incorporated pursuant to the laws of New Jersey) were combined ~~entered into a business combination~~ with those of Brown & Williamson Tobacco Corporation, owned by the defendant, British American Tobacco p.l.c. Concurrent with the completion of the business combination, R.J. Reynolds Tobacco Company became a North Carolina corporation. Its principal place of business continued to be North Carolina. For greater certainty, the Province pleads that R.J. Reynolds Tobacco Company (incorporated in North Carolina) is

responsible in law for the actions and conduct of its predecessor in interest and name, R.J. Reynolds Tobacco Company (incorporated in New Jersey).

2. R.J. Reynolds Tobacco International, Inc.

37. The defendant R.J. Reynolds Tobacco International, Inc. is a company incorporated pursuant to the laws of Delaware and has a registered office at 401 North Main Street, Winston-Salem, North Carolina, in the United States of America. R.J. Reynolds Tobacco International, Inc. is a Lead Company of the RJR Group.

3. JTI-Macdonald Corp.

38. The defendant JTI-Macdonald Corp. is a company formed by continuance pursuant to the laws of Canada and has a registered office at 1 Robert Speck Parkway, Mississauga, Ontario. JTI-Macdonald Corp. is responsible in law for the actions and conduct of its predecessors in interest, RJR-Macdonald Corp., RJR-Macdonald Inc. and Macdonald Tobacco Inc.
39. W.C. Macdonald Incorporated was incorporated in 1930 and changed its name to Macdonald Tobacco Inc. in 1957. In 1970, Macdonald Tobacco Inc. became the exclusive Canadian distributor of the cigarette brands of R.J. Reynolds Tobacco Company referred to in paragraph 50. Macdonald Tobacco Inc. became a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1974.
40. RJR-Macdonald Inc. was incorporated as a wholly owned subsidiary of R.J. Reynolds Tobacco Company in 1978. In 1978, R.J. Reynolds Tobacco Company sold Macdonald Tobacco Inc. to RJR-Macdonald Inc. RJR-Macdonald Inc. succeeded Macdonald Tobacco Inc. and acquired all or substantially all of Macdonald Tobacco Inc.'s assets and

continued the business of manufacturing, promoting and selling cigarettes previously conducted by Macdonald Tobacco Inc.

41. In 1999, RJR-Macdonald Inc. amalgamated with 3027221 Nova Scotia Company and continued as RJR-Macdonald Corp. JTI-Macdonald Corp. was created in 1999 as a result of an amalgamation between RJR-Macdonald Corp. and JT-Nova Scotia Corporation.

4. The RJR Group Lead Companies Control and Direct JTI-Macdonald Corp.

42. At all times material to this action, the Canadian company, JTI-Macdonald Corp., has been controlled and directed by the Lead Companies of the RJR Group. The control and direction by R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. has extended to the manufacture and promotion of their cigarettes.

43. The means by which the RJR Lead Companies have exercised control and direction include:

- i. Developing a reporting system whereby each global "Area," including Canada as Area II, had a smoking issue designee who was supervised by R.J. Reynolds Tobacco International, Inc. and who reported to R.J. Reynolds Tobacco Company's Manager of Science Information
- ii. Convening meetings such as the Winston-Salem Smoking Issues Coordinator Meetings
- iii. Developing and implementing positions and policies such as the "Issues Guide" to direct and control the activities of the RJR Group's subsidiaries, including JTI-Macdonald Corp.

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- iv. Placing senior executives of the Lead Companies as senior executives of JTI-Macdonald Corp.
 - v. Distributing materials and related information and providing knowledge obtained from the Lead Companies' "Information Science" research department
 - vi. Providing technical expertise, including information and knowledge on the manufacture of cigarettes, the use of substitutes and additives, the use of pH controls, the appropriate levels of tar and nicotine and the type and mixture of tobacco used in the manufacture of cigarettes
 - vii. Providing cigarettes and cigarette samples made by the Lead Companies to JTI-Macdonald Corp. for sale in Canada, including Saskatchewan
 - viii. Maintaining a veto over research funding by the Canadian Tobacco Manufacturers' Council.
44. The control and direction by the Lead Companies of the RJR Group have involved the implementation of the RJR Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the RJR Group has maintained a policy that members of the RJR Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. This policy included the creation of an action plan to respond to health and smoking issues by distributing information creating a scientific controversy surrounding smoking-related disease and by countering anti-smoking groups and legislation.
45. From 1960, it has been the RJR Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.

46. The Lead Companies of the RJR Group have communicated and directed these policies for JTI-Macdonald Corp. by a variety of means, including:
- i. Establishing directives and communications such as the "Issues Guide"
 - ii. Developing an action plan which set out the RJR Group's position on smoking and health issues to ensure that the personnel in the RJR Group companies, including JTI-Macdonald Corp., understood and disseminated the RJR Group's position
 - iii. Convening meetings including the Winston-Salem Smoking Issues Coordinator Meetings
 - iv. Convening conferences including the "Hounds Ears" and Sawgrass conferences
 - v. Taking a leadership role in the International Committee on Smoking Issues ("ICOSI"), particularly in relation to Canada
 - vi. Conspiring or acting in concert as particularized in Part IV below.
47. These common policies of the RJR Group have continued notwithstanding changes in the corporate structure of the RJR Group. These common policies on smoking and health in the RJR Group have been maintained in Canada under the control and direction of R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. from 1950 to the present, such that these defendants are responsible in law for the RJR Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of JTI-Macdonald Corp.

48. In particular, the Government of Saskatchewan states that:

- i. By reason of the facts pleaded, R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of JTI-Macdonald Corp.
- ii. JTI-Macdonald Corp. has acted as agent for R.J. Reynolds Tobacco Company and R.J. Reynolds Tobacco International, Inc. in committing tobacco-related wrongs in Canada
- iii. As described in Part IV, R.J. Reynolds Tobacco Company, R.J. Reynolds International, Inc. and JTI-Macdonald Corp. have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

5. The RJR Group Defendants are Manufacturers under the Act

49. Each of R.J. Reynolds Tobacco Company, R.J. Reynolds Tobacco International, Inc. and JTI-Macdonald Corp. (collectively, "the RJR Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the RJR Defendants manufactures or has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the RJR Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the RJR Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.

iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the RJR Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

50. From 1950 and continuing to the present, cigarettes manufactured or promoted by the RJR Defendants have been offered for sale in Saskatchewan. The brand names of the cigarettes of the RJR Defendants offered for sale in Saskatchewan and the rest of Canada include *Export, Export "A", Vantage, Camel, Salem, Smooth, Contessa, Contessa Slims, More, Macdonald* and *Winston*.

(iii) The BAT Group

1. British American Tobacco p.l.c.

51. The defendant British American Tobacco p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England. British American Tobacco p.l.c. is responsible in law for the actions and conduct of its predecessors in interest, British-American Tobacco Company Limited (now known as British American Tobacco (Investments) Limited) and B.A.T Industries p.l.c. British American Tobacco p.l.c. is a Lead Company of the BAT Group.

52. British American Tobacco p.l.c. has been the parent company of the BAT Group since 1998. British American Tobacco p.l.c. purports to have been in the tobacco business in the Americas for more than 100 years and to be solely focused on tobacco.

2. **British American Tobacco (Investments) Limited**

53. The defendant British American Tobacco (Investments) Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England. British American Tobacco (Investments) Limited is responsible in law for the actions and conduct of its predecessor in name, British-American Tobacco Company Limited. British American Tobacco (Investments) Limited is a Lead Company of the BAT Group.
54. British American Tobacco (Investments) Limited was the parent company of the BAT Group from 1902 to 1976. British American Tobacco (Investments) Limited was known as British-American Tobacco Company Limited until 1998.

3. **B.A.T Industries p.l.c.**

55. The defendant B.A.T Industries p.l.c. is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 4 Temple Place, London, England. B.A.T Industries p.l.c. is responsible in law for the actions and conduct of its predecessors in interest, B.A.T Industries Limited and Tobacco Securities Trust Limited. B.A.T Industries p.l.c. is a Lead Company of the BAT Group.
56. B.A.T Industries p.l.c. was the parent company of the BAT Group from 1976 to 1998.

4. **Imperial Tobacco Canada Limited**

57. The defendant Imperial Tobacco Canada Limited is a company incorporated pursuant to the laws of Canada and has a registered office at 3711 St. Antoine Street West, Montreal, Quebec. Imperial Tobacco Canada Limited is responsible in law for the actions and

conduct of its predecessors in interest, Imperial Tobacco Company of Canada Limited, Imperial Tobacco Limited and Imasco Ltd.

58. For 100 years, Imperial Tobacco Canada Limited and its predecessors have been an integral part of the BAT Group and a subsidiary of the parent company of the BAT Group.
59. Imperial Tobacco Company of Canada Limited was incorporated in 1912. In 1970, Imperial Tobacco Company of Canada Limited changed its name to Imasco Limited, and formed a wholly owned subsidiary, Imperial Tobacco Limited. In 2000, Imasco Limited and Imperial Tobacco Limited were amalgamated under the name Imperial Tobacco Canada Limited.
60. In 2000, Imperial Tobacco Canada Limited became a wholly owned subsidiary of British American Tobacco p.l.c., the current parent of the BAT Group.

5. The BAT Group Lead Companies Control and Direct Imperial Tobacco Canada Limited

61. At all times material to this action, the Canadian company, Imperial Tobacco Canada Limited has been controlled and directed by the Lead Companies of the BAT Group. The control and direction by British American Tobacco p.l.c., British American Tobacco (Investments) Limited, and B.A.T Industries p.l.c. has extended to the manufacture and promotion of their cigarettes.
62. The means by which the BAT Group Lead Companies have exercised control and direction include:

- i. Establishing Smoking and Health Policies to be followed by the members of the
BAT Group
 - ii. Convening Tobacco Strategy Review Team Policy meetings
 - iii. Convening Smoking and Health, Marketing and Research conferences for major
international markets, including Canada
 - iv. Forming committees including the Chairman's Policy Committee, the Research
Policy Group, the Scientific Research Group, the Tobacco Division Board and the
Tobacco Executive Committee
 - v. Overseeing tobacco-related activities in Canada by the Chairman of the BAT
Group Tobacco Division Board
 - vi. Making final decisions on which Canadian Tobacco Manufacturers' Council
research should be funded by Imperial Tobacco Canada Limited.
63. The control and direction by the Lead Companies of the BAT Group have involved the implementation of the BAT Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the BAT Group has maintained a policy that members of the BAT Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed. The policy of the BAT Group was to maintain that causation had not been scientifically proven and remained controversial and to resist warnings as long as possible.

64. From 1960, it has been the BAT Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
65. The Lead Companies of the BAT Group have communicated and directed these policies for Imperial Tobacco Canada Limited by a variety of means, including:
 - i. Establishing the Smoking and Health Policies which ensured that all BAT Group companies gave uniform answers to similar questions on smoking and health issues, including B.A.T Industries p.l.c.'s Statement of Business Conduct
 - ii. Convening the Chairman's Advisory Conferences, BAT Group Research Conferences and BAT Group Marketing Conferences, all of which included Imperial Tobacco Canada Limited
 - iii. Preparing and distributing to BAT Group members, including Imperial Tobacco Canada Limited, written directives and communications, including "Smoking Issues: Claims and Responses," "Consumer Helplines: How To Handle Questions on Smoking and Health and Product Issues," "Smoking and Health: The Unresolved Debate," "Smoking: The Scientific Controversy," "Smoking: Habit or Addiction?" and "Legal Considerations on Smoking and Health Policy"
 - iv. Ensuring through all of these means that the personnel of the BAT Group companies, including Imperial Tobacco Canada Limited, understood and disseminated the BAT Group's position on smoking and health
 - v. Conspiring or acting in concert as particularized in Part IV below.

66. These common policies of the BAT Group have continued notwithstanding changes in the corporate structure of the BAT Group. There continues to be central coordination of the BAT Group's international strategy, of which Canada is an integral part, and central control and management of the BAT Group policies on smoking and health issues. These common policies on smoking and health in the BAT Group have been maintained in Canada under the control and direction of British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited from 1950 to the present, such that these defendants are responsible in law for the BAT Group tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited.

67. In particular, the Government of Saskatchewan states that:

- i. By reason of the facts pleaded, British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited are jointly liable with and are vicariously liable for the tobacco-related wrongs of Imperial Tobacco Canada Limited
- ii. Imperial Tobacco Canada Limited has acted as agent for British American Tobacco p.l.c., B.A.T Industries p.l.c. and British American Tobacco (Investments) Limited in committing tobacco-related wrongs in Canada
- iii. As described in Part IV, British American Tobacco p.l.c., B.A.T Industries p.l.c., British American Tobacco (Investments) Limited and Imperial Tobacco Canada Limited have, as a Group and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

6. The BAT Group Defendants are Manufacturers under the Act

68. Each of British American Tobacco p.l.c., British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Imperial Tobacco Canada Limited (collectively, "the BAT Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:
- i. Each of the BAT Defendants manufactures or has manufactured cigarettes.
 - ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the BAT Defendants causes or has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
 - iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the BAT Defendants derives at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
 - iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the BAT Defendants engages in, or causes, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.
69. From 1950 and continuing to the present, cigarettes manufactured or promoted by the BAT Defendants have been offered for sale in Saskatchewan. The brand names of the cigarettes of the BAT Defendants offered for sale in Saskatchewan and the rest of Canada include *du Maurier*, *Peter Jackson*, *Player's Matinee*, *Goldcrest*, *John Player*, *Avanti*,

Cameo, Kool, Marlboro, Sweet Caporal, Pall Mall, Medallion, Matinee Slims, Matinee Special Mild, Matinee Extra Mild and Vogue.

(iv) **The Rothmans Group**

1. Carreras Rothmans Limited

70. The defendant Carreras Rothmans Limited is a company incorporated pursuant to the laws of the United Kingdom and has a registered office at Globe House, 1 Water Street, London, England. Carreras Rothmans Limited is responsible in law for the actions and conduct of its predecessors in interest Rothmans of Pall Mall Limited, Rothmans of Pall Mall Canada and Carreras Limited. Carreras Rothmans Limited was a Lead Company of the Rothmans Group. Since 1999, Carreras Rothmans Limited has been part of the BAT Group.

71. Carreras Rothmans Limited was formed in 1958 when Rothmans of Pall Mall Limited acquired a controlling interest in Carreras Limited. At that time, Rothmans of Pall Mall Limited controlled Rothmans of Pall Mall Canada Limited and Carreras Limited controlled Rock City Tobacco Company of Quebec. By 1963, Rothmans of Pall Mall Canada had assumed all outstanding shares of Rock City Tobacco Company of Quebec.

2. Rothmans Inc.

72. The defendant Rothmans Inc. is a company incorporated pursuant to the laws of Ontario and has a registered office at 1500 Don Mills Road, North York, Ontario. Rothmans Inc. has represented itself to have been a part of the Canadian tobacco industry for the past 100 years. Rothmans Inc. is responsible for the actions and conduct of its predecessor in name Rothmans of Pall Mall Canada Limited.

73. Rothmans of Pall Mall Canada Limited was incorporated in 1956. In 1985, Rothmans of Pall Mall Canada Limited changed its name to Rothmans Inc. Between 1986 and 2008, Rothmans Inc. was a co-owner with Altria Group, Inc. of Rothmans, Benson & Hedges Inc. In 2009, Rothmans Inc. amalgamated with and continued as Rothmans, Benson & Hedges Inc. as a wholly owned subsidiary of Philip Morris International, Inc.

3. The Rothmans Group Lead Companies Controlled and Directed Rothmans Inc.

74. Prior to 1986, the Canadian company, Rothmans Inc., was controlled and directed by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group. The control and direction by the Rothmans Group Lead Companies extended to the manufacture and promotion of their cigarettes.

75. Since 1980, the Philip Morris Group exercised substantial influence over Rothmans International through the creation of a partnership with the Rothmans Group and the placement of board members of the Philip Morris Group Lead Companies on the board of Rothmans International.

76. The means by which Carreras Rothmans Limited and Rothmans International exercised control and direction included:

- i. Coordinating the research strategy of all of the Rothmans Group companies worldwide, including Canada
- ii. Facilitating a constant exchange of information, knowledge and ideas of all of the Rothmans Group companies worldwide, including Canada

- iii. Directing its subsidiaries and affiliates, including Rothmans Inc., to conform their policies to those of the broader tobacco industry
 - iv. Creating the International Advisory Board for the development of common policies and strategies for the benefit of the Rothmans Group
 - v. Providing technical expertise and other support to members of the Rothmans Group
 - vi. Placing board members of the Lead Companies on the board of directors of Rothmans Inc.
77. The control and direction by Carreras Rothmans Limited and Rothmans International as Lead Companies of the Rothmans Group involved the implementation of the Rothmans Group's positions and policies on smoking and exposure to cigarette smoke and health. From 1950, the Rothmans Group maintained a policy that members of the Rothmans Group must deny the existence of any relationship between smoking and adverse health consequences and that warning labels would be strenuously opposed.
78. From 1960, it was the Rothmans Group policy to deny or to diminish the relationship between the exposure to smoke and adverse health consequences.
79. The Lead Companies of the Rothmans Group, including Carreras Rothmans Limited and Rothmans International, communicated and directed these policies for Rothmans Inc. by a variety of means, including:
- i. Directing Rothmans Inc. to maintain the Rothmans Group's position that more research was needed in order to determine whether cigarettes cause disease

- ii. Instructing Rothmans Inc. not to agree voluntarily to cautionary warnings in advertising
 - iii. Creating the International Advisory Board
 - iv. Conspiring or acting in concert as particularized in Part IV below.
80. These common policies on smoking and health in the Rothmans Group were maintained in Canada under the control and direction of Carreras Rothmans Limited and Rothmans International from 1950 to 1986 such that Carreras Rothmans Limited is responsible in law for its own tobacco-related wrongs and is jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
81. Altria Group, Inc. and Philip Morris International, Inc. controlled and directed the Rothmans Group such that from 1980 to the present, Altria Group, Inc. and Philip Morris International, Inc. are responsible in law for their own tobacco-related wrongs and are jointly and severally liable for the tobacco-related wrongs of Rothmans Inc.
82. In particular, the Government of Saskatchewan states that:
- i. By reason of the facts pleaded, Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. are jointly liable with and are vicariously liable for the tobacco-related wrongs of Rothmans Inc.
 - ii. Rothmans Inc. has acted as agent for Carreras Rothmans Limited, Altria Group, Inc. and Philip Morris International, Inc. in committing tobacco-related wrongs in Canada

- iii. As described in Part IV, Carreras Rothmans Limited, Altria Group, Inc., Philip Morris International, Inc. and Rothmans Inc. have, together and with the other Defendants, conspired or acted in concert in committing tobacco-related wrongs.

4. The Rothmans Group Defendants are Manufacturers under the Act

83. Each of Carreras Rothmans Limited and Rothmans Inc. (together, the "Rothmans Defendants") is a Manufacturer pursuant to paragraph 2(1)(h) of the Act because:

- i. Each of the Rothmans Defendants has manufactured cigarettes.
- ii. Pursuant to subparagraph 2(1)(h)(i) of the Act, each of the Rothmans Defendants has caused, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of cigarettes.
- iii. Pursuant to subparagraph 2(1)(h)(ii) of the Act, each of the Rothmans Defendants derived at least 10% of revenues from the manufacture or promotion of cigarettes, by itself or by the Group.
- iv. Pursuant to subparagraph 2(1)(h)(iii) of the Act, each of the Rothmans Defendants engaged in, or caused, directly or indirectly, other persons to engage in the promotion of cigarettes. The "other persons" include retail sellers of tobacco cigarettes, marketing and advertising consultants, medical consultants, associations for the promotion of cigarettes and associations opposing the plain packaging of cigarettes.

84. From 1950 until 2008, cigarettes manufactured or promoted by the Rothmans Group were offered for sale in Saskatchewan. The brand names of the cigarettes of the

Rothmans Group offered for sale in Saskatchewan and the rest of Canada are now offered for sale through the defendant, Rothmans, Benson & Hedges Inc. and include *Rothmans*, *Dunhill*, *Craven "A"*, *Craven "A" Superslims*, *Sportsman* and *Black Cat*.

(v) **The Canadian Tobacco Manufacturers' Council**

85. The defendant Canadian Tobacco Manufacturers' Council is a company incorporated pursuant to the laws of Canada and has a registered office at 6 Rue D'Angers, Gatineau, Quebec. The Canadian Tobacco Manufacturers' Council is the trade association of the Canadian tobacco industry and was originally formed as an ad hoc committee of members of the Canadian tobacco industry in 1963 to influence government authorities on the question of smoking and health.

86. The founding members of the Canadian Tobacco Manufacturers' Council were Rothmans, Benson & Hedges Inc., JTI-Macdonald Corp., Imperial Tobacco Canada Limited and Rothmans Inc.

87. As described in paragraphs 167 - 184, the Canadian Tobacco Manufacturers' Council provided a means by which the Defendants' Conspiracy (defined in Part IV) was implemented and continues to be implemented in Canada. In addition, the Canadian Tobacco Manufacturers' Council itself was and remains a participant in the Conspiracy.

88. The Canadian Tobacco Manufacturers' Council is a Manufacturer pursuant to subparagraph 2(1)(h)(iv) of the Act because it has been and is engaged in all of the following activities:

(a) the advancement of the interests of Manufacturers

- (b) the promotion of cigarettes
- (c) causing, directly or indirectly, other persons to engage in the promotion of cigarettes.

II. THE DEFENDANTS' KNOWLEDGE OF THE RISKS OF SMOKING AND EXPOSURE TO SMOKE

89. The Defendants designed and manufactured cigarettes to deliver nicotine to smokers.
90. Nicotine is an addictive drug that affects the brain and central nervous system, the cardiovascular system, the lungs, other organs and body systems and endocrine function. Addicted smokers physically and psychologically crave nicotine.
91. Smoking causes or contributes to disease, including, but not limited to:
- (a) chronic obstructive pulmonary disease and related conditions, including:
 - i. emphysema
 - ii. chronic bronchitis
 - iii. chronic airways obstruction
 - iv. asthma
 - (b) cancer, including:
 - i. cancer of the lung
 - ii. cancer of the lip, oral cavity and pharynx

- iii. cancer of the larynx
 - iv. cancer of the esophagus
 - v. cancer of the bladder
 - vi. cancer of the kidney
 - vii. cancer of the pancreas
 - viii. cancer of the stomach
- (c) circulatory system diseases, including:
- i. coronary heart disease
 - ii. pulmonary circulatory disease
 - iii. cerebrovascular disease
 - iv. atherosclerosis, aortic and other aneurysms
 - v. peripheral vascular disease
- (d) pneumonia and influenza
- (e) peptic ulcers
- (f) increased morbidity and general deterioration of health
- (g) fetal harm.

92. Since 1950, the Defendants have been aware that cigarettes:
- (a) contain substances and produce by-products which can cause or contribute to disease including, nitrosamines, carbon monoxide, benzene, benzo[a]pyrene, dibenz[a,h]anthracene, benzo[e]pyrene, chrysene, dibenzo[a,i]pyrene, n'nitrosornicotine, acrolein, hydrogen cyanide, isoprene, chromium, chloracetophenone and arsenic
 - (b) cause or contribute to addiction.
93. By 1950, and at all material times thereafter, the Defendants knew or ought to have known that smoking cigarettes could cause or contribute to disease.
94. By 1950, the Defendants knew or ought to have known that:
- (a) nicotine is an addictive and active ingredient in cigarettes
 - (b) smokers crave nicotine
 - (c) the physiological and psychological effects of nicotine on smokers compel them to continue to smoke.

III. TOBACCO-RELATED WRONGS COMMITTED BY THE DEFENDANTS

A. Deceit and Misrepresentation

95. At all material times, the Defendants have owed a duty to persons in Saskatchewan not to misrepresent the risks of smoking, those risks being the risks of addiction and disease.

96. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

(i) **The Misrepresentations**

97. From 1950, the Defendants have misrepresented the risks of addiction and disease and in particular, without limiting the generality of the foregoing, have misrepresented in Saskatchewan and throughout Canada that:

- (a) smoking has not been shown to cause any known diseases
- (b) there is no medical or scientific link between smoking and disease
- (c) they were not aware of any research, or any credible research, establishing a link between smoking and disease
- (d) environmental and genetic factors are to blame for many diseases rather than smoking
- (e) cigarettes are not addictive
- (f) smoking is merely a habit or custom, not an addiction
- (g) they have not manipulated nicotine levels
- (h) they have not included substances in their cigarettes designed to increase the bio-availability of nicotine

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- (i) certain of their cigarettes, such as "filter," "mild," "low tar" and "light" brands, are safer than other cigarettes
- (j) machine measurements of tar and nicotine are representative of actual intake
- (k) smoking is consistent with a healthy lifestyle
- (l) smoking is not harmful to health
- (m) exposure to cigarette smoke is not harmful to health
- (n) smoking and exposure to cigarette smoke are not a serious health risk
- (o) they are interested in the health and well-being of smokers.

98. The misrepresentations by the Philip Morris Group in Canada have been continuous and have been made through a variety of means, including:

- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)
- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of

- Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
- iii. Public and media statements to Canadian newspapers and on North American television (including a statement in the Toronto Daily Star (September 1967) and a speech in Halifax (June 1978))
 - iv. Annual Reports (including in the 1977 and 1981 Annual Reports for Benson & Hedges (Canada) Inc.)
 - v. Publications (including in the 1978 Booklet "The Facts" published by Benson & Hedges (Canada) Inc.)
 - vi. Advertising, marketing and promotional campaigns
 - vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.
99. The misrepresentations by the RJR Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 1963), the National Association of Tobacco and Confectionery Distributors Convention (October 1969 and in 1995), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and federal Legislative Committees (including in November 1987 and January 1988)

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- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
 - iii. Publications (including "R.J. Reynolds Industries: A Hundred Years of Progress in North Carolina" in *The Tobacco Industry in Transition*).
 - iv. Speeches and presentations (including 1969 speech to the Tobacco Growers Information Committee and 1980 presentation to a National Meeting of Security Analysts)
 - v. Public statements (including the 1983 Revised Mission Statement on Smoking and Health)
 - vi. Advertising, marketing and promotional campaigns
 - vii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.
100. The misrepresentations by the BAT Group in Canada have been continuous and have been made through a variety of means, including:
- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on

Health, Welfare and Social Affairs (May 1969), the National Association of Tobacco and Confectionery Distributors Convention (October 1969), federal Legislative Committees (including in November 1987 and January 1988) and the House of Commons Standing Committee on Health (December 1996)

- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979), with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981) and with federal Minister of Health and Welfare Jake Epp (September 1986)
- iii. Annual Reports (including the 1959, 1961, 1967 and 1968 Annual Reports for Imperial Tobacco Canada Limited)
- iv. Public and media statements to Canadian newspapers and on national television (including CBC television (December 1969) and in the Toronto Daily Star (June 1971))
- v. Publications (including on the topics of smoking and health, "habit or addiction" and environmental tobacco smoke)
- vi. British American Tobacco p.l.c.'s website relating to environmental tobacco smoke
- vii. Advertising, marketing and promotional campaigns

viii. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

101. The misrepresentations by the Rothmans Group in Canada were continuous and were made through a variety of means, including:

- i. Presentations to the Canadian Medical Association (May 1963), the Conference on Smoking and Health of the federal Department of National Health and Welfare (November 25 and 26, 1963), the House of Commons Standing Committee on Health, Welfare and Social Affairs (May 1969) and the National Association of Tobacco and Confectionery Distributors Convention (October 1969)
- ii. Meetings with federal Minister of Health Marc Lalonde (April 1973), with Health and Protection Branch (March 1978), federal Minister of Health and Welfare Monique Bégin (April 1978), with officials of the federal Department of Health and Welfare (February 1979) and with the Assistant Deputy federal Minister of Health and Welfare Dr. A.B. Morrison (March 1981)
- iii. Full-page advertising in Canadian newspapers promoting smoking as safe and pledging to impart "vital information" as soon as available
- iv. Public and media statements to Canadian newspapers and on national television, (including in the Toronto Daily Star (September 1962, June 1969) and in the Globe and Mail (June 1967))
- v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

102. Since 1963, the Canadian Tobacco Manufacturers' Council's misrepresentations have been continuous and have been made through a variety of means including:

- i. Presentations, including the 1963 presentation to the Canadian Medical Association, the 1963 presentation to the federal Department of National Health and Welfare, the 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs, the 1969 presentation to the National Association of Tobacco and Confectionery Distributors Convention and the 1987 and 1988 presentations to federal Legislative Committees
- ii. Meetings with the federal Department of National Health and Welfare, the purpose of which was to oppose and delay regulatory measures
- iii. Position papers
- iv. Public statements characterizing warnings as misstatements and exaggerations of the scientific evidence, and representing environmental tobacco smoke as a symptom of inadequate ventilation in buildings
- v. Conduct in furtherance of the conspiracy or concerted action as particularized in Part IV below.

(ii) Suppression and Concealment of Scientific and Medical Data

103. From 1950, the Defendants have suppressed and concealed scientific and medical data which revealed the serious health risks of smoking and exposure to cigarette smoke. Each Group had policies in accordance with which the Defendants have withheld, altered and destroyed research on addiction and disease causation.

104. Particulars of this suppression of scientific and medical data and research by the Philip Morris Group include:

- i. Agreeing with British American Tobacco (Investments) Limited and the RJR Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
- ii. Destroying unfavourable smoking and health data generated by external research funded by the Philip Morris Group
- iii. Closing of research laboratories and destroying related scientific information
- iv. Withdrawing internal research relating to nicotine from peer review
- v. Destroying internal research relating to nicotine
- vi. Prohibiting research designed to develop new tests for carcinogenicity, to relate human disease and smoking and to show the additive effect of smoking
- vii. Establishing INBIFO, a facility in Europe where unfavourable research was destroyed
- viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.

105. Particulars of this suppression of scientific and medical data by the RJR Group include:

- i. Agreeing with British American Tobacco (Investments) Limited and the Philip Morris Group to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)

- ii. Ceasing research on the effects of smoke because of its potential bearing on product liability
 - iii. Removing 150 boxes of smoking and health materials from the R.J. Reynolds Tobacco Company libraries in Winston-Salem, North Carolina
 - iv. Imposing restrictions on the use of terms, including "drug," "marketing" and "dependency," in scientific studies
 - v. Destroying research relating to the biological activity of Camel cigarettes
 - vi. Invalidating and destroying research reports
 - vii. Terminating and destroying research associated with R.J. Reynolds Tobacco Company's "The Mouse House" experiments
 - viii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
106. Particulars of this suppression of scientific and medical data by the BAT Group include:
- i. Agreeing with the Philip Morris and RJR Groups to suppress scientific and medical findings relating to work that was funded at Harrogate, U.K. (1965 and 1966)
 - ii. Agreeing with the Rothmans Group to suppress research relating to carbon monoxide and smoke intake
 - iii. Implementing a policy with Imperial Tobacco Canada Limited to avoid written documentation on issues relating to smoking and health

- iv. Agreeing within the BAT Group not to publish or circulate research in the areas of smoke inhalation and smoker compensation and to keep all research on sidestream activity and other product design features within the BAT Group
 - v. Directing that certain research reports in Canada be destroyed (1992)
 - vi. Suppressing information and developments relating to potentially safer products
 - vii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
107. Particulars of this suppression of scientific and medical data by the Rothmans Group include:
- i. Agreeing with British American Tobacco (Investments) Limited to suppress research relating to carbon monoxide and smoke intake
 - ii. Participating in ICOSI's total embargo of all research relating to the pharmacology of nicotine in concert with the other Groups.
108. Particulars of the Canadian Tobacco Manufacturers' Council's suppression of scientific and medical data include:
- i. Refusing to approve and fund research where there was a concern that the results could be adverse to the tobacco industry
 - ii. Sponsoring studies only where there was no likelihood that the results could be harmful to the tobacco industry.

(iii) Misleading Campaigns to Enhance Their Own Credibility

109. From 1950, the Defendants have participated in misleading campaigns to enhance their own credibility and to diminish the credibility of health authorities and anti-smoking groups for the purposes of reassuring smokers that cigarettes were not as dangerous as authorities were saying and of maintaining the social acceptability of smoking.

110. The misleading campaigns were at least two-pronged: (a) public denials as to the harmful effects of smoking and the calls for more research (while concealing research findings and suppressing further research); and (b) implementing misleading campaigns designed to reassure smokers which (as described in paragraphs 98 to 102) included advertising campaigns and numerous public statements relating both to cigarette smoking and exposure to cigarette smoke.

(iv) Misrepresentations Relating to Filtered, "Mild," "Low Tar" and "Light" Cigarettes

111. Beginning in the 1960s, the Defendants have wrongfully promoted filtered, "mild," "low tar" and "light" cigarettes to the public and government agencies, including the federal government and the federal Department of Health and Welfare, with the purpose of deceiving the public and these agencies into believing that these cigarettes were healthier and safer.

112. From the 1960s, the Defendants have known that filtered, "mild," "low tar" and "light" cigarettes were not healthier or safer because smokers would compensate by increasing their inhalation of smoke to obtain as much or more nicotine.

113. The Defendants have also misled the public by linking a healthy image and lifestyle to filtered, "mild," "low tar" and "light" cigarettes. In this way, the Defendants have reassured the public and furthered their campaign of misrepresentation. The tobacco industry's research confirmed that smokers and the public mistakenly believed that filtered, "mild," "low tar" and "light" cigarettes meant healthier or safer cigarettes.

114. Particulars of the Defendants' research are as follows:

- i. The Philip Morris Group's research confirmed that smokers develop a daily nicotine intake quota and that when smoking a cigarette lower in nicotine delivery than their regular cigarettes, smokers will adjust their smoking patterns to obtain their normal nicotine intake.
- ii. The RJR Group's research confirmed that smokers will subconsciously adjust their intake volume and frequency, and smoking frequency, to obtain and maintain their hourly and daily requirements of nicotine. The RJR Group also knew that "low tar, low nicotine" cigarettes did not offer a health advantage compared to regular filter cigarettes.
- iii. The BAT Group's research confirmed that smokers must maintain a threshold amount of nicotine. BAT Group scientists found that when nicotine content was reduced, smokers would adjust their smoking patterns to obtain their threshold nicotine intake. These scientists also found that smokers would obtain a tar yield proportionately higher than that which the cigarette was designed to produce and could more than double the amount of nicotine intake reported in league tables.

iv. The Rothmans Group possessed research which confirmed that when a smoker changes to a brand of cigarette with purportedly lower delivery of nicotine the smoker will compensate by increasing inhalation of tar and carbon monoxide.

(v) **Campaigns to Increase Smoking Rates Among Women**

115. From 1950, the Defendants have engaged in deceitful advertising, marketing and promotional campaigns to increase smoking rates among women.

116. The Defendants have advertised, marketed and promoted their cigarettes to women as being reasonably healthy and safe, both expressly, through public statements including denials that cigarettes are harmful, and impliedly, through campaigns which equate smoking cigarettes with physical activities and a healthy lifestyle.

117. Each of the four Groups has targeted women as smokers and as potential smokers through advertising and branding campaigns. In Saskatchewan, and throughout Canada, brands targeted at women include the Philip Morris Group's *Marlboro Lights* and *Virginia Slims*, the RJR Group's *Contessa* and *Contessa Slims*, the BAT Group's *Matinee*, *Matinee Slims*, *Matinee Special Mild* and *Matinee Extra Mild*, and the Rothmans Group's *Craven "A" Superslims*.

B. Failure to Warn

118. At all material times, the Defendants knew or ought to have known that their cigarettes were addictive and could cause or contribute to disease. At all material times, the Defendants owed a duty to persons in Saskatchewan to warn of the risks of smoking, being addiction and disease. As Manufacturers, the Defendants have owed a duty to

persons in Saskatchewan as consumers of cigarettes and as persons who would be exposed to cigarette and tobacco smoke.

119. As described below, from 1950, the Defendants have breached this duty, thereby committing tobacco-related wrongs. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.
120. Beginning in 1950, the Defendants breached their duty by failing to provide any warning, or any adequate warning after 1972, of:
 - (a) the risk of tobacco-related disease or
 - (b) the risk of addiction to the nicotine contained in their cigarettes.
121. Any warnings that were provided were inadequate and ineffective in that they:
 - (a) failed to warn of the actual and known risks
 - (b) failed to give smokers, prospective smokers, and the public a true indication of the risks
 - (c) were introduced for the purpose of delaying more accurate government mandated warnings
 - (d) were combined with marketing plans and campaigns designed to reassure smokers
 - (e) failed to make clear, credible, complete and current disclosure of the harmful substances in their cigarettes.

122. From 1950, the Defendants have breached their duty to warn by wrongfully engaging in advertising, marketing, promotional and public relations activities to neutralize or negate the effectiveness of warnings on cigarette packaging and of warnings and advertising by governments and other agencies concerned with public health. These activities include the campaigns to reassure the public and governments, all as previously described.
123. From 1950, the Defendants have breached their duty to warn by misinforming and misleading the public about the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 95-102.
124. From 1950, the Defendants have breached their duty to warn by selectively promoting and publicising misleading research to create doubt and controversy regarding the risks of smoking and of exposure to cigarette smoke. This selective promotion and publication of misleading research was facilitated, in part, by the Defendants' creation of tobacco organizations, as particularized in paragraphs 151-157, and the Canadian tobacco Manufacturers' Council, and by presentations made by the Lead Companies to the public.
125. From 1950, the Defendants have breached their duty to warn by suppressing and concealing information regarding the risks of smoking and of exposure to cigarette smoke, as particularized in paragraphs 103 to 108.
126. From 1950, the Defendants have breached their duty to warn children and adolescents. The Defendants knew or ought to have known that children (under the age of 13) and adolescents (between the ages of 13 and 18) in Saskatchewan either were smoking or might start smoking. Despite their knowledge, the Defendants failed to provide warnings sufficient to inform children and adolescents of the risks. The Defendants wrongfully

directed advertising, marketing and promotional material to children and adolescents who were unable to make informed decisions about smoking.

C. Promotion of Cigarettes to Children and Adolescents

127. At all material times, the Defendants have owed a duty to children and adolescents in Saskatchewan to take all reasonable measures to prevent them from starting or continuing to smoke.

128. As described below, from 1950, the Defendants have breached this duty and have thereby committed tobacco-related wrongs. As a result of these tobacco-related wrongs, children and adolescents in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

129. The Defendants' own research revealed that the vast majority of smokers start to smoke and become addicted before they are 19 years of age. The Defendants were also aware that children and adolescents are unable to make informed decisions about smoking.

130. From 1950, the Defendants knew or ought to have known that children and adolescents in Saskatchewan were smoking or might start to smoke and that it was contrary to law, including the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and public policy, to sell cigarettes to children and adolescents or to promote smoking by such persons.

131. From 1950, the Defendants knew or ought to have known that children and adolescents in Saskatchewan who smoked cigarettes would become addicted and would suffer tobacco-related disease.
132. From 1950, the Defendants have failed to take any reasonable and effective measures to prevent children and adolescents from starting or continuing to smoke. Instead, the Defendants have effectively done the opposite: they have targeted children and adolescents in their advertising, promotional and marketing activities; they have advertised in publications accessed by children and adolescents; they have marketed cigarettes for sale in places frequented by children and adolescents; and they have engaged in marketing campaigns directed at children and adolescents.
133. These activities were undertaken to induce children and adolescents in Saskatchewan to start or continue to smoke and to undermine government initiatives and legislation (including that set out in paragraph 130) aimed at preventing children and adolescents in Saskatchewan from starting or continuing to smoke.
134. In particular:
 - (a) The Philip Morris Group targeted youth as a means to both attract new smokers and develop those smokers into a "young adult franchise" and through Rothmans, Benson & Hedges Inc., undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands.
 - (b) The RJR Group recognized the importance of imagery for the youth market and developed marketing criteria (including the use of cartoons and celebrities) and

specific brands it believed would assist in obtaining and maintaining the youth marketing position.

- (c) The BAT Group targeted what it described as "starters", that is, children and adolescents, by studying their smoking habits and adopting advertising strategies which focused on youth-oriented and youth-appealing activities.
- (d) The Rothmans Group targeted youth and undermined efforts to curb youth smoking by sponsoring youth-oriented and youth-appealing activities for the promotion of their brands in Canada.

D. Negligent Design and Manufacture

- 135. At all material times, the Defendants have owed a duty to design and manufacture a reasonably safe product and a duty to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking the cigarettes they manufactured and promoted.
- 136. As described below, since 1950, the Defendants have breached these duties by failing to design a reasonably safe product – a product that is not addictive and does not cause disease – and by failing to take all reasonable measures to eliminate, minimize, or reduce the risks of smoking. In breaching these duties, the Defendants have committed tobacco-related wrongs.
- 137. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and an increased risk of tobacco-related disease.

138. From the 1960s, the Defendants have halted research and development of alternative products because of concerns that such products would imply that cigarettes were unsafe. As described in paragraph 105, the RJR Group stopped work on the alleged positive effects of smoke due to concerns about product liability. As described in paragraph 106, through its control of Imperial Tobacco Canada Limited, B.A.T Industries p.l.c. suppressed information relating to potentially safer products because of the negative implications for cigarettes.
139. From the 1960s, the Defendants have increased the risks of smoking by manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:
- (a) blending of tobacco
 - (b) adding nicotine or substances containing nicotine
 - (c) increasing the pH level to increase the rate of nicotine intake into the body
 - (d) introducing substances, such as ammonia and menthol, to enhance the bio-availability of nicotine to smokers or to compensate for the variability in the nicotine content
 - (e) such further and other activities known to the Defendants.
140. From the 1960s, the Defendants have increased the risks of smoking by adding to their cigarettes ineffective filters and by misleading the public and government agencies, including the federal government and the federal Department of Health and Welfare, that these filters made smoking safer. At all material times, the Defendants have known that smokers compensated for the filters by increasing their inhalation and by adopting other

means to increase the assimilation of smoke into their lungs. The Defendants have known that the design of these filters resulted in a larger dose of nicotine to be inhaled by the smoker.

141. From the 1960s, the Defendants have designed and manufactured filtered, "mild," "low tar" and "light" cigarettes which they promoted as healthier than regular cigarettes, with knowledge that this was not the case. The Defendants have misled the public by linking a healthy image to a low tar – low nicotine cigarette through the use of descriptors and the portrayal of filtered, "mild," "low tar" and "light" cigarettes in the context of a lifestyle or activities that misrepresented smoking and health.

142. These filtered, "mild," "low tar" and "light" cigarettes were designed and manufactured notwithstanding the Defendants' own research and knowledge. In particular, the BAT Group's research confirmed that smokers and the public mistakenly believed that "light" or "low tar" meant a healthier cigarette and Imperial Tobacco Canada Limited marketed its brands, including *Medallion*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The Philip Morris Group's research confirmed that smokers mistakenly believed that low delivery was healthy and that the public's positive perception of filtration was more important than the filtration's actual effectiveness. Rothmans, Benson & Hedges Inc. marketed its brands, including *Benson & Hedges Lights*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette. The RJR Group's research confirmed that younger people believed "mild," "low tar" and "light" cigarettes to be more healthy and JTI-Macdonald Corp. marketed its brands, including *Vantage*, in a manner designed to reinforce the public's perception that the lower the tar, the safer the cigarette.

E. Breaches of Other Common Law, Equitable and Statutory Duties and Obligations

143. The Defendants, in their role as Manufacturers of cigarettes for human use and consumption, were under legal, equitable and statutory duties and obligations to ensure that their cigarettes were reasonably safe, and they expressly or impliedly warranted that their cigarettes were reasonably safe. In particular, from 1950, the Defendants advertised and promoted their cigarettes as being reasonably safe, both expressly, through public statements including denials that they are harmful, and impliedly, through campaigns which related cigarettes to a healthy lifestyle and physical activities. The Defendants also have repeatedly proclaimed to be interested in the health and well-being of smokers.

144. Knowing that cigarettes are addictive and cause and contribute to disease, from 1950, the Defendants inflicted harm on persons in Saskatchewan by manufacturing, promoting and selling cigarettes for profit and in disregard of public health.

145. From 1950, the Defendants engaged in unconscionable acts or practices and exploited the vulnerabilities of children and adolescents, and persons addicted to nicotine, particulars of which include:

(a) manipulating the level and bio-availability of nicotine in their cigarettes, particulars of which include:

i. sponsoring or engaging in selective breeding or genetic engineering of tobacco plants to produce a tobacco plant containing increased levels of nicotine

ii. deliberately increasing the level of nicotine through blending of tobaccos

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- iii. deliberately increasing the level of nicotine by adding nicotine or other substances containing nicotine
 - iv. adding ammonia and menthol
- (b) adding ineffective filters to cigarettes and misleading the public into believing these filters made smoking safer
 - (c) failing to disclose to consumers the risks inherent in smoking, those being the risks of disease and addiction
 - (d) engaging in marketing, promotional and public relations activities to neutralize or negate the effectiveness of safety warnings provided to the public
 - (e) suppressing or concealing scientific and medical information regarding the risks of smoking and of exposure to cigarette smoke
 - (f) marketing and promoting smoking in a manner designed to mislead the public into believing that cigarettes have performance characteristics, ingredients, uses, benefits and approval that they did not have
 - (g) using innuendo, exaggeration and ambiguity to misinform and mislead the public about the risks of smoking and of exposure to cigarette smoke by mischaracterizing any health concerns relating to smoking and exposure to smoke or attempts at regulation as unproven, controversial, extremist and an infringement of liberty or authoritarian
 - (h) failing to take any reasonable measures to prevent children and adolescents from starting or continuing to smoke

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- (i) targeting children and adolescents in their advertising, promotional and marketing activities for the purpose of inducing children and adolescents to start smoking or to continue to smoke
- (j) manufacturing, marketing, distributing and selling cigarettes which they knew or ought to have known are unjustifiably hazardous in that they are addictive and cause or contribute to disease and death
- (k) misrepresenting that:
 - i. smoking has not been shown to cause any known diseases
 - ii. there is no medical or scientific link between smoking and disease
 - iii. they were not aware of any research, or any credible research, establishing a link between smoking and disease
 - iv. environmental and genetic factors are to blame for many diseases rather than smoking
 - v. cigarettes are not addictive
 - vi. smoking is merely a habit or custom, not an addiction
 - vii. they have not manipulated nicotine levels
 - viii. they have not included substances in their cigarettes designed to increase the bio-availability of nicotine

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- ix. certain of their cigarettes, such as filtered, "mild," "low tar" and "light" brands, are safer than other cigarettes
 - x. machine measurements of tar and nicotine are representative of actual intake
 - xi. smoking is consistent with a healthy lifestyle
 - xii. smoking is not harmful to health
 - xiii. exposure to cigarette smoke is not harmful to health
 - xiv. smoking and exposure to cigarette smoke are not a serious health risk
 - xv. they are interested in health and well-being of smokers.
- (l) failing to correct statements regarding the risks of smoking which they knew were incomplete or inaccurate, thereby misrepresenting the risks of smoking by omission or silence
- (m) misrepresenting the characteristics of their cigarettes without proper testing, investigation or research concerning:
- i. the risk of disease
 - ii. the risk of addiction to nicotine
 - iii. the feasibility of eliminating or minimizing these risks

- (n) misrepresenting as safer products, cigarettes with filters, and "mild," "low tar" or "low nicotine" tobacco, which adequate and proper testing would have revealed were ineffective to safeguard the health of smokers
- (o) failing to make clear, credible, complete and current disclosure of the risks inherent in smoking their cigarettes
- (p) misleading the public about the risks of smoking and of exposure to cigarette smoke
- (q) deliberately and unconscionably discrediting various testing and research which showed a link between smoking and disease and addiction
- (r) such further and other activities known to the Defendants.

146. The Defendants breached their legal, equitable and statutory duties and obligations, provincially and federally, including the provisions of *Combines Investigation Act*, R.S.C. 1952 (supp.), chapter 314 as amended by the *Criminal Law Amendment Act*, S.C. 1968-69, chapter 38 and amendments thereto (and in particular, section 33D) and subsequently the *Competition Act*, R.S.C. 1985, chapter C-34 and amendments thereto (and in particular, section 74.01), the 1908 *Tobacco Restraint Act* (Canada), the *Tobacco Sales to Young Persons Act* (Canada) and the 1997 *Tobacco Act* (Canada), and statutory and regulatory obligations in the province of Saskatchewan.

147. As a result of these tobacco-related wrongs, persons in Saskatchewan started or continued to smoke cigarettes or were exposed to cigarette smoke from cigarettes manufactured and promoted by the Defendants and suffered tobacco-related disease and increased risk of such disease.

IV. CONSPIRACY AND CONCERT OF ACTION IN COMMITTING TOBACCO-RELATED WRONGS

A. Role of the Lead Companies

148. At various times beginning in 1953 and continuing to the present, in response to reports in medical and other publications linking smoking and disease, the Defendants conspired or acted in concert to prevent the Government of Saskatchewan and persons in Saskatchewan and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes in circumstances where they knew or ought to have known that their actions would cause increased health care costs (the "Conspiracy").

149. The Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups were acting throughout on their own behalf and on behalf of their respective Groups. As particularized below, the Conspiracy was renewed at numerous meetings and through various campaigns and policies, all of which are known to the Defendants.

(vi) The Industry Conspiracy is Hatched

150. The Conspiracy or concert of action secretly originated in 1953 and early 1954 in a series of meetings and communications among Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (in its own capacity and as agent for British American Tobacco (Investments) Limited), American Tobacco Company, Lorillard Tobacco Company and the public relations firm, Hill & Knowlton. At least two of these meetings were held at the Plaza Hotel in New York on December 15 and 28, 1953. These companies agreed to:

- (a) jointly disseminate false and misleading information regarding the risks of smoking
- (b) make no statement or admission that smoking caused disease
- (c) orchestrate a public relations program on smoking and health issues with the object of:
 - i. promoting cigarettes
 - ii. protecting cigarettes from attack based upon health risks
 - iii. reassuring the public that smoking was not hazardous (sometimes referred to as the campaign of reassurance).

(vii) Use of Research Organizations in Furtherance of the Conspiracy

151. Between late 1953 and the early 1960s, the Lead Companies of each of the Groups formed or joined several research organizations including the Tobacco Industry Research Council (the "TIRC", renamed the Council for Tobacco Research in 1964, both referred to herein as TIRC), the Centre for Co-operation in Scientific Research Relative to Tobacco ("CORESTA"), the Tobacco Manufacturers' Standing Committee (the "TMSC", renamed the Tobacco Research Council in 1963 and renamed the Tobacco Advisory Council in 1978, collectively referred to herein as TMSC) and Verband der Cigarettenindustrie ("Verband").
152. The Lead Companies publicly misrepresented that they, or members of their respective Groups, along with the TIRC, CORESTA, TMSC and Verband, would objectively conduct research and gather data concerning the link between smoking and disease and

would publicize the results of this research throughout the world. Particulars of these misrepresentations are within the knowledge of the Defendants but include:

- i. The issuance of the TIRC's 1954 "Frank Statement to Cigarette Smokers" which received coverage in the Canadian press
 - ii. Statements made to the Canadian Medical Association in May 1963
 - iii. November 25-26, 1963 presentation to the Conference on Smoking and Health of the federal Department of National Health and Welfare
 - iv. May 1969 presentation to the House of Commons Standing Committee on Health, Welfare and Social Affairs
 - v. Statements to the national press and news organizations in Canada
 - vi. Communications through the Canadian Tobacco Manufacturers' Council in Canada, including to the federal Department of Health and Welfare
 - vii. As to British American Tobacco p.l.c. and the Philip Morris Group in particular, misleading statements on environmental tobacco smoke.
153. From 1953, the Lead Companies conspired with the TIRC, CORESTA, TMSC and Verband to distort the research and to publicize misleading information to undermine the truth about the link between smoking and disease. The Defendants misled the public and the Government of Saskatchewan, into believing that there was a medical or scientific controversy about whether smoking is addictive and causes disease. The Defendants' position and policy has been that causation remains an "open question." As described

below, this policy was enforced through ICOSI and the Canadian Tobacco Manufacturers' Council.

154. In 1963 and 1964 the Lead Companies and the Defendants agreed to co-ordinate their research with research conducted by the TIRC in the United States, for the purpose of suppressing any findings which might indicate that cigarettes are harmful and dangerous. In particular, the Lead Companies contributed to research and vetted and selected the persons who were to conduct such research.
155. In April and September 1963, the Lead Companies, and in particular, British American Tobacco (Investments) Limited, through its agent Brown & Williamson Tobacco Corporation, and Imperial Tobacco Canada Limited, Philip Morris U.S.A. Inc. and R.J. Reynolds Tobacco Company, together with TIRC and Hill & Knowlton, agreed to develop a public relations campaign to counter the Royal College of Physicians Report in England, the forthcoming Surgeon General's Report in the United States and a Report of the Canadian Medical Association in Canada, for the purpose of misleading smokers that their health would not be endangered by smoking cigarettes. This public relations campaign was part of the broader ongoing public relations campaign which continues to the present to reassure the public and to suppress information.
156. In September 1963 in New York, the Lead Companies agreed that they would not issue warnings about the link between smoking and disease unless and until they were forced to do so by government action.
157. The Lead Companies further agreed that they would suppress and conceal information concerning the harmful effects of cigarettes and risks of smoking, including research

funded by British American Tobacco (Investments) Limited at Harrogate Labs in England. In particular, the Lead Companies agreed to suppress and conceal all information which confirmed scientific work on the carcinogenicity of tobacco smoke condensate, and to avoid reference to nicotine, nicotine dependence and nicotine pharmacology in the development of research proposals.

(viii) Operation Berkshire and the Establishment of ICOSI

158. By the mid-1970s, the Lead Companies of the Philip Morris, RJR, BAT and Rothmans Groups decided that an increased international misinformation campaign ("Operation Berkshire") was required to mislead smokers and potential smokers and to protect the interests of the tobacco industry, for fear that any admissions relating to the link between smoking and disease could lead to a "domino effect" to the detriment of the industry world-wide.
159. Through Operation Berkshire, the Defendants further advanced their campaign of misinformation. Operation Berkshire was aimed at Canada and other major markets and led by both the Philip Morris Group in concert with the Rothmans Group and the BAT Group.
160. Operation Berkshire was implemented as a scheme among the Defendants. This scheme involved an agreement among the Defendants not to make concessions voluntarily and to oppose, through legal or other means, the imposition of anti-smoking legislation. The Defendants also agreed not to concede that adverse health effects had been linked to smoking and, instead, agreed to create "controversy" concerning any research or studies suggesting otherwise.

161. In June, 1977, Philip Morris U.S.A. Inc., R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Rothmans International, as Lead Companies of each of the four Groups and acting on behalf of the members of those Groups, met in England to establish ICOSI.
162. The primary objective of ICOSI was to implement the Conspiracy. The smoking and health scheme denying the relationship between smoking and disease was directed at major international markets, including Canada. This scheme included an agreement by all members that the issue of causation remains controversial and unresolved and that warning notices would be strenuously resisted with all means at their disposal.
163. On June 2 and 3, 1977 and November 11 and 12, 1977, the founding members of ICOSI, including Philip Morris U.S.A. Inc., the R.J. Reynolds Tobacco Company, British American Tobacco (Investments) Limited, B.A.T Industries p.l.c. and Rothmans International, adopted a position paper and then a revised version thereof, developed jointly by the BAT and Philip Morris Groups. The position paper and the revised version required that the tobacco industry as a whole take the position that there was "medical controversy" regarding the relationship between smoking and disease.
164. Through ICOSI, the Defendants resisted attempts by governments to provide warnings about smoking and disease and sought to attribute warnings to governments. In furtherance of the Conspiracy, all of the Defendants pledged to:
- (a) jointly disseminate false and misleading information regarding the risks of smoking
 - (b) make no statement or admission that smoking caused disease

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- (c) suppress research regarding the risks of smoking
- (d) resist government attempts to restrict advertising, sponsorship and smoking in public places
- (e) not compete with each other by making health claims with respect to their cigarettes – in other words, not advertise "safer" cigarettes - and thereby avoid direct or indirect admissions about the risks of smoking
- (f) attribute quotes on smoking and health to "appropriate non-ICOSI sources"
- (g) participate in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarettes from attack based upon health risks, and reassuring smokers, the public and authorities in Saskatchewan and other jurisdictions that smoking was not hazardous.

165. In and after 1977 the members of ICOSI, including the Lead Companies of each of the Groups, in furtherance of the Conspiracy, agreed orally and in writing, to ensure that:

- (a) the members of their respective Groups, including those in Canada, would act in accordance with the ICOSI position on smoking and health (as described in paragraph 164), including the decision to mislead the public about the link between smoking and disease
- (b) initiatives pursuant to the ICOSI positions would be carried out, whenever possible, by national manufacturers' associations ("NMAs") including, in Canada, the Canadian Tobacco Manufacturers' Council, to ensure compliance in the various tobacco markets worldwide

- (c) when it was not possible for NMAs to carry out ICOSI's initiatives they would be carried out by the members of the Lead Companies' Groups or by the Lead Companies themselves
- (d) their subsidiary companies would, when required, suspend or subvert their local or national interests in order to assist in the preservation and growth of the tobacco industry as a whole.

166. In 1980, ICOSI was renamed the International Tobacco Information Centre/Centre International d'Information du Tabac – INFOTAB. In 1992, INFOTAB changed its name to the Tobacco Documentation Centre ("TDC") (ICOSI, INFOTAB and TDC are referred to collectively as ICOSI). The objectives of ICOSI have remained the same notwithstanding these name changes and the Defendants maintained and have continued their Conspiracy to commit tobacco-related wrongs.

(ix) ICOSI and the Canadian Tobacco Manufacturers' Council

167. At all times from 1977 onward, the policies of ICOSI were identical to the policies of the NMAs, including the Canadian Tobacco Manufacturers' Council, and were presented as the policies and positions of the NMAs, including the Canadian Tobacco Manufacturers' Council and its member companies, so as to conceal from the public and from governments the existence of the Conspiracy or concert of action. ICOSI organized conferences of the NMAs, including the Canadian Tobacco Manufacturers' Council, to ensure compliance with ICOSI initiatives.

168. The Lead Companies were members of the Canadian Tobacco Manufacturers' Council through their respective operating companies in Canada, the predecessors of the

defendants Imperial Tobacco Canada Limited, JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Rothmans Inc. The Canadian Tobacco Manufacturers' Council was an allied member of ICOSI.

169. In particular, the ICOSI and the Canadian Tobacco Manufacturers' Council position papers were essentially identical in most respects and include the false and misleading positions that:

- i. No causal relationship between smoking and disease exists
- ii. No persuasive scientific evidence exists to support the contention that non-smokers are harmed by the tobacco smoke of others
- iii. Laws and regulations banning smoking are an unwarranted intrusion into the lives and rights of citizens.

170. At all material times, the Lead Companies conspired or acted in concert to ensure that manufacturers complied with, and did not deviate from, the official ICOSI position on the adverse health effects of smoking. In particular, "Issues Binders" were prepared so that ICOSI affiliates, including the Defendants in Canada, would speak with one voice on key issues such as addiction, advertising and sponsorship, the public smoking issue, smoking and health, social costs and warning labels. The Lead Companies instructed their respective Group companies to conform their policies to those of ICOSI. ICOSI developed workshops for the training of NMA personnel, including personnel of the Canadian Tobacco Manufacturers' Council.

171. The Defendants conspired or acted in concert in committing the tobacco-related wrongs particularized in Part III. The Defendants have continued the Conspiracy or have

continued to act in concert to commit tobacco-related wrongs. The Defendants have continued to maintain that environmental tobacco smoke is not harmful, have continued to create doubt and controversy regarding the health effects of exposure to cigarette smoke. The Defendants also have continued to oppose, delay and negate attempts by all levels of government, including municipal governments, and by health authorities, to provide health warnings or to otherwise limit or control cigarette smoking and exposure to cigarette smoke.

172. The Defendants' Conspiracy or concert of action has continued for more than thirty years since the inception of ICOSI. Further particulars of the manner in which the Conspiracy or concert of action was entered into and continued, and of the breaches of duty committed in furtherance of the Conspiracy or concert of action, are within the knowledge of the Defendants.

B. Conspiracy and Concerted Action in Canada

(x) Canadian Tobacco Manufacturer's Council

173. In furtherance of the Conspiracy, from 1953, the Defendants conspired or acted in concert with one another and within each Group to prevent the Government of Saskatchewan and persons in Saskatchewan and other jurisdictions from acquiring knowledge of the harmful and addictive properties of cigarettes, and to commit the tobacco-related wrongs described in Part III. The Defendants conspired or acted in concert in circumstances where they knew or ought to have known that harm and health care costs would result from acts done in furtherance of the Conspiracy or concert of action.

174. The Conspiracy or concert of action was continued in Canada when:

- (a) In 1962, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited secretly agreed not to compete with each other by making health claims with respect to their cigarettes so as to avoid any admission, directly or indirectly, concerning the risks of smoking.
- (b) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited misrepresented to the Canadian Medical Association that there was no causal connection between smoking and disease.
- (c) In 1963, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited formed the Ad Hoc Committee on Smoking and Health (renamed the Canadian Tobacco Manufacturers' Council in 1969, incorporated as the Canadian Tobacco Manufacturers' Council in 1982 and collectively referred to as the Canadian Tobacco Manufacturers' Council) in order to maintain a united front on smoking and health issues and to respond to what the Defendants viewed as an increasingly vocal anti-tobacco lobby.
- (d) In May 1969, Rothmans Inc., JTI-Macdonald Corp., Rothmans, Benson & Hedges Inc. and Imperial Tobacco Canada Limited, through the Canadian Tobacco Manufacturers' Council, misrepresented to the House of Commons, Standing Committee on Health, Welfare and Social Affairs, that there was no causal connection between smoking and disease.

- (e) The Lead Companies of each of the Groups recruited, approved and coordinated the witnesses who presented the positions and misrepresentations of the Canadian tobacco industry.
175. Upon its formation in 1963 and at all material times thereafter, the Canadian Tobacco Manufacturers' Council provided a means and method to continue the Conspiracy or concert of action in Canada. From its inception, the Canadian Tobacco Manufacturers' Council agreed, adopted and participated in the Conspiracy or concert of action.
176. Through meetings, presentations and position papers, the Canadian Tobacco Manufacturers' Council has maintained that smoking was not the cause of any disease and has misrepresented the risks of smoking to governments and regulatory agencies throughout Canada. Through its misrepresentations and delay tactics, the Canadian Tobacco Manufacturers' Council has opposed or negated government restrictions on the tobacco industry.
177. In accordance with the position of the Lead Companies and its members, the Canadian Tobacco Manufacturers' Council has maintained that smoking is not the cause of any disease and misrepresented the risks of smoking to the Canadian public.
178. Since 1963, the Canadian Tobacco Manufacturers' Council has co-ordinated with its co-Defendants and international tobacco industry associations the Canadian tobacco industry's positions on smoking and health issues. At all material times, the Canadian Tobacco Manufacturers' Council acted as agent for each of its co-Defendants.
179. In furtherance of the Conspiracy or concert of action, the Canadian Tobacco Manufacturers' Council:

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- (a) Disseminated false and misleading information regarding the risks of smoking, including making false and misleading submissions to governments and withheld from the federal government research relating to carbon monoxide, addiction, smoker compensation and warnings
- (b) Refused to admit that smoking caused disease
- (c) Suppressed research regarding the risks of smoking
- (d) Participated in a public relations program on smoking and health issues with the object of promoting cigarettes, protecting cigarette sales and protecting cigarettes and smoking from attack by misrepresenting the link between smoking and disease
- (e) Misled governments in order to delay and minimize government initiatives with respect to smoking and health
- (f) Characterized anyone who disagreed with the Canadian tobacco industry on the issue of smoking and health as uninformed, misinformed or extremist
- (g) Participated in coordinated tobacco industry efforts in Canada to dismiss or minimize the risk of exposure to smoke.

(xi) The Conspiracy in Canada Among the Groups

180. As to the Philip Morris Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. Philip Morris Conference on Smoking and Health in June 1976

- ii. International Conference on Smoking Behaviour in November – December 1977
- iii. Conference on May 9, 1978 designed to change public opinion by developing policies to challenge and fight anti-smoking efforts
- iv. Tobacco Technology Group Meetings
- v. Corporate Affairs World Conference
- vi. Philip Morris International Legal Conference
- vii. Philip Morris International Corporate Affairs Presentation
- viii. Meetings of the Canadian Tobacco Manufacturers' Council
- ix. Meetings of ICOSI
- x. Position Papers of the Canadian Tobacco Manufacturers' Council
- xi. Direction by the Lead Companies to Rothmans, Benson & Hedges Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
- xii. The Canadian Tobacco Manufacturers' Council and Rothmans, Benson & Hedges Inc. acting as agents for the Lead Companies in the Philip Morris Group
- xiii. Requests by Rothmans, Benson & Hedges Inc. to the Canadian Tobacco Manufacturers' Council and ICOSI to respond to anti-tobacco campaigns

xiv. Public statements about the Philip Morris Group's continued efforts, in concert with the other Defendants, to present the smoking and health issue to the public

xv. Philip Morris Group and tobacco industry meetings relating to environmental tobacco smoke.

181. As for the RJR Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. Hounds Ears and Sawgrass conferences
- ii. Meetings of the Canadian Tobacco Manufacturers' Council
- iii. Meetings of ICOSI and in particular, the Social Acceptability Working Party chaired by the RJR Group
- iv. Smoking Issues Coordinator meetings
- v. Position Papers of the Canadian Tobacco Manufacturers' Council
- vi. Direction by the Lead Companies to JTI-Macdonald Corp. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research and the importance of maintaining the right to veto any particular research proposal
- vii. The Canadian Tobacco Manufacturers' Council and JTI-Macdonald Corp. acting as agents for the Lead Companies in the RJR Group

viii. RJR Group and tobacco industry meetings relating to environmental tobacco smoke.

182. As for the BAT Group, the means by which the Conspiracy or concert of action was continued in relation to Canada include:

- i. BAT Group Smoking and Health Policy Meetings, including Chairman's Advisory Conferences and BAT Group Smoking Behaviour Conferences
- ii. Smoker Reassurance Campaigns, including Project Viking and the September 1976 campaign
- iii. BAT Group document destruction meetings, including on January 8, 1990, June 21-22, 1990, August 1990 and September 1991
- iv. Imperial Tobacco Canada Limited's retention of Hill & Knowlton in 1962 to combat certain Health Canada information
- v. Meetings of the Canadian Tobacco Manufacturers' Council, including those dealing with the threshold nicotine content, procrastination in relation to carbon monoxide warnings and environmental tobacco smoke
- vi. The Canadian Tobacco Manufacturers' Council Position Papers
- vii. Meetings of ICOSI at which Imperial Tobacco Canada Limited was present or represented
- viii. Direction by the Lead Companies to Imperial Tobacco Canada Limited regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council

- v. Pooling of resources with other companies in the tobacco industry to fund studies intended to generate data that supported the industry's position that environmental tobacco smoke is not a health risk
 - vi. Direction by Carreras Rothmans Limited to Rothmans Inc. regarding how it should vote at meetings of the Canadian Tobacco Manufacturers' Council on issues relating to smoking and health, including the approval and funding of research
 - vii. The Canadian Tobacco Manufacturers' Council and Rothmans Inc. acting as agents for Carreras Rothmans Limited
 - viii. Rothmans Group and tobacco industry meetings relating to environmental tobacco smoke.
184. Further particulars of the manner in which the Conspiracy or concert of action was entered into or continued, and of the tobacco-related wrongs committed by the Defendants in furtherance and as a result of the Conspiracy or concert of action, are within the knowledge of the Defendants.

C. Joint and Several Liability

185. The Government of Saskatchewan states that by reason of the facts pleaded, all of the Defendants are jointly and severally liable for the Government of Saskatchewan's aggregate cost of health care benefits equal to the Defendants' combined market share in cigarettes.

186. The Government of Saskatchewan also states that by reason of the facts pleaded, the Defendants within each Group are jointly and severally liable.

187. The Government of Saskatchewan pleads and relies on subsections 2(6) and 4(3) and section 5 of the Act.

V. RELIEF

188. The Government of Saskatchewan claims against the Defendants, and each of them:

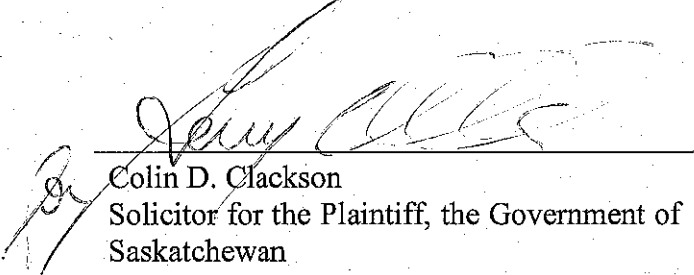
- (a) Its health care expenditures attributable to tobacco-related disease or the risk of tobacco-related disease, for each fiscal year from 1953, the present value of which for each year will be calculated to the date of trial.
- (b) The present value of the estimated total expenditure by the Government of Saskatchewan for health care benefits which could reasonably be expected to result from tobacco-related disease or the risk of tobacco-related disease.
- (c) costs; and
- (d) such other relief as to this Honourable Court seems just.

DATED at the City of Saskatoon, in the province of Saskatchewan, this 8th day of June, 2012.

“Colin D. Clackson”

Colin D. Clackson
Solicitor for the Plaintiff, the Government of Saskatchewan

AMENDED AND DATED at the City of Saskatoon, in the province of Saskatchewan, this 5 day of October, 2012.


Colin D. Clackson
Solicitor for the Plaintiff, the Government of Saskatchewan

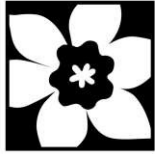
This document was delivered by:
Wallace Meschishnick Clackson Zawada
901-119 4th Avenue S.
Saskatoon, Saskatchewan S7K 5X2
Telephone: (306) 659-1226
Facsimile: (306) 933-2006
and the addresses for service is:
as above
Lawyer in charge of file:
Colin D. Clackson
Telephone: (306) 659-1227
Facsimile: (306) 933-2006
Our File No. 7933-16035

This is Exhibit “J” referred to in the Affidavit of Kelly Wilson Cull sworn by Kelly Wilson Cull of the City of Bedford, in the Province of Nova Scotia, before me at the City of Toronto, in the Province of Ontario, on January 20, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

**Katelin Zoe Parker, a Commissioner, etc.,
Province of Ontario, for Fogler, Rubinoff LLP,
Barristers and Solicitors. Expires April 23, 2026.**



Canadian Société
Cancer canadienne
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For immediate release

Total Victory - Supreme Court Upholds BC Law

New Brunswick – On Thursday September 29, 2005, at 4:00 PM (ET), the Supreme Court of Canada released its unanimous judgment upholding the constitutionality of the British Columbia *Tobacco Damages and Health Care Costs Recovery Act*. The Canadian Cancer Society praises the BC government for taking on the tobacco industry allowing them to proceed of a lawsuit against the tobacco industry.

The Canadian Cancer Society urges the New Brunswick Government to adopt legislation based on the BC model and pursue a similar Medicare cost recovery lawsuit against the tobacco industry. Indeed, Ontario and Newfoundland have already adopted similar legislation.

From a public policy perspective, the potential benefits of B.C.'s Medicare cost recovery lawsuit will include **justice**, by holding the tobacco industry accountable before the law for their wrongful behavior; **truth**, by obtaining information on tobacco industry practices through public disclosure of internal documents; **compensation**, by obtaining possibly billions of dollars as compensation for health care costs, thus benefiting taxpayers; and **health**, by forcing the tobacco industry to stop their deceptive and destructive ways that are detrimental to public health.

“The urgency for the New Brunswick Government to act is very apparent,” stated Canadian Cancer Society spokesperson, Lynn Ann Duffley. Annually 1300 New Brunswickers die from tobacco-related diseases, among them 163 non-smokers from exposure to second hand smoke. New cancer cases are increasing each year by 2-3% and lung cancer is the leading cause of cancer mortality for both men and women in the province. New Brunswick spends \$ 120 million yearly in health care costs for tobacco-related diseases and loses \$218 million dollars in productivity. “We have a cancer crisis on our hands, and tobacco industry’s products are directly responsible for 30% of all cancers; NB must make every effort to secure compensation to fund the prevention and reduction of the economic burden of tobacco use,” concluded Lynn Ann Duffley.

The tobacco industry has advertised to children, marketed to women, manipulated nicotine levels, contributed to contraband, concealed internal health research, failed to adequately warn consumers, destroyed documents, denied the truth, deceived the public about the real nature of so-called “light” and “mild” cigarettes, and aggressively opposed the implementation of tobacco control measures. The industry must be held accountable for its actions.

The Canadian Cancer Society is a national community-based organization of volunteers whose mission is the eradicate cancer and the enhancement of the quality of life of people living with cancer. When you need to know more about cancer, call the Society’s Cancer Information Service at 1-888-939-3333, or visit the website at www.cancer.ca.

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Lynn Ann Duffley
Director of Public Issues and Communications
Canadian Cancer Society – New Brunswick Division
1 506 634-6271
1 800 455-9090

Canadian Cancer Society welcomes introduction of legislation enabling lawsuit against tobacco industry's destructive behaviour

04 March 2009

TORONTO -

The Canadian Cancer Society welcomes the Ontario government's legislation enabling cost-recovery litigation against the tobacco industry.

The Society has been advocating for several years for legislation that would hold accountable an industry responsible for 30% of cancer deaths.

"We're pleased the government has listened and taken action," says Peter Goodhand, CEO, Ontario Division, Canadian Cancer Society. "In addition to recovering costs, the suit will hold the tobacco industry to account for the harm it has caused Ontarians and their families."

Cost-recovery litigation could significantly benefit public health. In other jurisdictions, litigation has resulted in restrictions on marketing practices of the tobacco industry.

"We call for the swift passage of the legislation and the timely filing of a law suit against the industry," added Goodhand. "This will remind all Ontarians that this is an industry that operates outside the rules of a normal business."

Benefits of litigation

The benefits of litigation include:

- Justice: A lawsuit against the tobacco industry will hold it accountable for the industry's destructive behaviour.
- Truth: Through the court process, information on the tobacco industry's deceptive practices will become public.
- Compensation: Potentially billions of dollars could be recovered as compensation for health care and other costs.
- Health: Litigation could result in greater restrictions on tobacco industry marketing and sales practices.

Background

- 13,000 people die of tobacco-related illness every year in Ontario.
- Tobacco use is responsible for 30% of cancer deaths.
- Provincial governments have spent billions of dollars to treat tobacco related illnesses.
- Tobacco-related illness accounts for \$1.6 billion in expenses.

The Canadian Cancer Society is a national community-based organization of volunteers whose mission is the eradication of cancer and the enhancement of the quality of life of people living with cancer. When you want to know more about cancer, visit our website www.cancer.ca or call our toll-free, bilingual *Cancer Information Service* at 1 888 939-3333.

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For more information, please contact:

[Christine Koserski](#)

Sr. Coordinator, Media Relations

Ontario Division

Phone: (416) 488-5402 x2305



COMMUNIQUÉ

Pour diffusion immédiate

Recouvrement de frais de santé causés par le tabac La Société canadienne du cancer applaudit la décision du gouvernement du Québec de poursuivre l'industrie du tabac

Montréal, le 8 juin 2012 — La Société canadienne du cancer (SCC) – Division du Québec est soulagée que le gouvernement du Québec intente enfin un procès aux fabricants de produits du tabac pour recouvrir les coûts des soins de santé liés à la consommation du tabac. Cette poursuite de 60 milliards \$ est la plus importante jamais entamée au Canada contre les cigarettiers.

« La poursuite déposée aujourd'hui est le début du processus qui tiendra l'industrie responsable des dommages causés à la santé de milliers de Québécois, déclare Suzanne Dubois, directrice générale de la Société canadienne du cancer. Pendant des décennies, l'industrie du tabac a utilisé des pratiques trompeuses pour promouvoir ses produits mortels, résultant en des centaines de millions de dollars engagés par l'assurance maladie du Québec pour le traitement du cancer et d'autres maladies liées à l'usage du tabac. Près du tiers des cancers sont directement liés au tabac. Uniquement cette année, plus de 15 000 Québécois vont apprendre qu'ils ont un cancer parce qu'ils auront été accros au tabac. »

Selon la SCC, un procès de recouvrement des coûts pourrait être très avantageux pour la santé publique. Aux États-Unis, une poursuite similaire a entraîné des restrictions sur le marketing de l'industrie du tabac, en plus de faire disparaître d'importants organismes de façade et de lobbying au service des cigarettiers. Elle a également permis de porter au grand jour des millions de pages de documents internes de cette industrie, demeurés secrets jusqu'à maintenant.

« Au-delà des cancers, des morts et des souffrances, le tabagisme coûte très cher aux Québécois. L'impact annuel du tabagisme est de 4 milliards \$ par année en coûts directs et indirects, alors que les taxes ne rapportent au coffre québécois que 850 millions \$, selon Mélanie Champagne, coordonnatrice, Questions d'intérêt public, à la SCC. Les compagnies de tabac ont joué le rôle central dans l'épidémie de tabagisme qui a sévi partout au pays, notamment en cachant les effets de l'usage du tabac sur la santé. On ne peut pas laisser ces entreprises s'en tirer et sans qu'elles ne soient tenues responsables de l'immense tort qu'elles ont causé aux victimes du tabac et à leur famille. »

Quelques-uns des avantages pour le Québec d'un tel procès :

- **Justice** : un procès contre l'industrie du tabac tiendra celle-ci responsable de son comportement destructeur.
- **Vérité** : Les documents rendus publics pendant le procès permettront de mieux comprendre les pratiques trompeuses et destructrices utilisées par l'industrie pendant des décennies. Le public comprendra finalement qu'il s'agit d'une industrie qui ne respecte pas les règles normales en affaires.
- **Compensation** : des milliards de dollars pourraient être recouverts en tant que compensation pour les soins de santé et autres coûts.
- **Santé** : un procès pourrait entraîner des restrictions plus importantes des pratiques de marketing et de vente de l'industrie du tabac.

À part le Québec, sept autres provinces ont déjà intenté des poursuites. Les autres provinces canadiennes, de même que le Nunavut, ont annoncé leur intention de le faire.

- Le tabagisme tue plus que les accidents de la route, le sida, la drogue, l'alcool, les incendies, les meurtres et les suicides réunis.
- Le tabac est responsable de **1 décès sur 3 par cancer**. C'est la première évitable de décès dans le monde.
- Depuis 5 ans, le nombre de fumeurs québécois demeure inchangé — pour chaque fumeur qui cesse de fumer ou décède, un jeune s'initie au tabac (environ 30 000 par année).
- On court à la catastrophe : plus de 100 000 jeunes ados (22 %) sont accros. Exactement le même taux que chez les adultes.
- La cigarette et un produit hautement toxique qui crée une forte dépendance. À peine 5 % des fumeurs réussissent à long terme à écraser sans aucune forme d'aide. **Des milliers de fumeurs n'arriveront jamais à écraser pour de bon, et ce, malgré tous les efforts qu'ils mettront.**
- Le cancer du poumon est de loin le plus meurtrier des cancers. Il tuera cette année 2 fois plus de Québécoises que le cancer du sein et 4 fois plus de Québécois que le cancer de la prostate. Il joue aussi un rôle dans l'apparition d'au moins 17 autres types de cancer.

La Société canadienne du cancer combat la maladie en faisant tout ce qu'elle peut pour prévenir le cancer, sauver des vies et soutenir les personnes qui sont atteintes. Pour en savoir plus sur le cancer, veuillez consulter notre site Web à l'adresse cancer.ca ou appeler notre Service d'information sur le cancer, un service gratuit et bilingue, au 1 888 939-3333.

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Renseignements :

André Beaulieu, conseiller principal, Relations publiques, SCC – Division du Québec
abeaulieu@quebec.cancer.ca | **514 393-3444**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

Court File No. CV-19-615862-00CL

Court File No. CV-19-616077-00CL

Court File No. CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF KELLY WILSON CULL

FOGLER, RUBINOFF LLP

Lawyers

Scotia Plaza

40 King Street West, Suite 2400

P.O. Box #215

Toronto, ON M5H 3Y2

Vern W. DaRe (LSO# 32591E)

Tel: 416-941-8842

Fax: 416-941-8852

Email: vdare@foglers.com

CANADIAN CANCER SOCIETY

116 Albert Street, Suite 500

Ottawa, ON K1P 5G3

Robert Cunningham (LSO# 35179L)

Tel: 613-762-4624

Email: rcunning@cancer.ca

Lawyers for Canadian Cancer Society

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RESPONDING MOTION RECORD OF
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VOLUME 1 OF 2

FOGLER, RUBINOFF LLP

Lawyers
Scotia Plaza
40 King Street West, Suite 2400
P.O. Box #215
Toronto, ON M5H 3Y2

Vern W. DaRe (LSO# 32591E)

Tel: 416-941-8842

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