CANADA
PROVINCE OF QUEBEC
MONTREAL SEAT

COURT OF APPEAL

CAM: 500-09-025385-154
CAM: 500-09-025387-150
(SCM: 500-06-000076-980)
(SCM: 500-06-000070-983)

IMPERIAL TOBACCO CANADA LTD.
-and-
ROTHMANS, BENSON & HEDGES INC.
APPELLANTS / Defendants

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
-and-
JEAN-YVES BLAIS
-and-
CÉCILIA LÉTOURNEAU
RESPONDENTS / Plaintiffs

-and-

FTI CONSULTING CANADA INC., in its capacity as Monitor and CCAA Plan Administrator of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited
-and-
ERNST & YOUNG INC., in its capacity as Monitor and CCAA Plan Administrator of Rothmans, Benson & Hedges Inc.
INTERVENERS / Monitors

-and-

JTI-MACDONALD CORP.
MISE EN CAUSE / Defendant

-and-

DELOITTE RESTRUCTURING INC., in its capacity as Monitor and CCAA Plan Administrator of JTI-Macdonald Corp.
MISE EN CAUSE

JOINT APPLICATION TO RELEASE AND WITHDRAW THE CASH SECURITY DEPOSITS
(Articles 18, 25, 49, 364 and 390 C.C.P.)
(Article 1584 C.C.Q.)

TO A JUDGE OF THE COURT OF APPEAL OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE MONITORS FTI CONSULTING CANADA INC. AND ERNST & YOUNG INC. (INTERVENERS) AND THE RESPONDENTS RESPECTFULLY SUBMIT THE FOLLOWING:

A. OVERVIEW[1]

1. By way of the present Application, FTI Consulting Canada Inc. ("**FTI**"), in its capacity as Monitor (in such capacity, the "**Imperial Monitor**") of the Appellant Imperial Tobacco Canada Ltd. ("**ITCAN**") and of Imperial Tobacco Company Limited (together with ITCAN, "**Imperial**"), and Ernst & Young Inc. ("**EY**"), in its capacity as Monitor (in such capacity, the "**RBH Monitor**") of Rothmans, Benson & Hedges Inc. ("**RBH**"), together with the Respondents (the Quebec Class Action Plaintiffs, or "**QCAP**"), jointly seek an order from this Honourable Court directing the Registry of the Court of Appeal of Quebec to release for deposit into the Global Settlement Trust Accounts (defined below):

    a. the amount of $757,995,000 deposited by ITCAN in Court file 500-09-025385-154; and
    b. the amount of $225,996,000 deposited by RBH in Court file 500-09-025387-150

    (collectively, the "**Cash Security Deposits**").

    which are presently being held as suretyship for the benefit of the Respondents pursuant to a judgment of this Honourable Court.

2. This request is being made in order to satisfy one of the conditions that must be met in order for the CCAA Plans (hereafter defined) to be implemented; namely, that the Cash Security Deposits shall be released from suretyship and deposited into dedicated trust accounts for the benefit of the creditors of the Tobacco

[1] All capitalized terms used but not defined herein have the meanings given to them in the CCAA Plans (Exhibit M-5).

Companies (hereafter defined) (the "**Global Settlement Trust Accounts**", as defined in each of the CCAA Plans).

3. The CCAA Plans will result in amounts being paid to settle the claims of the class members in the present Court files (the "**Class Members**").

B. PROCEDURAL HISTORY AND THE FURNISHING OF THE SURETYSHIP

4. By judgment dated May 27, 2015, rectified on June 9, 2015, (the "**Riordan Judgment**"), the Superior Court of Quebec decided in favour of the Respondents QCAP and condemned the Appellants ITCAN, RBH and JTI-Macdonald Corp. ("**JTIM**") to pay damages, with interest and additional indemnity, amounting to more than $15 billion.

5. On June 26, 2015, the Appellants ITCAN, RBH and JTIM each appealed the Riordan Judgment.

6. By judgment dated October 27, 2015 (the "**Schrager Judgment**"), filed herewith as **Exhibit M-1**, Schrager J.A. ordered that the appeals by the Appellants ITCAN and RBH were subject to the provision of security (suretyship) to guarantee, in part, payment of the judgment debt. In this regard, ITCAN was ordered to furnish as suretyship the aggregate amount of approximately $758 million and RBH was ordered to furnish the aggregate amount of approximately $226 million, by way of equal consecutive quarterly instalments.

7. ITCAN satisfied its obligations pursuant to the Schrager Judgment by making the following deposits, each in the amount of $108,285,000, at the Registry of the Court of Appeal of Quebec as agent for the *Ministre des Finances du Québec* (the "**Minister of Finance**"), as appears from Court file 500-09-025385-154 and the following deposit certificates filed herewith:[2]

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[2] See *Deposit Act*, CQLR c D-5, repealed and replaced by the *Act respecting deposits with the Bureau général de dépôts pour le Québec*, CQLR c D-5.1, pursuant to which the *Bureau général de dépôts pour le Québec* now holds the amounts.

a. Certificate 396415 dated December 30, 2015, **Exhibit M-2a**;
b. Certificate 396443 dated March 30, 2016, **Exhibit M-2b**;
c. Certificate 396450 dated June 29, 2016, **Exhibit M-2c**;
d. Certificate 396458 dated September 29, 2016, **Exhibit M-2d**;
e. Certificate 396567 dated December 29, 2016, **Exhibit M-2e**;
f. Certificate 0408716 dated March 31, 2017, **Exhibit M-2f**; and
g. Certificate 0408868 dated June 28, 2017, **Exhibit M-2g**.

8. RBH satisfied its obligations pursuant to the Schrager Judgment by making the following deposits, each in the amount of $37,666,000, at the Registry of the Court of Appeal of Quebec as agent for the Minister of Finance, as appears from Court file 500-09-025387-150 and the following deposit certificates filed herewith:

a. Certificate 396417 dated December 30, 2015, **Exhibit M-3a**;
b. Certificate 396441 dated March 29, 2016, **Exhibit M-3b**;
c. Certificate 396449 dated June 29, 2016, **Exhibit M-3c**;
d. Certificate 396559 dated September 30, 2016, **Exhibit M-3d**;
e. Certificate 396189 dated December 28, 2016, **Exhibit M-3e**; and
f. Certificate 0408861 dated March 30, 2017, **Exhibit M-3f**.

9. In accordance with the Schrager Judgment, the Cash Security Deposits became payable to the Respondents upon a final judgment of the Court of Appeal of Quebec:

> *[66] The security becomes payable upon a final judgment of this Court maintaining in whole or in part the judgment of first instance.*

10. On March 1, 2019, this Court substantially upheld the Riordan Judgment (the "**Appeal Judgment**"), filed herewith as **Exhibit M-4**.

11. Immediately following the release of the Appeal Judgment, the Respondents QCAP filed a motion before this Court seeking the release of the Cash Security Deposits, and ITCAN and RBH made urgent motions before this Court for stays of execution of the Appeal Judgment. Those motions were both scheduled to be

heard, but have since been stayed as a result of the CCAA proceedings described hereafter.

C. THE APPELLANTS' CCAA PROCEEDINGS AND CCAA PLANS

12. Shortly after the release of the Appeal Judgment, in March 2019, Imperial, RBH and JTIM (collectively, the "**Tobacco Companies**") sought and were granted protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**") before the Ontario Superior Court of Justice (Commercial List) (the "**CCAA Court**") and have benefitted from a stay of proceedings ever since.

13. On October 17, 2024, in the context of the Tobacco Companies' CCAA proceedings (in CCAA Court files CV-19-616077-00CL, CV-19-616779-00CL and CV-19-615862-00CL), three substantially identical plans of compromise and arrangement were filed by the Monitors and the Court-Appointed Mediator in respect of each of the Tobacco Companies, which were thereafter amended and restated, including by way of the Third Amended and Restated Court-Appointed Mediator's and Monitors' CCAA Plans of Compromise and Arrangement dated February 27, 2025 (the "**CCAA Plans**"). The CCAA Plans (without schedules) are filed *en liasse* as **Exhibit M-5**.

14. The CCAA Plans provide that the Tobacco Companies must pay an aggregate Global Settlement Amount of $32.5 billion into three separate Global Settlement Trust Accounts over multiple years, by way of upfront contributions at plan implementation and annual contributions over time, which will be used to satisfy the claims of the Tobacco Companies' creditors in the manner provided for therein.

15. In respect of the claims of Class Members in the present Court files, the CCAA Plans provide that an amount of $4.25 billion will be paid from the Global Settlement Amount to settle their claims, with $4.119 billion being allocated to satisfy the claims of the Class Members in court file 500-06-000076-980 (the "***Blais* Class Members**"), and $131 million being contributed to a Cy-près Foundation to

indirectly satisfy the claims of the Class Members in court file 500-06-000070-983 (*Létourneau*).

16. As appears from the CCAA Plans, the Cash Security Deposits:

    a. form part of the therein defined "Upfront Contributions" that the Tobacco Companies are required to make on or before the Plan Implementation Date; and

    b. must be released from suretyship prior to the Plan Implementation Date and deposited into the Global Settlement Trust Accounts.

17. In particular, Section 5.4 of each of the CCAA Plans provides:

> ***5.4 Upfront Contributions***
>
> *On or before the Plan Implementation Date, each Tobacco Company shall make a cash contribution which shall be deposited into the Global Settlement Trust Account (collectively, the "**Upfront Contributions**"). **The Upfront Contributions shall equal the aggregate of each Tobacco Company's cash and cash equivalents generated from all sources by each Tobacco Company as at the month end prior to the Plan Implementation Date, including all amounts pledged by the Tobacco Companies to cash collateralize any outstanding letters of credit, surety or bonding obligations to the issuers thereof, plus the Cash Security Deposits**, less the sum of $750 million which shall be deducted from the aggregate amount and retained by RBH (the "**RBH Retained Amount**"). RBH shall be free to deal in its sole discretion with the RBH Retained Amount, including being free to transfer or distribute such monies outside of Canada in such manner as RBH may determine. For greater certainty, any such transfers or distributions of the RBH Retained Amount will be deemed to be a Permitted Transfer for the purposes of Article 11.*
>
> [emphasis added]

18. Section 7.3 of each of the CCAA Plans provides:

> ***7.3 Release of Cash Security Deposits***
>
> *The Cash Security Deposits, which form part of the Upfront Contributions, shall be released from suretyship prior to the Plan Implementation Date and shall be deposited into the Global Settlement Trust Account.*

19. Section 19.3 of each of the CCAA Plans further provides that the release and deposit of the Cash Security Deposits into the Global Settlement Trust Accounts

is one of the "Plan Implementation Conditions" as therein defined. Specifically, section 19.3(n) of the CCAA Plans provides that the implementation of the CCAA Plans shall be conditional upon the satisfaction, prior to or at the Effective Time (as defined therein), of the condition precedent that ITCAN's and RBH's Cash Security Deposits will have been released from suretyship and deposited into the Global Settlement Trust Accounts in respect of Imperial and RBH respectively.

20. The CCAA Plans were unanimously approved by the creditors voting thereon at meetings held on December 12, 2024, and were subsequently sanctioned by the CCAA Court on March 6, 2025 (the "**Sanction Orders**"). The Sanction Orders (without schedules) are filed *en liasse* as **Exhibit M-6**.

21. The CCAA Plans also provide for an ongoing role for the Monitors, including FTI (in respect of Imperial) and EY (in respect of RBH), in the administration of the CCAA Plans as "CCAA Plan Administrators", whose responsibilities include overseeing the management of all trust accounts to be established pursuant to the CCAA Plans, including the Global Settlement Trust Accounts.

22. In that regard, concurrently with the issuance of the Sanction Orders, the CCAA Court also issued the CCAA Plan Administrator Appointment Orders, which formally appointed EY and FTI as CCAA Plan Administrator in respect of the CCAA Plans of RBH and Imperial, respectively. The CCAA Plan Administrator Appointment Orders are filed *en liasse* as **Exhibit M-7**.

D. <u>THE REQUEST TO RELEASE THE CASH SECURITY DEPOSITS</u>

23. As appears from the foregoing, the Cash Security Deposits must be released and deposited into the Global Settlement Trust Accounts in order for the CCAA Plans to be implemented.

24. In the Sanction Orders, the CCAA Court requested the aid and assistance of other courts, as follows:

> **THIS COURT HEREBY REQUESTS** *the aid and recognition of any court, tribunal aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, including but not limited to the Courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Sanction Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Sanction Order and the CCAA Plan. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Sanction Order and the CCAA Plan or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Sanction Order and the CCAA Plan.*

25. On June 18, 2025, the CCAA Court issued two orders (one in respect of Imperial and one in respect of RBH), filed herewith *en liasse* as **Exhibit M-8,** partially lifting the stay of proceedings with respect to Imperial and RBH, solely to the extent required to allow the Imperial Monitor and the RBH Monitor, with the support of ITCAN, RBH and the QCAP, to commence the present Application to this Honourable Court in order to seek the release of the Cash Security Deposits and their deposit into the Global Settlement Trust Accounts in accordance with the provisions of the CCAA Plans.

26. Moreover, this Court's authorization pursuant to Article 1584 C.C.Q. is sought because certain proceedings, namely, the stay motions of Imperial and RBH referred to in paragraph 11 have not been formally terminated in light of the stay of proceedings ordered by the CCAA Court.

27. It is in the interests of justice that the CCAA Plans be implemented as rapidly as possible in order that the Quebec Class Action Administration Plan can commence and *Blais* Class Members can finally start receiving the compensation that they have been waiting for since the issuance of the Riordan Judgment a decade ago.

28. Accordingly, the Imperial Monitor, the RBH Monitor and the QCAP jointly request an order from this Court directing the Registry of the Court of Appeal of Quebec to release the Cash Security Deposits to a trustee to be designated by the Imperial Monitor and the RBH Monitor for deposit into the Global Settlement Trust Accounts, once established.

29. Given that the amounts of the Cash Security Deposits to be released are in excess of $980 million, and the deposit of such sums by cheque is not feasible, the Imperial Monitor, the RBH Monitor and the QCAP request an Order of this Court ordering the Registry of the Court of Appeal of Quebec to transfer and deposit the amounts to be released by wire transfer into the bank accounts designated by the Imperial Monitor and the RBH Monitor in accordance with the wire instructions to be provided by the Imperial Monitor and the RBH Monitor after the establishment of the Global Settlement Trust Accounts.

30. As a result, the Imperial Monitor, the RBH Monitor and the QCAP request that the Registry of the Court of Appeal of Quebec be required to accept the *demande de retrait de dépôt judiciaire* forms (SJ-366) as amended to provide for wire instructions for payment (in lieu of a cheque), as appears from the example of form filed as **Exhibit M-9** (the "**Demand Form**"), but which shall be completed with the wire instructions to be provided by the Imperial Monitor and the RBH Monitor following the establishment of the Global Settlement Trust Accounts.

31. Because the Demand Forms (once competed) will include confidential details relating to the coordinates of the Global Settlement Trust Accounts, a sealing order in respect of these Demand Forms is necessary and requested.

32. The present Application is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

ORDER the Registry of the Court of Appeal of Quebec to release:

i) to the trustee to be designated by FTI Consulting Canada Inc., in its capacity as Monitor and CCAA Plan Administrator of Imperial Tobacco Canada Ltd. and Imperial Tobacco Company Limited, the amount of $757,995,000; and

ii) to the trustee to be designated by Ernst & Young Inc., in its capacity as Monitor and CCAA Plan Administrator of Rothmans, Benson & Hedges Inc., the amount of $225,996,000

upon presentation of the completed *demande de retrait de dépôt judicaire* forms, as amended to provide for wire instructions for payment (in lieu of a cheque) (the "**Demand Form**") (Exhibit M-9) in Court files 500-09-025385-154 and 500-09-025387-150, respectively;

ORDER that the aforesaid amounts of $757,995,000 and $225,996,000 be transferred to and deposited into the bank accounts designated by FTI Consulting Canada Inc., in its capacity as Monitor and CCAA Plan Administrator of Imperial Tobacco Canada Ltd. and Imperial Tobacco Company Limited, and by Ernst & Young Inc., in its capacity as Monitor and CCAA Plan Administrator of Rothmans, Benson & Hedges Inc., respectively, by wire transfer in accordance with the wire instructions to be provided with the Demand Forms (Exhibit M-9) to be filed;

ORDER that the Demand Forms, once filed, shall remain under seal unless otherwise ordered by this Court;

THE WHOLE without costs, save in the event of contestation.

Montréal, July 10, 2025

Fishman Flanz Meland Paquin
Trudel Johnston & Lespérance

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Montréal, July 10, 2025

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Montréal, July 10, 2025

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AFFIDAVIT

I, the undersigned, Philippe H. Trudel, practicing my profession at 750 Côte de la Place d'Armes, Suite 90, Montréal (Québec), certify the following:

1. I am one of the attorneys representing the Quebec Class Action Plaintiffs.

2. All of the facts alleged in the *Joint Application to Release and Withdraw the Cash Security Deposits* are true.

SWORN before me at the City of Montreal, in the Province of Quebec, this 10th day of July, 2025.

COMMISSAIRE À L'ASSERMENTATION / COMMISSIONER FOR OATHS
HÉLÈNE BOUTHILLETTE 217193
FOR QUEBEC / POUR LE QUÉBEC

Commissioner of Oaths for Quebec

Philippe Trudel
Philippe Trudel (Jul 10, 2025 15:00 EDT)

NOTICE OF PRESENTATION

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Lawyers for Ernst & Young Inc., in its capacity as court-appointed monitor of
Rothmans, Benson & Hedges, Inc.

NOTICE IS HEREBY GIVEN that the *Joint Application to Release and Withdraw the Cash Security Deposits* will be presented before a judge of the Court of Appeal of Quebec sitting at the Ernest-Cormier Building, located at 100 Notre-Dame Street East, in Montreal, on July 29, 2025 at 9:30 a.m., in Courtroom RC-18.

PLEASE ACT ACCORDINGLY

Montréal, July 10, 2025

Fishman Flanz Meland Paquin
Trudel Johnston & Lespérance

FISHMAN FLANZ MELAND PAQUIN LLP
TRUDEL JOHNSTON & LESPÉRANCE
Lawyers for the Respondents/Plaintiffs
Conseil québécois sur le tabac et la santé,
Jean-Yves Blais and Cécilia Létourneau

Montréal, July 10, 2025

Davies Ward Phillips & Vineberg LLP

DAVIES WARD PHILLIPS & VINEBERG LLP
Lawyers for FTI Consulting Canada Inc., in its capacity as Monitor and CCAA Plan Administrator of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Montréal, July 10, 2025

Langlois Lawyers LLP

LANGLOIS LAWYERS LLP
Lawyers for Ernst & Young Inc., in its capacity as Monitor and CCAA Plan Administrator of Rothmans, Benson & Hedges Inc.

CANADA
PROVINCE OF QUEBEC

COURT OF APPEAL

CAM: 500-09-025385-154
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(SCM: 500-06-000076-980)
(SCM: 500-06-000070-983)

IMPERIAL TOBACCO CANADA LTD.
-and-
ROTHMANS, BENSON & HEDGES INC.
APPELLANTS / Defendants

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
-and-
JEAN-YVES BLAIS
-and-
CÉCILIA LÉTOURNEAU
RESPONDENTS / Plaintiffs

-and-

FTI CONSULTING CANADA INC., in its capacity as Monitor and CCAA Plan Administrator of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited
-and-
ERNST & YOUNG INC., in its capacity as Monitor and CCAA Plan Administrator of Rothmans, Benson & Hedges Inc.
INTERVENERS / Monitors

-and-

JTI-MACDONALD CORP.
MISE EN CAUSE / Defendant

-and-
DELOITTE RESTRUCTURING INC., in its capacity as Monitor and CCAA Plan Administrator of JTI-Macdonald Corp.
MISE EN CAUSE

LIST OF EXHIBITS

Exhibit	Description	Onglet	Page
EXHIBIT M-1	Court of Appeal Judgment dated October 27, 2015 in court files 500-09-025387-150 and 500-09-025385-154;	1	20-37
EXHIBIT M-2a	Deposit certificate 396415 dated December 30, 2015;	2a	38
EXHIBIT M-2b	Deposit certificate 396443 dated March 30, 2016;	2b	39
EXHIBIT M-2c	Deposit certificate 396450 dated June 29, 2016;	2c	40
EXHIBIT M-2d	Deposit certificate 396458 dated September 29, 2016;	2d	41
EXHIBIT M-2e	Deposit certificate 396567 dated December 29, 2016;	2e	42
EXHIBIT M-2f	Deposit certificate 0408716 dated March 31, 2017;	2f	43
EXHIBIT M-2g	Deposit certificate 0408868 dated June 28, 2017;	2g	44
EXHIBIT M-3a	Deposit certificate 396417 dated December 30, 2015;	3a	45
EXHIBIT M-3b	Deposit certificate 396441 dated March 29, 2016;	3b	46
EXHIBIT M-3c	Deposit certificate 396449 dated June 29, 2016;	3c	47
EXHIBIT M-3d	Deposit certificate 396559 dated September 30, 2016;	3d	48
EXHIBIT M-3e	Deposit certificate 396189 dated December 28, 2016;	3e	49
EXHIBIT M-3f	Deposit certificate 0408861 dated March 30, 2017;	3f	50

EXHIBIT M-4	Court of Appeal Judgment dated March 1, 2019, in court files 500-09-025385-154, 500-09-025386-152 and 500-09-025387-150;	4	51-437
EXHIBIT M-5	*En liasse*, Third Amended and Restated Court-Appointed Mediator's and Monitor's CCAA Plan of Compromise and Arrangement dated February 27, 2025 (without schedules), in court files CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL;	5	438-868
EXHIBIT M-6	*En liasse*, Sanction Orders dated March 6, 2025 (without schedules), in court files CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL;	6	869-967
EXHIBIT M-7	*En liasse*, CCAA Plan Administrator Appointment Orders dated March 6, 2025, in court files CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL;	7	968-1030
EXHIBIT M-8	*En liasse*, Ontario Superior Court of Justice (Commercial List) Orders dated June 18, 2025, in court files CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL;	8	1031-1040
EXHIBIT M-9	Demande de retrait de dépôt judiciaire (SJ-366), as amended	9	1041

Montréal, July 10, 2025

Fishman Flanz Meland Paquin
Trudel Johnston & Lespérance

FISHMAN FLANZ MELAND PAQUIN LLP
TRUDEL JOHNSTON & LESPÉRANCE
Lawyers for the Plaintiffs Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau

Montréal, July 10, 2025

Davies Ward Phillips & Vineberg LLP

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Montréal, July 10, 2025

Langlois Lawyers LLP

LANGLOIS LAWYERS LLP
Lawyers for Ernst & Young Inc., in its capacity as Monitor and CCAA Plan Administrator of Rothmans, Benson & Hedges Inc.

COURT OF APPEAL

2015 QCCA 1737 (CanLII)

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-025385-154, 500-09-025387-150
(500-06-000070-983, 500-06-000076-980)

DATE: October 27, 2015

PRESIDING: THE HONOURABLE MARK SCHRAGER, J.A.

IMPERIAL TOBACCO CANADA LTD.
ROTHMANS, BENSON & HEDGES INC.
APPELLANTS – Defendants

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
JEAN-YVES BLAIS
CÉCILIA LÉTOURNEAU
RESPONDENTS – Plaintiffs

JUDGMENT

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[1] Respondents have filed identical motions in each of the three appeals seeking orders against Appellants, jointly, to furnish security.

[2] At the commencement of the hearing, the motion against JTI-Macdonald Corp ("JTM").[1] was withdrawn because attorneys were unavailable due to health issues. Hence, reference in this judgment to the "Appellants" should be read as referring to Imperial Tobacco Canada Ltd ("ITL") and Rothmans, Benson & Hedges Inc. ("RBH"), unless the context indicates otherwise.

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[1] Record no: 500-09-025386-152.

2015 QCCA 1737 (CanLII)

[3] On May 27, 2015, the Superior Court, District of Montreal (the Honourable Brian Riordan) condemned the three Appellants to pay moral and punitive damages aggregating in excess of $8 billion, which today would exceed $15 billion with interest and additional indemnity.

[4] The 237 page judgment in first instance culminated two class actions commenced in 1998 against the three Appellant cigarette companies. The class actions were authorized in 2005; the joint trial commenced on March 12, 2012 and terminated on December 11, 2014. More than 70 witnesses, including 27 experts, were heard over a total of 251 hearing days. In excess of 20,000 exhibits were filed in evidence. The judgment found that Appellants were liable under the *Charter of Human Rights and Freedoms*,[2] the *Consumer Protection Act*[3] and under the *Civil Code of Quebec*[4] (*C.C.Q.*) for faults causing injury to others and for failure to properly inform consumers of the risks and dangers associated with the products manufactured by Appellants.

[5] In the conclusions of the judgment, the judge ordered an initial deposit of $1,131,090,000 in partial satisfaction of the two awards within 60 days broken down as follows:

	BLAIS		**LÉTOURNEAU**	
ITL	$670,000,000	(compensatory)	$72,500,000	(punitive)
	$30,000	(punitive)		
RBH	$200,000,000	(compensatory)	$46,000,000	(punitive)
	$30,000	(punitive)		
JTM	$130,000,000	(compensatory)	$12,500,000	(punitive)
	$30,000	(punitive)		
TOTAL	**$1,000,090,000**		**$131,000,000**	

[6] The judge also ordered provisional execution “with respect to the initial deposit of one billion dollars of moral damages, plus all punitive damages”.

[7] Applying the proportions of liability found by the trial judge (JTM 13%, ITL 67% and RBH 20%), provisional execution payments amounted to:

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2 *Charter of Human Rights and Freedoms*, CQLR, c. C-12.
3 *Consumer Protection Act*, CQLR, c. P-40.1.
4 *Civil Code of Quebec*, CQLR c C-25.

i) JTM $130 million

ii) ITL $670 million

iii) RBH $200 million

[8] All Appellants petitioned this Court to cancel the order for provisional execution. In support of their motions, Appellants filed affidavits and financial information to support their claims that, on a cash basis, they could not pay their respective amounts of the provisional execution orders within the sixty day period imposed by the judgment. RBH stated explicitly that the obligation to pay rendered it insolvent on a cash basis and ITL alluded to the possibility of filing proceedings under the *Companies' Creditors Arrangement Act* ("*C.C.A.A.*").[5]

[9] By judgment of July 23, 2015,[6] this Court granted Appellants' motions and cancelled the provisional execution after identifying a weakness in that part of the judgment ordering provisional execution and the existence of a prejudice for the Appellants arising from the order of provisional execution.

[10] The Court pointed out that provisional execution may be incompatible with class actions because it is only upon final judgment that class members are definitively determined. Moreover, the Court observed that unless funds were provisionally distributed to class members, there would be no benefit to them but added that distribution on a provisional basis raised the problem of obtaining reimbursement should Appellants ultimately succeed in their appeals.

[11] On the issue of prejudice the Court said the following:

> [42] The affidavits filed by ITL and RBH in support of their motions to cancel provisional execution indicate that payment within 60 days of judgment causes serious financial prejudice to them. The evidence filed discloses a significant impact for Appellants despite that they are profitable and sizeable. In the case of JTM, its portion of $142,530,000 exceeds its annual earnings before interest, taxes and other expenses and well exceeds cash on hand of approximately $5.1 million. RBH's $246,030,000 exceeds its projected cash on hand at the end of July by approximately $125 million. ITL's provisional execution amount of $742,530,000 is approximately double its annual profit (before extraordinary items) and greatly exceeds current cash and credit availability to pay such sum.
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> [43] Serious prejudice has been held sufficient to cancel provisional execution where the effect is to negate the right of appeal. At least, in the case of JTM and ITL, based on the affidavits, this appears to be the case. The judge based his

[5] *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.

[6] *Imperial Tobacco Canada Ltd. v. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1224.

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> calculations of Appellants' ability to pay on historical earnings and balance sheet worth. He obviously did not analyze current cash and credit availability as set forth in the affidavits submitted to us. Respondents have pointed to numerous facts put in evidence in the lower court where Appellants have transferred profits and assets to related companies. Respondents assert that if Appellants are today unable to pay, this is their own doing and that of corporations related to them. However, these arguments are not helpful to Respondents given the other considerations germane to provisional execution and elicited above. This is not to say however that such facts and arguments could not give rise to other recourses or orders.

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[12] In virtue of the instant motions, Respondents seek security from Appellants in the aforementioned proportions, aggregating $5 billion, within 30 days of judgment or, subsidiarily that such security be provided by way of quarterly instalments of $250 million each commencing as at June 26, 2015. The proposed form of the security requested is irrevocable letters of credit issued by a Canadian bank listed in Schedule I of the *Bank Act*.[7]

[13] Other than facts found by the judge, the Respondents rely on the affidavits filed by Appellants in support of their motions to cancel provisional execution as well as the depositions of the affiants. Respondents submit that Appellants have arranged their affairs so as to be, in effect, judgment proof for any substantial condemnation and that there is every indication that, pending appeal, Appellants will continue to direct their earnings to related entities located out of jurisdiction so that they will be unable to pay any significant condemnation that may be maintained in appeal.

[14] Appellants have argued for the dismissal of the motions. Following are summaries of their submissions.

POSITION OF ITL

[15] ITL pleads that there are no grounds upon which to order it furnish security. The facts which Respondents invoke in support of their motion are not current. The transfer of trademarks to a subsidiary, which hypothecated them in favour of a related out-of-jurisdiction company occurred in the year 2000. The payment out of earnings as dividends to the out-of-jurisdiction parent, stopped in 2014, but in any event these payments merely reflect "business as usual". Thus, because there are no relevant facts occurring after judgment which might jeopardize the satisfaction of that judgment, there is no "special reason" to justify the ordering of security pursuant to article 497 of the *Code of Civil Procedure* ("*C.C.P*").[8]

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7 *Bank Act*, S.C. 1991, c. 46.

8 *Code of Civil Procedure,* CQLR c. C-25.

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[16] ITL adds that should I rule that there are grounds justifying security, the amounts requested are such as to drain all pre-tax earnings and put the going concern viability of ITL in peril. Moreover, ITL is unable to grant security in order to obtain borrowed funds because of its covenant to a related corporation. The latter currently provides credit facilities to ITL. Furthermore, an order of security payable in quarterly instalments would not alleviate this inability to pay.

POSITION OF RBH

[17] RBH submits that because of the magnitude of the judgment, Respondents are in effect seeking an appeal bond. However, the quantum of the judgment is an insufficient ground under article 497 *C.C.P.* The courts have stated that security will only be ordered where indicated by clear and precise facts; hypotheses based on subjective fear of Respondents that a judgment will not be satisfied does not suffice.

[18] RBH has been paying dividends in amounts less than net earnings throughout the litigation, so that Respondents' position once and if they obtain judgment from the Court of Appeal will be the same as it was at the outset of proceedings. Security should not be ordered for a situation existing prior to judgment; Respondents must demonstrate that their position has worsened and that their ability to obtain satisfaction of an eventual judgment will be in jeopardy. Respondents will simply have to obtain satisfaction out of the companies' revenues.[9] Counsel conceded that RBH's tangible or hard assets were of no value upon which to execute a judgment since plant and machinery were only appropriate to the manufacture and sale of cigarettes and inventory required government licensing to sell.

[19] Although RBH maintained in July 2015 before this Court that it could not pay its share of the provisional execution order, this only meant that it could not pay during the 60 day period provided in the judgment and should not be taken as a general admission of insolvency. The cancellation by RBH's parent of its credit facility within 2 days following the Superior Court judgment made it clear that it could not pay the provisional execution order, but is not a justification to order RBH to furnish security. In other words, the inability to satisfy the order of provisional execution should not be projected or be understood as an inability to satisfy a final judgment.

[20] RBH joined ITL by declaring that any security (particularly a letter of credit) cannot be ordered payable following the institution of proceedings (as Respondents seek) under either the *Bankruptcy and Insolvency Act* ("*B.I.A.*")[10] or *C.C.A.A.* That would be a "fraud on the bankruptcy". Moreover, as to the furnishing of security, RBH objects

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[9] This appeared to contradict counsel's assertion that there was no proof that RBH would continue to pay dividends notwithstanding the judgment since its representative was not directly asked the question during the examination on the affidavit supporting the motion to cancel provisional execution.

[10] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 2.

to a letter of credit arguing that this would potentially give Respondents priority over other creditors should RBH become subject to any of the insolvency legislation. Should security be ordered, RBH would prefer that it be in the form of cash deposited in a lawyer's trust account.

[21] RBH points out that security for court costs was not requested in the motion originally filed and of which the undersigned is seized and, in any event, in a class action, costs are paid out of first proceeds of recovery.

[22] Lastly, RBH pleaded that the security requested requires the equivalent of an order not to declare any further dividends which, in essence, is a seizure before judgment under article 733 *C.C.P.* or a safeguard order, both of which are within the jurisdiction of the Court but not of a judge sitting alone.

DISCUSSION

[23] Article 497 *C.C.P.* provides that:

497. Sauf les cas où l'exécution provisoire est ordonnée et ceux où la loi y pourvoit, l'appel régulièrement formé suspend l'exécution du jugement.	**497.** Saving the cases where provisional execution is ordered and where so provided by law, an appeal regularly brought suspends the execution of judgment.
Toutefois, un juge de la Cour d'appel peut, sur requête, pour une raison spéciale […], ordonner à l'appelant de fournir, dans le délai fixé dans cette ordonnance, un cautionnement pour une somme déterminée, destiné à garantir, en totalité ou en partie, le paiement des frais d'appel et du montant de la condamnation, au cas où le jugement serait confirmé.	However, a judge of the Court of Appeal may, on a motion, for a special reason (…), order the appellant to furnish, within the time fixed in the order, security in a specified amount to guarantee in whole or in part the payment of the costs of appeal and the amount of the condemnation, if the judgment is upheld.
Si l'appelant ne fournit pas le cautionnement dans le délai fixé, un juge de la Cour d'appel peut, sur requête, rejeter l'appel.	If the appellant does not furnish security within the fixed time, a judge of the Court of Appeal may, upon motion, dismiss the appeal.

[24] The granting of security is a matter of discretion. It is an exceptional remedy and as such, Respondents must indicate facts upon which I may draw the conclusion that

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there is a danger that the judgment, if maintained in appeal, may not be susceptible of execution.[11] Clear and precise facts are required; mere hypotheses will not suffice.[12]

[25] The judgment of Baudouin, J.A., in *Blue Bonnets* is the oft quoted starting point in considering a motion for security. The condemnation in that case of wrongful dismissal amounted to $412,956 plus interest and additional indemnity. This sum corresponded to 36 months of salary. Just prior to the presentation of the motion for security, the appellant deposited the equivalent of 12 months of salary which it recognized owing. Baudouin, J.A., summarized the then existing decisions of judges of this Court applying article 497 *C.C.P.* to state that given the change in the law (in 1966) to make security on appeal the exception instead of the rule, it is insufficient to merely allege fear to be unable to execute the eventual judgment or that appellant will become insolvent. He continued that to justify the granting of security a moving party must:

> […] présenter une preuve claire, précise et articulée basée sur des faits et non sur de simples hypothèses ou conjectures de circonstances particulières à l'espèce qui montrent que, sans l'octroi de ce cautionnement, ses droits reconnus par le jugement de première instance seront effectivement mis en péril.

[26] Baudouin, J.A., in applying these criteria to the facts before him dismissed the motion for security because even though the appellant distributed its earnings as dividends, it did so net of expenses, so that it was not in a "permanent state of insolvency" and that the "heavy" hypothecation of its assets in the absence of fraud was not sufficient as a "special reason" to order security under article 497 *C.C.P.* The report does not disclose the quantum of the appellant's earnings so that there is no means of comparison with the liability in virtue of the judgment appealed.

[27] Several years later, in *Europaper S.A. v. Avenor inc.*[13] Baudouin, J.A., again sitting on a motion[14] seeking security for a costs award of $92,694 found that recovery was in jeopardy because of the appellant's "insolvabilité complète" reflected by the fact that it had ceased activity, and had no place of business, no employees or assets of value. He concluded:

> Il y a donc là une importante différence factuelle avec l'arrêt *Blue Bonnets* […], où le moyen invoqué était la simple crainte éventuelle de difficultés financières d'une des principales parties du litige.

[28] The decided cases on point have considered a variety of factual circumstances as potentially constituting special reasons and, as such, have refined our understanding

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11 *Brouillette v. Grégoire*, 2011 QCCA 376 (Kasirer, J.A.); *Sodexin Financement mercantile inc. v. Aly*, 2009 QCCA 1860 (Pelletier, J.A.) [*Sodexin*]; *Nadeau v. Nadeau*, 2008 QCCA 300; *Hippodrome Blue Bonnets inc. v. Jolicoeur*, [1990] R.D.J. 458 (Baudouin, J.A.) [*Blue Bonnets*].

12 *Blue Bonnets*, *supra*, note 11.

13 *Europaper S.A. v. Avenor inc.*, AZ-97011392, 1997 CanLII 10448 (Baudouin, J.A.).

14 *Ibid.*, p. 2.

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of the test. An accounting firm subject to a multi-million dollar judgment amalgamated with another firm, which asserted that it was not liable for the delictual acts of the partners of the judgment debtor firm. It was ordered to furnish security of $16.9 million.[15] The sale of a company's principal assets has been held sufficient grounds to order security,[16] just as the funnelling of all revenues to a related company has been deemed a special reason.[17] While the apparent insolvency of the judgment debtor continues to be a justification for the furnishing of security, at the end of the day, the correct criterion for the exercise of the discretion, is whether in the absence of security, the execution of the judgment would be in jeopardy.[18] The interpretation of "special reason" in article 497 *C.C.P.* has gone beyond restricting it to cases akin to those where a seizure before judgment could be issued.[19] Naturally, insolvency may constitute a special reason as may fraudulent behaviour, but neither is the criterion *per se*. Moreover, the insolvency discussed by Appellants and seemingly in many of the judgments, is insolvency on a cash basis. The *B.I.A.* defines an insolvent person in a threefold manner including a definition based on the value of assets on a forced sale being less than liabilities (or, a balance sheet test).[20]

[29] I do not subscribe to Appellants' theory that the clear and precise facts underlying an order of security, in appeal, must have occurred since judgment was rendered in first instance. While the existence prior to judgment of the facts invoked may have been noted in certain decisions of my colleagues,[21] no judgment has asserted the existence of such a hard and fast rule. Indeed, in *Widdrington* (which is the highest award of security in appeal of which I am aware), the most salient fact alluded to is the amalgamation of the two accounting firms, which occurred in July, 1998 i.e. after the institution of proceedings in first instance but years before the appeal.

[30] Appellants have submitted a judgment of Mongeon, J.S.C., of 2013,[22] dismissing an application for a safeguard order against JTM because it had transferred its trademarks valued at $1.2 billion to an "offshore" subsidiary in 1999, the year following the institution of proceedings in the Superior Court. The transferee then pledged the trademark to secure an indebtedness. JTM pays substantial royalties to the transferee in consideration of the use by it of the trademark. Its president agreed that the purpose

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15 *Wightman v. Widdrington (Succession de)*, 2011 QCCA 1393 [*Widdrington*].

16 *Gagné v. Québec (Commission des droits de la personne et des droits de la jeunesse)*, 2003 CanLII 55068, J.E. 2003-497 (Dalphond, J.A.).

17 *Entreprise Enapex inc. v. Recouvrements métalliques Bussières ltée*, 2008 QCCA 261 (Rochette, J.A.).

18 *Pothitos v. Demers*, 2013 QCCA 603, para. 15 (St-Pierre, J.A.); *Shama Textiles inc. v. Certain Underwriters at Lloyd's*, 2012 QCCA 473, paras. 13-14 (Dalphond, J.A.).

19 André Rochon, *Guide des requêtes devant le juge unique de la Cour d'appel*, Cowansville, Éditions Yvon Blais, 2013, pp. 158-159.

20 *B.I.A.*, *supra*, note 10, s. 2, "insolvent person".

21 *Sodexin*, *supra*, note 11.

22 *Conseil québécois sur le tabac et la santé v. JTI-MacDonald Corp.*, 2013 QCCS 6085; leave to appeal denied in *Conseil québécois sur le tabac et la santé v. JTI-MacDonald Corp.*, 2014 QCCA 520 (Savard, J.A.).

of the transaction was “creditor proofing” and Riordan, J.S.C., also characterized “the tangled web of interconnecting contracts” as a creditor proofing exercise.[23] The judgment of Mongeon, J.S.C., however is of no assistance to Appellants as it did not address any point before me for adjudication. It did not support the contention that facts pre-appeal cannot be relied upon. Mongeon, J.S.C., faced with a demand to enjoin JTM from continuing the royalty payments, concluded that he could not do so because the other party to the royalty contract was not a party to the litigation. Mongeon, J.S.C., held that all parties to the contract should be parties to the litigation, in order that he alter their contractual rights.

[31] As a final argument, counsel for RBH likened the motions before me to applications for a seizure before judgment under article 733 *C.C.P.* or a safeguard order and in any event beyond the jurisdiction of a judge in chambers and within the jurisdiction of the Court. The argument is clearly wrong as it flies in the face of the clear wording of article 497 *C.C.P*. according jurisdiction over the motions before me to a “judge of the Court of Appeal”.

[32] From 2008 to 2013, RBH’s average annual earnings from operations was approximately $450 million. It paid $300 million annually on average to its parent, Phillip Morris International (“PMI”). RBH had benefited from a credit facility with PMI but as indicated, that was cancelled the day following the judgment in first instance. Historically, RBH’s short term credit comes from the PMI cash pool, so given the cancellation, it appears to have little short term availability of cash. In June, RBH’s representative confirmed its inability to pay its share of the provisional execution ($200 million) within sixty days, but projected that it could pay the amount by March 2016. At the time of the judgment, its available cash was $70 million.

[33] Despite RBH’s assertion that it does not pay out all of its earnings, its financial statements clearly show negative shareholder equity for 2013 and 2014. Counsel’s attempts to qualify its insolvency on a cash basis by stating that it only said it could not pay the provisional execution within 60 days does not change the conclusion that it was insolvent if it was obliged to pay. The *B.I.A.* measures insolvency by the ability to pay debts when due.[24] In answer to my questioning how Respondents would obtain satisfaction upon receipt of a favourable judgment on the merits, counsel stated that they would have to wait to be paid out of cash flow. By way of illustration, if RBH owed $1 billion (including interest and additional indemnity) upon judgment of the Court on the merits, it would require more than two years, at least, to satisfy that judgment. This is not payment when due.

[34] RBH confirms that its real estate and equipment being appropriate for tobacco production only are not readily marketable. Counsel informed me that the sale of tobacco products requires special government permits so that inventory could be

[23] *Létourneau v. JTI-MacDonald Corp.*, 2015 QCCS 2382, para. 1101.

[24] *B.I.A.*, *supra*, note 10, s. 2, “insolvent person”.

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difficult if not impossible to seize and sell in execution of a judgment. Also, the trademarks are not owned by RBH. Thus, it appears that the only real “assets” on the balance sheet against which a creditor might execute judgment are the accounts receivable which is the cash flow and which is substantially and regularly paid out in dividends to PMI.

[35] Irrespective of whether RBH is technically insolvent, it is certainly unable to satisfy the judgment of the Superior Court even if the quantum was reduced. That fact and the on-going practice of distributing earnings leads the undersigned to conclude that Respondents are in jeopardy of not being able to execute any substantial award that this Court may uphold.

[36] ITL earned $535 million from operations in 2014 and paid $334 million in dividends to its out of jurisdiction parent, British American Tobacco Corp. (“BAT”).

[37] Not only has ITL never set aside funds for a condemnation in this matter, it has still not done so even after the judgment of first instance herein because it does not consider the outcome unfavourable according to its representative during the deposition. I understand that he meant that the outcome would not be unfavourable until all appeals have been exhausted.

[38] Similar statements could be made concerning ITL’s tangible assets as those of RBH. The trademarks are also encumbered.

[39] ITL is indebted to BAT under various financing agreements. The credit facilities are fully drawn upon. BAT was not willing to fund the provisional execution award and I am given to understand that BAT makes no commitment to fund a final judgment.

[40] Though counsel asserted that payments of dividends stopped at the end of 2014, this results from payments made to BAT for the repayment of the loan made to finance the settlement of other litigation (*i.e.* the Flinkote matter). In other words, the funds were not available to pay a dividend. Though there is equity for the shareholders on the balance sheet of 2014, there is no liquidity to pay a judgment.

[41] I am also of the opinion that Respondents are in jeopardy of not being able to satisfy any substantial judgment against ITL.

[42] The depositions conducted by Respondents’ attorneys of the affiants upon the motions to cancel the provisional execution make it clear that the Appellants intend to continue payments (dividends and otherwise) to their out-of-jurisdiction related entities while the appeal is pending. That practice caused them to protest their inability to satisfy the order of provisional execution. It is reasonable to deduce that should their appeals fail completely or merely reduce the condemnation marginally, leaving a substantial condemnation, the Appellants will be unable to pay just as they were unable to pay the provisional execution in a timely fashion. This state of affairs is not due to any cause

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extraneous to the will of Appellants such as an unsuccessful business. Rather, their businesses are profitable. The situation is the result of the ongoing business practice continued consistently during the litigation of paying out surplus earnings. This was not illegal. However, there is now and has been since May 27, 2015, a judgment, which includes a condemnation with interest and additional indemnity aggregating approximately $15.5 billion at today's value. Interest and additional indemnity run at approximately $1 million per day. This changes the equation radically. Even if the grounds of appeal are not frivolous, in the circumstances Appellants cannot be allowed to continue on a course of conduct where they will not be able to satisfy the judgment.

[43] A judgment pending appeal benefits from a presumption of validity.[25] Findings of fact of the trial judge are compelling as only a palpable error of fact justifies a reversal by an appellate court. It is not an answer for the Appellants to state that they are not behaving differently now than they were prior to the judgment of the Superior Court. That judgment, in the circumstances, and despite the appeal requires that they do behave differently given the circumstances presented to me. It is in my opinion far too cynical to adopt the position that we were so foresightful and efficient in ordering our affairs so as not to have the liquidity to satisfy the judgment, that there is no special reason existing to re-balance the situation. Counsel for Respondents characterized the situation as "heads I win, tails you lose". Sometimes, the vernacular is pointedly apt.

[44] Both Appellants have structured their affairs in a manner that drastically, if not completely, reduces their exposure to satisfy any substantial condemnation that might be made against them in this litigation. Of course, the companies are not empty shells because it is in their obvious interest and that of their parent companies that they continue to operate so as to continue to generate profits. The structure and *modus operandi* was put in place years ago because no doubt Appellants could observe the seriousness of the case and resolve of the Respondents to conclude that a substantial award was possible, even perhaps likely. In these circumstances, now that there is a judgment condemning them to pay $8 billion ($15.5 billion at today's value) and nothing to suggest that the practice (of distributing virtually all earnings) will not continue and notwithstanding that the transfer and encumbrance of trademarks may have occurred long ago, I am faced with a situation where on balance I conclude that the Respondents are in jeopardy of not obtaining satisfaction of any substantial amount confirmed in appeal. I am mindful that Appellants stated clearly that they could not pay the provisional execution award as ordered. Positive action is necessary to convince me that the reaction to a final judgment would not be the same. These circumstances taken together are a "special reason". I will order that security be furnished.

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[25] *Épiciers unis Métro-Richelieu inc. v. Syndicat des travailleuses et des travailleurs des épiciers unis Métro-Richelieu (C.S.N.)*, 1997 CanLII 10141 (Baudouin, J.A.); *Québec (Ministre de l'Agriculture, des Pêcheries et de l'Alimentation du Québec) v. Produits de l'érable Bolduc & Fils ltée*, AZ-50134137, J.E. 2002-1239, para. 6 (Pelletier, J.A.); *Droit de la famille — 102409*, 2010 QCCA 1725, para. 2 (Rochon, J.A.); *Soft Informatique Inc. v. Gestion Gérald Bluteau Inc.*, 2012 QCCA 2018, para. 12 (Dalphond, J.A.); *Droit de la famille — 151906*, 2015 QCCA 1309, para. 6 (Kasirer, J.A.).

[45] What amount of security is appropriate? The initial deposit required in the class action as awarded by Justice Riordan was $1.131 billion on the rationale that 80% of the estimated compensatory damages might be enough to satisfy claims:

> [927] In nearly every class action, especially ones with a large number of class members, only a small portion of the eligible members actually make claims. Thus, the remaining balance, or "reliquat", could often be greater than the amount actually paid out. Hence, it is not unreasonable to proceed on the basis that the full amount of the initial deposits might not be claimed.
>
> [928] We thus feel comfortable in ordering the Companies initially to deposit only 80% of the estimated total compensatory damages, i.e., before any reduction based on the smoking dates. If that proves insufficient to cover all claims eventually made, it will be possible to order additional deposits later, unless something unforeseen occurs and all three Companies disappear. The Court is willing to assume that this will not happen. We shall thus reserve the Plaintiffs' rights with respect to such additional deposits.

[46] Counsel for Respondents noted that Justice Riordan's reasoning here may be strained because lower "take up rates" in class actions are prevalent where the amount distributed to each member is minimal which will not be the case here. However, I have no evidence of these assertions. I prefer to rely on the judgment.

[47] Also, as the Court noted in cancelling the provisional execution, it cannot be said that the grounds of appeal are frivolous, so that the $5 billion of security requested being nearly the capital amount of the judgment and given Justice Riordan's reasoning above, is not an appropriate amount of security. An amount of security approaching the entire amount of the judgment in first instance is to be avoided as too closely equivalent to provisional execution.[26]

[48] No amount of security for legal costs was requested in the motions as filed so that consideration does not enter into the calculation. Moreover, article 1035 *C.C.P.* provides that first proceeds of collection of class action judgments are directed towards the payment of costs.

[49] Considering the foregoing, the security will be calculated on the basis of the initial deposit of $1.131 billion or, based on the proportions of liability determined by the judge (ITL 67% and RBH 20%), the order against ITL will be $758 million and against RBH $226 million. Both figures are rounded.

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[26] *Bell v. Molson*, 2013 QCCA 377 [*Bell*]; *Agaisse v. Duranceau*, 2015 QCCA 1320, para. 7; *Laforest v. Côté*, 2015 QCCA 119 (G. Gagnon, J.A.), para. 17.

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[50] I am mindful of judgments holding that the amount of security ordered should not, in effect, negate an Appellant's right to appeal.[27]

[51] This Court considered a similar principle in cancelling the provisional execution where Appellants pleaded their inability (or at least inability within 60 days following judgment) to pay the amount of the provisional execution as set forth in the extract quoted above.

[52] I see the current situation as somewhat different. The Appellants chose not to reserve funds to satisfy an eventual condemnation as was their right. However, now that there is a judgment, which I have stated, benefits from a presumption of validity, the situation is changed. Given my conclusions based on the facts in the record, it is not acceptable that Appellants merely say that they have no funds to satisfy the judgment or an order to furnish security and continue to distribute earnings because that is "business as usual". A strategic decision is required by Appellants in caucus with their parent companies and related entities who have received the benefit of the profitable operations over the years and who continue to do so. Are they willing to do the necessary to help fund security to allow Appellants to continue their appeal? I do not question Appellants' right to appeal but neither can I stand idly by while Appellants pursue an appeal which will benefit them if they win but which will not operate to their detriment if they lose. Continuing the practice of distributing earnings out-of-jurisdiction at this point is at best disingenuous and at worst, bad faith.

[53] That being said, in fixing the mode of payment, I am willing to make some compromise to the cash requirements of Appellants. As Justice Riordan said, the object of the exercise is not to bankrupt the Appellants,[28] nor should Appellants appeal rights be defeated by the amount of security.[29]

[54] Accordingly, I will order that the security be provided in quarterly instalments as Respondents concluded, subsidiarily, in their motions. I am unaware of any legal impediment to so ordering. In this manner, each instalment of security will not exceed quarterly earnings.

[55] The trial judge found that the average annual net earnings before tax of Appellants was as follows:

ITL – $483 million

RBH – $460 million

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27 *Bell*, *supra*, note 26, para. 10; *Camirand v. Gagnon*, 2013 QCCA 375; *Inversiones Bellrim, s.a. v. Guzzler Manufacturing inc.*, 2009 QCCA 1685 (Dalphond, J.A.); *Inversiones Bellrim, s.a. v. Guzzler Manufacturing Inc.*, 2009 QCCA 550 (Dufresne, J.A.); *Sharma Textiles inc. v. Certain Underwriters at Lloyd's*, 2007 QCCA 771 (Bich, J.A.).

28 *Létourneau v. JTI-MacDonald Corp.*, 2015 QCCS 2382, para. 1068.

29 *Labene v. Paquette*, 2015 QCCA 962 (Mainville, J.A.), para. 6, and *supra*, note 27.

On a quarterly basis, this computes to:

ITL – $121 million (rounded up)

RBH – $115 million

[56] I have financial statements for 2014 of ITL and RBH, which were filed in the record of this Court with the affidavits in support of the motions to cancel provisional execution. For 2014, RBH's net pre-tax earnings were $495 million. ITL shows a loss due to the pay out of the settlement of the Flinkote litigation. For consistency, I will use the averages determined by the judge for the period 2008 to 2013 as quoted above.

[57] Respondents concluded in the alternative for security to be deposited by way of quarterly instalments of $250 million each in the aggregate. As indicated, I have decided to award security equal to the initial deposit of $1.131 billion or $758 million for ITL and $226 million for RBH. The RBH security will be payable by way of six quarterly instalments and that of ITL in seven quarterly instalments so that the amount of each instalment does not exceed average quarterly earnings. In both cases, payments will commence at the end of December, 2015. In addition to the six months since the judgment, this allows 60 days before the first instalment as requested at the hearing by counsel of RBH.

[58] Accordingly, the Appellants will be ordered to furnish security as follows:

Payable on or before last juridical day of	ITL ($758 million)	RBH ($226 million)
December, 2015	$108,285,000	$37,666,000
March, 2016	$108,285,000	$37,666,000
June, 2016	$108,285,000	$37,666,000
September, 2016	$108,285,000	$37,666,000
December, 2016	$108,285,000	$37,666,000
March, 2017	$108,285,000	$37,666,000
June, 2017	$108,285,000	

The instalments bring us to March 2017 and June 2017. A hearing for the appeal has been tentatively scheduled before this Court during the autumn of 2016. I think it safe to assume that given the projected volume of the joint record, a lengthy advisement can be anticipated. If judgment is rendered before June or even March 2017, the remaining instalments of security will not be payable.

2015 QCCA 1737 (CanLII)

2015 QCCA 1737 (CanLII)

[59] The above amounts are less than average quarterly revenue. They are far easier to manage financially than a single lump sum. Again, according to the figures that we have, I am fully cognizant that Appellants may require some infusion or assistance of their related entities on a short or medium term basis in order to furnish the security. However, the amounts compared to earnings are such that it cannot be said, in my view, that the security ordered has negated the right to appeal.

[60] The security will be in the form of cash or irrevocable letters of credit issued by a Schedule I Canadian bank to remain in force until final judgment of this Court, or further order of this Court.

[61] As to the form of security, an argument was attempted by counsel for Appellants concerning the legality or appropriateness of letters of credit as security.

[62] This Court has held that an irrevocable letter of credit of a Canadian bank could constitute valid security in lieu of the deposit of cash.[30]

[63] A letter of credit of a bank is an undertaking by that bank. The latter is not a party to the litigation. The Appellants voiced concerns that this undertaking would remain despite any insolvency proceedings initiated by the Appellants. However, the deposit of cash at the office of the Court (in effect with the Ministre des Finances)[31] is also security in the sense that a litigant has, conditionally, a right exercisable in respect of the deposit.[32] This is not as Appellants seem to suppose a “fraud on the bankruptcy” or the granting of a “super priority”. Valid security, consensual or court ordered, is supposed to offer priority to its beneficiaries in an insolvency and is so recognized in the *B.I.A*.[33] The effect of such security in the event of an insolvency may be the subject of a decision by a judge or court having jurisdiction but at present the question is hypothetical. In any event, Appellants will have the option of depositing the cash or furnishing letters of credit.

[64] Counsel for RBH suggested that any security take the form of a deposit in one of the lawyer’s trust accounts. This is a matter for consent if any, by the parties but should not, in my view, form part of a court order.

[65] Accordingly, I will order security and allow letters of credit to be provided to Respondents’ counsel instead of cash deposits in court at each Appellants’ option.

[66] The security becomes payable upon a final judgment of this Court maintaining in whole or in part the judgment of first instance. It cannot be payable, as suggested by Respondents on a *B.I.A.* or *C.C.A.A.* filing. Any applicable stay of proceedings arising from such a filing would have to be respected; any exception should be court ordered at

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30 *Droit de la famille – 2054*, AZ-97011711, 1997 CanLII 10660 (C.A.); see also article 1574 *C.C.Q.*
31 *Deposit Act*, CQLR, c. D-5, s. 8.
32 *Basille v. 9159-1503 Québec inc.*, 2014 QCCA 1653 (Kasirer, J.A.).
33 Ss. 69(2), 69.1(2), 69.3 (2), 71 and 136 *B.I.A.*, *supra*, note 10.

the appropriate time by the court having jurisdiction. The undersigned cannot order now that a letter of credit be payable following an insolvency filing which may impose a suspension of such recourse.

2015 QCCA 1737 (CanLII)

[67] The letter of credit will be payable upon receipt by the issuing bank of a sworn statement by one of Respondents' attorneys certifying that the Court of Appeal has rendered judgment in this matter and specifying the amounts due by Appellants. A copy of the judgment will be annexed to the sworn statement. Since an appeal to the Supreme Court does not automatically operate a stay, I need not include that possibility in the conditions of payment of the letters of credit. In the alternative, the letters of credit will be payable subject to further order of the Court. Any letter of credit must of course be issued by a Canadian bank listed in Schedule I of the *Bank Act* and be irrevocable, payable in whole or in part and remain in force until final judgment either by renewal or replacement prior to expiry.

CONCLUSIONS:

[68] **IN RECORD FILE NO: 500-09-025385-154**

FOR ALL THE FOREGOING REASONS, THE UNDERSIGNED:

[69] **GRANTS** in part Respondents' motion to order Appellants to furnish security;

[70] **ORDERS** Appellant, Imperial Tobacco Canada Ltd, to furnish security in accordance with article 497 *C.C.P.* in an amount of $758 million, which security may at Appellant's option, be in the form of cash or letter of credit and shall be furnished in equal consecutive quarterly instalments of $108,285,000 each, on or before the last juridical day of the following months: December, 2015, March, 2016, June, 2016, September, 2016, December, 2016, March, 2017 and June, 2017.

[71] **DECLARES** that security in the form of cash shall be deposited at the Registry of the Court of Appeal, Montreal, and that security by way of letter of credit be delivered to one of the attorneys of Respondents and comply with the following:

i) be issued by a Canadian bank listed in Schedule I of the *Bank Act*;

ii) make reference to the record number of the Court of Appeal;

iii) be irrevocable;

iv) remain in force until: a) judgment on the merits in this Court record either by renewal or replacement prior to expiry or b) further order of the Court of Appeal;

v) be payable: a) upon receipt by the issuing bank of a sworn statement of one of Respondents' attorneys declaring that judgment has been rendered

and stating the amount owing by the Appellant pursuant to the judgment on the merits, a copy of such judgment to be annexed to such sworn statement or b) upon further order of the Court of Appeal.

[72] **DECLARES** that any and all costs or expenses incurred to furnish the said security will be for the account of Appellant, Imperial Tobacco Canada Ltd.

[73] **THE WHOLE** with costs to follow suit.

[74] **IN RECORD FILE NO: 500-09-025387-150**

FOR ALL THE FOREGOING REASONS, THE UNDERSIGNED:

[75] **GRANTS** in part Respondents' motion to order Appellants to furnish security;

[76] **ORDERS** Appellant, Rothmans, Benson & Hedges Inc., to furnish security in accordance with article 497 *C.C.P.* in an amount of $226 million, which security may at Appellant's option, be in the form of cash or letter of credit and shall be furnished in equal consecutive quarterly instalments of $37,666,000.00 each on or before the last juridical day of the following months: December, 2015, March, 2016, June, 2016, September, 2016, December, 2016 and March, 2017.

[77] **DECLARES** that security in the form of cash shall be deposited at the Registry of the Court of Appeal, Montreal, and that security by way of letter of credit be delivered to one of the attorneys of Respondents and comply with the following:

i) be issued by a Canadian bank listed in Schedule I of the *Bank Act*;

ii) make reference to the record number of the Court of Appeal;

iii) be irrevocable;

iv) remain in force until: a) judgment on the merits in this Court record either by renewal or replacement prior to expiry or b) further order of the Court of Appeal;

v) be payable: a) upon receipt by the issuing bank of a sworn statement of one of Respondents' attorneys declaring that judgment has been rendered and stating the amount owing by the Appellant pursuant to the judgment on the merits, a copy of such judgment to be annexed to such sworn statement or b) upon further order of the Court of Appeal.

[78] **DECLARES** that any and all costs or expenses incurred to furnish the said security will be for the account of Appellant, Rothmans, Benson & Hedges Inc.

2015 QCCA 1737 (CanLII)

[79] **THE WHOLE** with costs to follow suit.

2015 QCCA 1737 (CanLII)

MARK SCHRAGER, J.A.

Mtre Deborah Glendinning
Mtre Éric Préfontaine
OSLER, HOSKIN & HARCOURT
For Imperial Tobacco Canada Ltd.

Mtre Simon V. Potter
Mtre Pierre-Jérôme Bouchard
McCARTHY TÉTRAULT
For Rothmans, Benson & Hedges Inc.

Mtre Gordon Kugler
KUGLER, KANDESTIN
Mtre Philippe Trudel
TRUDEL, JOHNSTON & LESPÉRANCE
For Conseil québécois sur le tabac et la santé, Jean-Yves Blais et Cécilia Létourneau

Date of hearing: October 6, 2015

Certificat de dépôt judiciaire

N° 500-09-025385-154

1. Partie demanderesse IMPERIAL TOBACCO CANADA LTD

2. Partie défenderesse LÉTOURNEAU CECILIA ET AL

3. Autres

Déposé par ☒ 1 ☐ 2 ☐ 3 { ☐ Personnellement ou ☐ Par Me

Somme consignée 108 285 000,$

Nature

☒ Cautionnement

☐ Offres et consignation
☐ Loyer
☐ Expropriation
☐ Saisie
☐ Autres

☐ Chèque certifié $
☐ Mandat $
☐ Argent $
☒ Frais 325 205,00 $
☐ TOTAL 108 610 205,00 $

VALEUR(S) MOBILIÈRE(S) (description)

Services de justice
PQ
30 DEC. 2015
MONTRÉAL

DROITS DE GREFFE
Gouvernement du Québec
Palais Justice MONTREAL

0321896-0070-1452
325 205,00
2015-12-30

Reçu n° 396415

2015-12-30
Date

Officier autorisé

• SJ-102 (2008-05)

DÉPOSANT

Certificat de dépôt judiciaire

N° 500-09-025385-154

1. Partie demanderesse Imperial Tobacco Canada LTD

2. Partie défenderesse Letourneau Cecilia et Al.

3. Autres

Déposé par ☑ 1 ☐ 2 ☐ 3 { ☐ Personnellement ou ☐ Par Me _____

Somme consignée 108285000,00 $

Nature
- ☑ Cautionnement
- ☐ Offres et consignation
- ☐ Loyer
- ☐ Expropriation
- ☐ Saisie
- ☐ Autres _____

- ☐ Chèque certifié _____ $
- ☐ Mandat _____ $
- ☐ Argent _____ $
- ☑ Frais 541 775,00 $
- ☐ **TOTAL** 108826 775,00 $

VALEUR(S) MOBILIÈRE(S) (description)

DROITS DE GREFFE
Gouvernement du Québec
Palais Justice MONTREAL
0325862-0091-1519
541 375,00
2016-03-31

Reçu n° 396443

2016-03-30
Date

Officier autorisé

DÉPOSANT

DROITS DE GREFFE
Gouvernement du Québec
Palais Justice MONTREAL
2016-03-31
400,00
0325862-0092-1520

Certificat de dépôt judiciaire

N° 500-09-025385-154

1. Partie demanderesse Imperial Tobacco Canada LTD

2. Partie défenderesse Letourneau Cecilia et al

3. Autres

Déposé par ☑ 1 ☐ 2 ☐ 3 { ☐ Personnellement ou ☐ Par Me _____

Somme consignée 108 285 000.00 $

Nature

☑ Cautionnement

☐ Offres et consignation

☐ Loyer

☐ Expropriation

☐ Saisie

☐ Autres _____

☐ Chèque certifié _____ $

☐ Mandat _____ $

☐ Argent _____ $

☑ Frais 541 715.00 $

☑ **TOTAL** 108 826 715.00 $

VALEUR(S) MOBILIÈRE(S) (description)

Reçu n° 396450

2016.06.29
Date

Officier autorisé

RÉSERVÉ À L'ADMINISTRATION

J'accuse réception de la(des) valeur(s) mobilière(s) ci-dessus décrite(s).

Date

Signature du dépositaire

• SJ-102 (2008-05)

DÉPOSITAIRE DES VALEURS MOBILIÈRES

COUR D'APPEL 5 JUL '16 15:05
2016 06 29 032878-0064 CP
9 000 000.00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

Certificat de dépôt judiciaire

N° 500-09-025385-154

1. Partie demanderesse Imperial Tobacco Canada inc.

2. Partie défenderesse Letourneau cecilia et AL

3. Autres

Déposé par ☑ 1 ☐ 2 ☐ 3 { ☐ Personnellement ou ☐ Par Me _____

Somme consignée 10828 40 $

Nature

- ☑ Cautionnement
- ☐ Offres et consignation
- ☐ Loyer
- ☐ Expropriation
- ☐ Saisie
- ☐ Autres _____

- ☑ Chèque certifié $
- ☐ Mandat $
- ☐ Argent $
- ☑ Frais 54 17 80 $
- ☑ TOTAL 10826 22 $

VALEUR(S) MOBILIÈRE(S) (description)

Reçu n° 396458

2016-09-29
Date

Officier autorisé

DÉPOSANT

• SJ-102 (2008-05)

2016 09 30 0333995-0097 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 09 30 0333995-0096 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 09 30 0333995-0095 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 09 30 0333995-0094 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 09 30 0333995-0093 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 09 30 0334060-0011 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 09 30 0334060-0012 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 09 30 0333995-0092 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 09 30 0333995-0091 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 09 30 0333995-0095 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500
2016 12 28 0338269-0132 CP
9 000 000,00

Certificat de dépôt judiciaire

N° 500-09-025385-154

1. Partie demanderesse IMPERIAL TOBACCO CANADA LTD

2. Partie défenderesse LETOURNEAU CECILIA ET AL

3. Autres

Déposé par ☒ 1 ☐ 2 ☐ 3 { ☐ Personnellement ou ☐ Par Me _____

Somme consignée 108285000,00 $

Nature

☒ Cautionnement

☐ Offres et consignation

☐ Loyer

☐ Expropriation

☐ Saisie

☐ Autres _____

☐ Chèque certifié _____ $

☒ Mandat _____ $

☐ Argent _____ $

☒ Frais 541775,00 $

☐ **TOTAL** 108826775,00 $

COUR D'APPEL 6 JAN 171440

VALEUR(S) MOBILIÈRE(S) (description)

Reçu n° 396567

2016-12-29
Date

Officier autorisé

RÉSERVÉ À L'ADMINISTRATION

J'accuse réception de la(des) valeur(s) mobilière(s) ci-dessus décrite(s).

Date

Signature du dépositaire

CERTIFICAT DE DÉPÔT JUDICIAIRE

N° de dossier : 500-09-025275-150

1. Partie demanderesse IMPERIAL TOBACCO CANADA LTD

2. Partie défenderesse - LOUKMAN SOCILIA ET AL

3. Autres

COUR D'APPEL 6 AVR 17 08 HP

Déposé par ☑ 1 ☐ 2 ☐ 3

☐ Personnellement
ou
☐ Par Me _____

Somme consignée 108 235 000.00 $

Nature

☑ Cautionnement

☐ Loyer

☐ Offres réelles et consignation (petites créances)

☐ Expropriation

☐ Saisie (ex : en mains tierces)

☐ Autres _____

☐ Chèque certifié _____ $

☐ Mandat _____ $

☐ Argent _____ $

☑ Frais 541 775.00 $

☐ **TOTAL** 108 826 775 $

Reçu n° 0408716

2017-03-31
Date

Officier autorisé

CERTIFICAT DE DÉPÔT JUDICIAIRE

N° de dossier : 500-09-025385-154

1. Partie demanderesse Imperial Tobacco Canada LTD

2. Partie défenderesse Letourneau Cecilia et AL

3. Autres

Déposé par ☐ 1 ☐ 2 ☐ 3 ☐ Personnellement ou ☐ Par Me _____

Somme consignée 108 285 000,00 $

Nature

- ☑ Cautionnement
- ☐ Loyer
- ☐ Offres réelles et consignation (petites créances)
- ☐ Expropriation
- ☐ Saisie (ex : en mains tierces)
- ☐ Autres _____

- ☐ Chèque certifié _____ $
- ☐ Mandat _____ $
- ☐ Argent _____ $
- ☑ Frais 541 775,00 $
- ☑ **TOTAL** 108 826 775,00 $

Reçu n° 0408868

2017-06-28
Date

Officier autorisé

DÉPOSANT

• SJ-102 (2015-06)

2017 06 28 0348248-0153 CP
9 000 000,00
DÉPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

DROITS DE GREFFE
Gouvernement du Québec
Palais Justice MONTRÉAL
0348389-0001-1402
541 775,00
2017-06-30

Certificat de dépôt judiciaire

N° 500-09-025387-150

1. Partie demanderesse ROTHMANS BENSON & HEDGES INC

2. Partie défenderesse LETOURNEAU CECILIA & AL

3. Autres

Déposé par ☒ 1 ☐ 2 ☐ 3 { ☐ Personnellement ou ☐ Par Me

Somme consignée 37 666 000,00$

Nature

☒ Cautionnement

☐ Offres et consignation

☐ Loyer

☐ Expropriation

☐ Saisie

☐ Autres

☐ Chèque certifié

☐ Mandat

☐ Argent

☒ Frais 113 348,00$

☐ **TOTAL** 37 779 348,00$

VALEUR(S) MOBILIÈRE(S) (description)

Services de justice
30 DEC. 2015
MONTRÉAL

Reçu n° 398417 2015-12-30 Date

Officier autorisé

RÉSERVÉ À L'ADMINISTRATION

J'accuse réception de la(des) valeur(s) mobilière(s) ci-dessus décrite(s).

Date Signature du dépositaire

Certificat de dépôt judiciaire

N° 500-09-025387-150

1. Partie demanderesse Bathmans Benson et Hedges inc.

2. Partie défenderesse Letourneau Cecilia et Al

3. Autres

Déposé par ☑ 1 ☐ 2 ☐ 3 { ☐ Personnellement ou ☐ Par Me

Somme consignée 37666000.00 $

Nature

☑ Cautionnement			
☐ Offres et consignation	☐ Chèque certifié		$
☐ Loyer	☐ Mandat		$
☐ Expropriation	☐ Argent		$
☐ Saisie	☑ Frais	188 680.90	$
☐ Autres	☐ **TOTAL**	37 854 680.90	$

VALEUR(S) MOBILIÈRE(S) (description)

Reçu n° 396441 2016-03-29 Date

Officier autorisé

RÉSERVÉ À L'ADMINISTRATION

J'accuse réception de la(des) valeur(s) mobilière(s) ci-dessus décrite(s).

Date Signature du dépositaire

• SJ-102 (2008-05)

DÉPOSITAIRE DES VALEURS MOBILIÈRES

Certificat de dépôt judiciaire

N° 500-09-025387-150

1. Partie demanderesse Rothmans Benson et Hedges inc

2. Partie défenderesse Létourneau Cecilia et Al

3. Autres

Déposé par ☑ 1 ☐ 2 ☐ 3 { ☐ Personnellement ou ☐ Par Me _____

Somme consignée 376663 $

Nature

- ☑ Cautionnement
- ☐ Offres et consignation
- ☐ Loyer
- ☐ Expropriation
- ☐ Saisie
- ☐ Autres _____

- ☑ Chèque certifié _____ $
- ☐ Mandat _____ $
- ☐ Argent _____ $
- ☑ Frais 188680,00 $
- ☐ **TOTAL** 376546,63 $

VALEUR(S) MOBILIÈRE(S) (description)

Reçu n° 396449

2016-06-29
Date

Officier autorisé

2016 06 29 0329878-0062 CP
1 666 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 06 29 0329878-0060 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 06 29 0329878-0061 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 06 29 0329878-0058 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 06 29 0329878-0059 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

DROITS DE GREFFE
Gouvernement du Québec
Palais Justice MONTREAL
0329878-0063-1209
188 680,00
2016-06-29

DÉPOSANT

DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

Certificat de dépôt judiciaire

N° 500-09-025387-150

1. Partie demanderesse ROTHMANS BENSON & HEDGES INC

2. Partie défenderesse LETOURNEAU CECILIA ET AL

3. Autres

Déposé par ☒ 1 ☐ 2 ☐ 3 { ☐ Personnellement ou ☐ Par Me _____

Somme consignée 37 666 000 $

Nature

☒ Cautionnement
☐ Offres et consignation
☐ Loyer
☐ Expropriation
☐ Saisie
☐ Autres _____

☐ Chèque certifié _____ $
☐ Mandat _____ $
☐ Argent _____ $
☒ Frais 188 680 $
☐ **TOTAL** 37 854 680 $

VALEUR(S) MOBILIÈRE(S) (description)

Reçu n° 396559

2016-09-30
Date

Officier autorisé

RÉSERVÉ À L'ADMINISTRATION

J'accuse réception de la(des) valeur(s) mobilière(s) ci-dessus décrite(s).

Date

COPIE CONFORME
Officier dûment autorisé
GREFFIER ADJOINT DE LA COUR D'APPEL ADAM SCOTT

Signature du dépositaire

• SJ-102 (2008-05)

DÉPOSITAIRE DES VALEURS MOBILIÈRES

Certificat de dépôt judiciaire

DROITS DE GREFFE 0338313-0105-1431
Gouvernement du Québec*DUPLICATA 188 680,00
Palais Justice MONTREAL 2016-12-28

2016 12 28 0338313-0102 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

N° 500-09-025387-150

1. Partie demanderesse Rothmans Benson et Hedgesinc

2. Partie défenderesse Letourneau Cecilia et Al

3. Autres

Déposé par ☐ 1. ☐ 2 ☐ 3 { ☐ Personnellement ou ☐ Par Me _____

Somme consignée 37666000,00 $

Nature
- ☑ Cautionnement
- ☐ Offres et consignation
- ☐ Loyer
- ☐ Expropriation
- ☐ Saisie
- ☐ Autres _____

- ☐ Chèque certifié _____ $
- ☐ Mandat _____ $
- ☐ Argent _____ $
- ☑ Frais 188680,00 $
- ☑ TOTAL 37854680,00 $

2016 12 28 0338313-0103 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

VALEUR(S) MOBILIÈRE(S) (description)

BM

2016 12 28 0338313-0104 CP
666 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

2016 12 28 0338313-0100 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

Reçu n° 396189 2016-12-28 Marion
Date Officier autorisé

2016 12 28 0338313-0101 CP
9 000 000,00
DEPOT AU COMPTE SERVICES FINANCIERS
EN FIDEICOMMIS GREFFE NO: 500

• SJ-102 (2008-05) DÉPOSANT

CERTIFICAT DE DÉPÔT JUDICIAIRE

N° de dossier : 500-09-025387-150

1. Partie demanderesse Imperial Tobacco

2. Partie défenderesse Létourneau Lecuyer et Al

3. Autres

Déposé par ☐ 1 ☑ 2 ☐ 3 ☐ Personnellement ou ☐ Par Me _____

Somme consignée 37 666 000,00 $

Nature

☑ Cautionnement

☐ Loyer

☐ Offres réelles et consignation (petites créances)

☐ Expropriation

☐ Saisie (ex : en mains tierces)

☐ Autres _____

☐ Chèque certifié _____ $

☐ Mandat _____ $

☐ Argent _____ $

☑ Frais 188 680,00 $

☐ **TOTAL** 37 854 680,00 $

Reçu n° 0408861

2017-03-30
Date

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Unofficial English Translation of the Judgment of the Court

Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé **2019 QCCA 358**

2019 QCCA 358 (CanLII)

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

Nos.: 500-09-025385-154, 500-09-025386-152 and 500-09-025387-150
(500-06-000070-983 and 500-06-000076-980)

DATE: March 1, 2019

CORAM: THE HONOURABLE YVES-MARIE MORISSETTE, J.A.
ALLAN R. HILTON, J.A.
MARIE-FRANCE BICH, J.A.
NICHOLAS KASIRER, J.A.
ÉTIENNE PARENT, J.A.

No.: 500-09-025385-154

IMPERIAL TOBACCO CANADA LIMITED
APELLANT / CROSS-RESPONDENT - defendant
v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
JEAN-YVES BLAIS
CÉCILIA LÉTOURNEAU
RESPONDENTS / CROSS-APPELLANTS - plaintiffs And
JTI-MACDONALD CORP.

ROTHMANS, BENSON & HEDGES INC.
IMPLEADED PARTIES - defendants

No.: 500-09-025386-152

JTI-MACDONALD CORP.
APPELLANT / CROSS-RESPONDENT - defendant

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
JEAN-YVES BLAIS
CÉCILIA LÉTOURNEAU
RESPONDENTS / CROSS-APPELLANTS - plaintiffs And
IMPERIAL TOBACCO CANADA LIMITED
ROTHMANS, BENSON & HEDGES INC.
IMPLEADED PARTIES – defendants

No.: 500-09-025387-150

ROTHMANS, BENSON & HEDGES INC.
APPELLANT / CROSS-RESPONDENT - defendant

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ
JEAN-YVES BLAIS CÉCILIA LÉTOURNEAU
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JTI-MACDONALD CORP.
IMPERIAL TOBACCO CANADA LIMITED
IMPLEADED PARTIES - defendants

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JUDGMENT

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[1] The Court is asked to determine the outcome of three appeals and one cross-appeal contesting a judgment rendered on May 27, 2015,[1] and corrected on June 9, 2015, by the Superior Court, District of Montreal (the Honourable Brian Riordan), in the context of two class actions[2] whose origins date back to 1998. The judgment ordered the collective recovery of $6,858,864,000 in compensatory damages for the injury caused to the members in one of the class actions and the collective recovery of a total of $131,090,000 in punitive damages in both files.

[2] In that judgment, the Honourable Brian Riordan condemned the appellants, three cigarette manufacturers, to pay moral and punitive damages due to the multiple faults they committed over the course of the second half of the twentieth century. The appellants' liability is invoked on several fronts, involving the regimes of extracontractual liability under the general law, the provisions of the *Charter of human rights and freedoms*[3] (the "***Charter***"), those of the *Consumer Protection Act*[4] (the "**C.P.A.**") and the regime of manufacturer's liability. Added to that are the provisions that derogate from the general law in the *Tobacco-related Damages and Health Care Costs Recovery Act*[5] (the "**T.R.D.A.**"), enacted by the National Assembly in 2009. The appellants are alleged to have conspired, for close to five decades, to silence or minimize the risks inherent to smoking and to have, if not created, at least maintained a controversy surrounding the state of scientific knowledge to encourage smoking. It is alleged that this policy of silence and this scientific controversy, *inter alia*, are faults that caused the members' smoking and, consequently, the development of certain diseases among some and tobacco addiction among others.

[3] In the Blais file, which groups together tens of thousands of persons who developed certain types of cancer and emphysema, the appellants were condemned to indemnify the victims of these diseases by paying moral damages ($6,858,864,000) and a symbolic amount of punitive damages ($90,000). In the Létourneau file, which groups together hundreds of thousands of persons who have developed an addiction to tobacco, the judge found the appellants liable but refused to award compensation to the members. He nevertheless condemned the appellants to pay substantial punitive damages totalling $131,000,000. Collective recovery was ordered in both files.

[4] In these appeals, the appellants allege that the trial judge made numerous errors. In addition to his conclusions on fault, causation and the assessment of damages, the appellants challenge a series of contingent conclusions, including the application of the general principles governing class actions, collective recovery, the prescription of certain claims, the applicability of

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1 *Létourneau v. JTI-MacDonald Corp.*, 2015 QCCS 2382 [judgment *a quo*].

2 In the original French version of the judgment, the expression "*recours collectif*" is used to refer to the actions in these files, rather than the expression "*action collective*" set out in the new *Code of Civil Procedure*. The English translation of both these expressions is "class action."

3 *Charter of human rights and freedoms*, CQLR, c. C-12.

4 *Consumer Protection Act,* CQLR c P-40.1.

5 *Tobacco-related Damages and Health Care Costs Recovery Act*, CQLR c. R-2.2.0.0.1.

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the *Charter* and the C.P.A., the calculation of the quantum of punitive damages, the starting point for the calculation of interest and the additional indemnity, as well as various findings of fact concerning certain actions of the appellants and the admissibility or use of certain exhibits.

[5] After carefully reviewing the reasons of the trial judge and the French translation accompanying them, the Court has concluded that only the English version should be considered authoritative. When analyzing reasons of this magnitude, which make abundant reference to legal, technical and scientific terminology that is often highly specialized or uncommon, it is advisable to follow the example of the Supreme Court of Canada and defer to the language used by their author in drafting them. As the judge noted in paragraph 1205 of his reasons, that language is English. The Court will therefore cite herein only the reasons filed in English, and the same will apply for the excerpt from the conclusions of the trial judgment reproduced in the conclusions of this judgment. In the footnotes that appear in support of these reasons, references to the case law (except for the judgment *a quo*) and to certain statutes systematically reproduce the complete reference to the original source. Due to the length of the judgment, it seemed preferable to proceed in this way for the reader's convenience, rather than by *supra* and *infra* references in the footnotes. An exception to this rule, however, is made for the footnotes referring to commentary. In general, the page references refer to the page numbers of the exhibit referred to; if the exhibit does not have page numbers, the references refer to the page numbers of the joint schedules ("J.S."). The titles of exhibits are indicated only when relevant to the understanding of the reasons.

I. BACKGROUND

1. CLASS ACTIONS

[6] The two class actions that were before the Superior Court concern the period from 1950 to 1998 ("**the relevant period**"). Within the framework of each of the actions, the respondents alleged that the appellants committed numerous faults that caused injury to hundreds of thousands of Quebec residents. These faults originate in four principal sets of circumstances. They result from (i) a failure to fulfil the general duty not to cause injury to another (art. 1053 C.C.L.C. and art. 1457 C.C.Q.); (ii) the failure to comply with the manufacturer's obligation to inform (duty to warn) (arts. 1468 and 1473 C.C.Q.); (iii) violations of the fundamental rights of the members set forth in the *Charter*; and (iv) violations of the merchant's or manufacturer' duties imposed by the *C.P.A.* The respondents furthermore allege that the Appellants intentionally took concerted action and cooperated in order to delay public awareness of the dangers of tobacco.

[7] We reiterate that these cases concern tobacco sold in the form of cigarettes. Consequently, where dealing with the issues of cigarettes, tobacco or smoking, it is agreed that these terms refer solely to cigarettes or the consumption of cigarettes by inhalation.

1.1. Blais file

[8] The Blais claim was filed in the Superior Court in November 1998 and was authorized on February 21, 2005. The class whose members are represented by Mr. Jean-Yves Blais ("**the**

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Blais Class") is comprised of smokers who developed cancer of the lung, larynx, oropharynx or the hypopharynx or contracted emphysema ("**the diseases at issue**") prior to March 12, 2012, after having smoked a stipulated quantity of cigarettes manufactured by the appellants ("**the critical dose**" of smoking). The threshold for this dose was established as being 12 pack years by the trial judge. A pack-year is equivalent to the consumption of one pack of 20 cigarettes per day for one year or any equivalent consumption. In other words, this measurement corresponds to 7,300 cigarettes *per annum* for a total of 87,600 cigarettes.

[9] At trial, the judge found the appellants liable and ordered them to pay moral damages to the members who had received a diagnosis of any of the diseases at issue, i.e., $100,000 for cancer of the lung, larynx, oropharynx or hypopharynx and $30,000 for emphysema. He concluded, however, that the members who were not yet addicted to nicotine as of January 1, 1980, i.e., the moment when the public became aware that tobacco caused the diseases at issue ("**the date of public knowledge**") were entitled to only 80% of the moral damages on the ground of their contributory negligence. He also established the period for becoming addicted to tobacco as being four years. The Judge ordered the collective recovery of the sums for an aggregate amount of $6,858,864,000. He also ordered the appellants to pay punitive damages which, due to the significant amount of moral damages awarded, were limited to the amount of $30,000 per appellant.

1.2. Létourneau file

[10] The Létourneau claim was filed in the Superior Court in September 1998 and authorized on February 21, 2005. The class, whose members are represented by Ms. Cécilia Létourneau ("**the Létourneau Class**"), is estimated to include nearly one million smokers who developed an addiction to nicotine contained in cigarettes manufactured by the appellants. The judge defined addiction to nicotine as resulting (i) from the consumption of cigarettes over a minimum period of four years and (ii) consumption at the time of assessment of this addiction of a minimum daily average of 15 cigarettes.

[11] At trial, the judge found that the appellants had caused the addiction of the members of the Létourneau Class. He nevertheless refused to award them moral damages due to a lack of sufficiently precise evidence of the aggregate total of claims and due to the indeterminate number of members. However, he ordered the appellants to pay punitive damages totalling $131,000,000, a sum providing for collective recovery in accordance with terms to be established at a later time.

1.3. Description of the appellants

[12] The appellants are three cigarette manufacturers who carried on trade in Quebec and in Canada under various corporate forms throughout the period governed by the two class actions. They underwent major changes in their corporate structure and their shareholdings. Although it is not necessary for the purposes of this Appeal to relate this in every detail, a brief description of each of them is necessary for a proper comprehension of these reasons.

[13] Furthermore, to facilitate this comprehension, the appellants will be referred to using their current name and not their prior corporate identity, save and except where necessary in order to make the necessary distinctions.

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A. ITL

[14] Imperial Tobacco Canada Ltd. ("**ITL**") is, in terms of market share, the largest of the appellants, having held on average 50.38% of the market share of the appellants during the relevant period.[6] Today, and since a considerable period of time, it has been owned, either in whole or in part, depending on the time, by British American Tobacco ("**BAT**"), a company based in London.

B. JTM

[15] JTI-Macdonald Corp. ("**JTM**") is the smallest of the appellants in terms of market share, having held on average 19.59% of the market share of the appellants during the relevant period.[7] At the time of trial, it was indirectly owned by the company Japan Tobacco.

[16] Originally, this was a Montreal company founded by the McDonald brothers – their name would eventually be changed to MacDonald – towards the mid-19th century. From 1917 to 1974, the company was owned by the Stewart family. In 1974, the company, which at that time was called Macdonald Tobacco Inc. ("**MTI**"), was acquired by the American conglomerate R.J. Reynolds Tobacco Company. Initially, MTI continued operating under the same name, but its activities were eventually merged into a new corporate entity, RJR-Macdonald Inc. ("**RJRM**"), which is directly or indirectly owned by R.J. Reynolds Tobacco Company. MTI was eventually dissolved. Finally, in 1999, R.J. Reynolds Tobacco Company split from RJRM and, in the wake of a succession of agreements among the various corporate structures of the companies, RJRM became the indirect owner of Japan Tobacco and henceforth was known under the current name of the appellant, JTI-Macdonald Corp.[8]

C. RBH

[17] Rothmans, Benson and Hedges Inc. ("**RBH**") is the second largest entity among the appellants with respect to market share, having held on average 30.03% of the market share of the Appellants during the relevant period.[9]

[18] The appellant RBH is the result of a merger of two companies in 1986: Rothmans of Pall Mall Canada ("**RPMC**") and Benson & Hedges ("**B&H"**). Whereas B&H were present in Canada prior to the commencement of the relevant period, RPMC commenced carrying on business in Canada in 1958. After their merger in 1986, the RBH shareholding was comprised of the Philip Morris and Rothmans groups. Since 2008, Philip Morris International Inc. is the sole shareholder of the appellant RBH.[10]

2. GENERAL CHRONOLOGY

[19] Due to its abundance, the evidence filed in the trial record creates certain constraints and

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6 Judgment *a quo* at para. 1007.
7 Judgment *a quo* at para. 1007.
8 See exhibit 40000.
9 Judgment *a quo* at para. 1007.
10 Judgment *a quo* at paras. 591–592 and note 289.

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calls for a preliminary remark. It is certain that, at least viewed from the angle of the size of the body of evidence, the matter exceeds the complexity of most cases previously heard before the Quebec Superior Court. Thus, it is not desirable to attempt at this time to present a summary of all the facts read into the court record as the reader would risk becoming lost in a maze of details. In the following pages, the numerous complaints formulated by the appellants against the judgment *a quo* will be dealt with in order, and each of them will be accompanied by a summary of the evidence most relevant to it.

[20] It is nevertheless appropriate to offer as a reference point a general chronology of the legal framework within which the consumption of cigarettes has evolved since the commencement of the period defined by the trial judge, running from 1950 to 1998.

[21] One can draw a portrait of the relevant period in three phases. From 1950 to 1972, the public debate on tobacco and health existed, but no significant government measures resulted therefrom. From 1972 to 1998, the Canadian tobacco industry was self-regulating – under the threat of legislative intervention – and as a result, public awareness increased. It was during this period that the initial warnings began to appear on cigarette packages. Finally, from 1988 to 1998, governments intervened in order to oversee the industry both with respect to advertising and warnings. In what follows, solely the salient facts of these three periods will be discussed, as will be the case for the specific matters of Mr. Blais and Ms. Létourneau.

2.1. Evolution of perceptions (1950–1972)

[22] Although we can retrace the origins of the legislative framework for tobacco use (for example to the *Tobacco Restraint Act*,[11] enacted in 1908), it has long since been reduced to its most simple expression.

A. Early confrontations

[23] During the 1950s, certain initiatives intensified, which led governments to increasingly direct their attention to the issue.

[24] Thus, in 1953, the American industry created a common strategy for the half century to come during a meeting that will remain known as the *Plaza Hotel Meeting*.[12] The Tobacco Industry Research Committee, an American association of cigarette manufacturers, issued a release titled *Frank Statement to the Public by the Makers of Cigarettes*[13] on December 28, 1953. It acknowledged the existence of certain studies that linked lung cancer with cigarette smoking, but pointed out that several other causes of lung cancer had been identified, that there existed no scientific consensus, that there was no proof that tobacco use was a cause of lung cancer, and finally that the statistics related to smoking could apply "to any one of many other aspects of modern life."[14] As the founding act of the Tobacco Industry Research Committee, the

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11 *Tobacco Restraint Act*, S.C. 7-8 Ed VII (1908), c. 73.
12 Testimony of Robert Proctor, November 28, 2012, at 30.
13 Exhibit 1409.
14 Exhibit 1409.

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Frank Statement united several American cigarette manufacturers.[15] It contained a promise to cooperate with public health authorities and to lend assistance to research into tobacco and health. This document illustrates the tone that would be adopted by cigarette manufacturers during the years to come.

[25] In 1957, the United States Surgeon General published a notice on tobacco and health further to which it affirmed that excessive smoking was *one* of the underlying factors contributing to lung cancer.[16]

[26] On June 21, 1958, Rothmans International published in the *Globe and Mail* a release, which it qualified in the following manner: "*AN ANNOUNCEMENT OF MAJOR IMPORTANCE*."[17] It stated therein that the Canadian Medical Association disclosed, during its annual congress, that there existed a link between smoking and lung cancer. Rothmans International declared that it wished to seek a solution in cooperation with medical authorities, or alone if necessary. It considered various proposals, including improving cigarette filters, using only tobacco containing lower tar and nicotine levels (the Virginia), and promoting King Size cigarettes, i.e., longer cigarettes where the combustion generates less warmth and thus less tar. The company concluded by noting that with moderation, "smoking can still remain one of life's simple and safe pleasures."[18] Furthermore, it added, "Rothmans would like it known that the problem of the relationship between cancer and smoking has for many years engaged the attention of the Research Division of its worldwide organization."[19] Several weeks later, Rothmans International issued a release[20] during a meeting of the *International Cancer Congress* held in London. At that meeting, it clarified its position: it accepted the statistical evidence of a link between cancer and heavy tobacco use. It reiterated that the biological cause of cancer remained unknown, and it committed to remaining transparent in the future. These announcements of Rothmans International were very poorly received by the tobacco industry and forced Mr. Patrick O'Neil-Dunne, Rothmans' executive and principal instigator behind the announcements in question to explain himself before the Tobacco Industry Research Committee.[21]

[27] In 1962, the Royal College of Physicians and Surgeons of the United Kingdom published a report titled *A Report of The Royal College of Physicians of London on Smoking in relation to Cancer of the Lung and Other Diseases*,[22] which noted a substantial increase in the number of lung cancers in the United Kingdom from 1910 to 1950 (also credited, it should be added, to the improvement in diagnostic techniques). However, by indexing several retrospective and prospective studies, the body concluded that there existed a "strong statistical association" between tobacco use and lung cancer, even going so far as to speak of a relation of cause and effect. It underlined that the laboratory experiments did not establish a causal link but did reveal

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15 The signatories included the American Tobacco Company, Benson & Hedges, Brown & Williamson Tobacco Corporation, P. Lorillard Company, Philip Morris & Co., R. J. Reynold Tobacco Company, Tobacco Associates Inc., and the U.S. Tobacco Company.

16 Exhibit 21363-AUTH.

17 Exhibit 536.

18 Exhibit 536.

19 Exhibit 536 [emphasis added].

20 Exhibit 536A; see also Exhibit 536B.

21 Exhibit 922; see also Exhibits 918 to 921 and 923 to 924; and Exhibits 536 to 536H.

22 Exhibit 545.

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several compatible elements pointing to a form of causation. On addiction, the report was less explicit: it disclosed popular beliefs – shared by doctors – further to which tobacco created a *"*addictive habit" but expressed the view that there existed no decisive evidence in this regard. The report used the expression "habit*"* and concluded that tobacco use is generally "much more habit-forming than drinking."[23] It recommended that preventive measures be taken, including the removal of hazardous products transported by the smoke, the implementation of educational and tax measures against smoking, the reduction of advertising and a ban against smoking in certain public places.

B. The 1962 Statement of Principle

[28] On October 12, 1962, the appellants or their successor companies,[24] as applicable, signed the *Policy Statement by Canadian Tobacco Manufacturers on the question of tar, nicotine and other smoke constituents that may have similar connotations* ("**Statement of Principle**").[25] At the instigation of Mr. Edward C. Wood, President of Imperial Tobacco Company of Canada Ltd. (the forerunner of ITL) a letter was sent to the other companies encouraging them to sign the Statement of Principle.[26] This document required the companies to refrain from using the words "tar," "nicotine" or other terms that could have a similar connotation in advertising or public communications. The companies were of the view that they were acting in the public interest because such labelling, in their minds, would only serve to confuse consumers. This document also contains guidelines concerning media interventions by cigarette manufacturers, in a schedule.[27] The guidelines state that voluntary comments by companies on health and tobacco should be avoided, that the companies would not attribute special advantages to cigarette brands and that the components of smoke would not be disclosed.

C. Ad Hoc Committee of the Canadian Tobacco Industry, Canadian Tobacco Manufacturers Council and the LaMarsh Conference

[29] It is also necessary to mention the Ad Hoc Committee of the Canadian Tobacco Industry ("**Ad Hoc Committee***"*), formed in 1963, whose actions would intermittently mark the remainder of the relevant period.

[30] During the summer of 1963, correspondence[28] between ITL and the Ministry of National Health and Welfare of Canada and the Minister at that time, Ms. Judy LaMarsh, suggested that the industry was getting organized with a view to a conference devoted to public health issues related to tobacco use scheduled to take place in November 1963 in Ottawa (the LaMarsh Conference). In August 1963, the cigarette manufacturers established the Ad Hoc Committee at Royal Montreal Golf Club, in all likelihood to prepare for that. This Ad Hoc Committee changed its name in 1971 and became the Canadian Tobacco Manufacturers Council ("**CTMC**").[29]

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23 Exhibit 545 at 42.
24 Imperial Tobacco Company of Canada Limited, Rothmans of Pall Mall Canada and MTI.
25 Exhibit 154; this Exhibit is also identified as 40005A-1962.
26 Exhibit 154A.
27 Exhibit 154B-2m.
28 See Exhibits 20321 to 20343.
29 Exhibit 544E.

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[31] The Conference, chaired by Minister LaMarsh, was held on November 25 and 26, 1963.[30] On behalf of the cigarette manufacturers, Messrs. John Keith, L.C. Laporte, L.P. Chesney and N.A. Dann (ITL), Messrs. J.H. Devlin and G.J. McDonald (RPMC), Robert Leahy and Jos. Secter (B&H) and Mr. René Fortier (MTI) attended, in addition to associations of tobacco farmers, the Canadian Medical Association, the Canadian Cancer Society and various other Intervenors.[31]

D. Report of the United States Surgeon General (1964) and its aftermath

[32] January 11, 1964, was a milestone date. On this date, the Surgeon General published a key report titled *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service*.[32]. Among other findings, it stated as follows: (i) tobacco use increases the specific mortality rates of men and to a lesser extent women; (ii) there is a causal link between smoking and lung cancer among men, which increases the risk of contracting lung cancer by a factor of 10 (average smoker) to 20 times (heavy smoker); (iii) smoking increases the risk of contracting emphysema but no causal link is established; (iv) smoking "appears" to be linked with other types of cancer (larynx, bowel), but causation is not established; and (v) smoking ("habitual use") is principally related to psychological and social impulses that are reinforced by the pharmacological effect of nicotine. The report advised remedial action: "Cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."[33] This report received significant coverage by Quebec media outlets[34] and was characterized as being "seminal"[35] or a "bombshell"[36] by an expert witness.

[33] Several years later, in 1969, in the wake of the work of the Surgeon General, the Standing Committee on Health, Welfare and Social Affairs of the House of Commons of Canada published in turn its report. The Committee, chaired by Dr. Gaston Isabelle, titled its 1969 report, *Report of the Standing Committee on Health, Welfare and Social Affairs on Tobacco and Cigarette Smoking*.[37] It contained several recommendations following consultations with various Intervenors: (i) restrict and reduce the promotion of cigarette sales; (ii) affix warnings on packages and promotional materials and, ultimately, (iii) eliminate advertising related to cigarettes. The experts concluded that "there is no longer any scientific controversy regarding the risk created by cigarette smoking. The original statistical observations have been validated by clinical observation and the evidence is now accepted as fact by Canadian medicine."[38]

[34] On June 10, 1971, bill C-248, introduced by the Minister of Health and Welfare, John Munro, the *Cigarette Products Bill*, underwent its initial reading before the House of Commons. There would not be a second or third reading.[39] Subparagraph 3(1) of the bill prohibited virtually

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30 Exhibit 40118.
31 Exhibit 20341.
32 Exhibit 601-1964.
33 Exhibit 601-1964 at 33.
34 Testimony of Prof. David Flaherty, May 21, 2013, at 78.
35 Testimony of Prof. David Flaherty, May 21, 2013, at 78.
36 Testimony of Prof. David Flaherty, May 21, 2013, at 225.
37 Exhibit 1554.4.
38 Exhibit 1554.4 at 10.
39 Exhibit 20073. The bill was abandoned by the House due to the general elections, according to the testimony of Mr. Marc Lalonde (see testimony of Marc Lalonde, June 17, 2012, at 38).

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any form of tobacco advertising. Several exhibits on the record[40] retraced the debates that were held between the powers within the Trudeau government of that time.

[35] Four months earlier, on February 19, 1971, the Surgeon General had published "a major reworking"[41] of its 1964 report titled "*The Health Consequences of Smoking.*"[42] Among its findings, the report stated that smoking is the principal cause of lung cancer among men and one of the causes among women, that it is a significant risk factor in the development of cancer of the larynx and of the mouth and that it is associated with cancer of the oesophagus. Smoking was also the most significant cause of chronic obstructive pulmonary disease ("**COPD**"[43]).

[36] At that time, no warning appeared on cigarette packs sold in Canada and advertising, as it appears in samples filed with the Court record, flourished. It is within this context, and particularly that of bill C-248, that the industry would henceforth practice a form of "voluntary" submission, but which was not unrelated to government pressure.

[37] Thus, on September 8, 1971, the CTMC held a meeting.[44] The participants[45] discussed the scientific controversy and estimated that it was preferable to reduce to a minimum any public interventions. According to Mr. Paul Paré (president of ITL and the CTMC), the CTMC had a responsibility towards (i) its member companies, (ii) the Canadian tobacco industry, and (iii) the worldwide tobacco industry. In his view, notwithstanding the divergent interests, it was necessary to fully assume these three responsibilities. Conscious of the bills that were reviewed in the House of Commons,[46] the CTMC decided to establish a line of conduct inspired by the voluntary actions taken in the United Kingdom and the American legislation.

2.2. Voluntary Adherence (1972–1988)

A. Voluntary codes

[38] With the approval of representatives of the Canadian Government with whom the appellants had jointly consulted, the latter adopted several Voluntary Codes as of 1972. It is true that these Codes had been preceded in 1964 by a *Cigarette Advertising Code*,[47] which had been published by the appellants. The trial judge saw in this a precursor to the Codes of the 1970s but added that, as opposed to these latter codes, the evidence did not allow for a determination as to

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40 Exhibits 20068 to 20074.1.

41 Testimony of Prof. David Flaherty, May 21, 2013, at 96.

42 Exhibit 601-1971.

43 Which may be defined as [TRANSLATION] "A pathological condition characterized by a decrease in the airways (bronchial obstruction), incompletely reversible, usually progressive and associated with an abnormal inflammatory response in the lungs to toxic gases and particles" (Exhibit 1382 at 12).

44 Exhibit 542.

45 Imperial Tobacco Products Ltd. (ITL), RPMC, MTI, B&H Tobacco Co., a lawyer of the Tobacco Institute Inc., a certain L.C. Laporte for the CTMC and N. J. McDonald of the public relations firm Public & Industrial Relations.

46 Exhibit 542.

47 Exhibit 40005B-1964.

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whether the *Cigarette Advertising Code* of 1964 had been adopted after consultation with the government.[48]

[39] On January 1, 1972, the first Voluntary Code[49] endorsed by the appellants was adopted. This Code provided for (i) the television and radio advertising ban,[50] (ii) the affixing of warnings (which will be analysed in the next section of this chronology) and (iii) a ban against advertising to minors.

[40] In 1975, two new versions of the Voluntary Code were adopted and replaced that of 1972.[51] The attendant regulations were also adopted.[52] Subsequent versions succeeded in 1976, 1984, 1985, 1995 and 1996.[53]. In this regard, the trial judge concluded that the rules limiting advertising that were included in the voluntary codes scarcely changed from 1972 to 1988.[54]

B. Warnings

[41] Also in 1972, the first warnings appeared on cigarette packages. The trial judge noted that the industry reacted "under threat of legislation."[55] The 1972 Voluntary Code[56] provided at rule 2, that any package produced after April 1, 1972, would bear the following statements:

WARNING: THE DEPARTMENT OF NATIONAL HEALTH AND WELFARE ADVICES THAT DANGER TO HEALTH INCREASES WITH AMOUNT SMOKED.	AVIS: LE MINISTÈRE DE LA SANTÉ NATIONALE ET DU BIEN- ÊTRE SOCIAL CONSIDÈRE QUE LE DANGER POUR LA SANTÉ CROÎT AVEC L'USAGE.

[42] These warnings were also reproduced in small font letters on cigarette packages, presumably on the lateral sides of the packages,[57] or as footers to advertising posters.[58]

[43] In 1975, once again "under threat of legislation,"[59] the following warnings appeared

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48 Judgment *a quo* at para. 394, note 206.

49 Exhibit 40005C-1972; Exhibit 40005D-1972.

50 The first rule of the Code provided: "After December 31, 1971, there will be no cigarette or cigarette tobacco advertising on radio or television."

51 The first rule of the 1975 Code provided: "There will be no cigarette or cigarette tobacco advertising on radio or television, nor will such media be used for the promotion of sponsorship of sports or other popular events whether through the use of brand of corporate name or logo" (Exhibit 40005G-1975 at 2).

52 Exhibits 40005G-1975 to 40005K-1975; see also Exhibit 20002.

53 See exhibits 40005B-1964 to 40005S-1996.

54 Judgment *a quo* at para. 394.

55 Judgment *a quo* at para. 110, note 57.

56 Exhibit 40005D-1972.

57 Exhibit 40005E-1972.

58 Exhibit 40005F-1973.

59 Judgment *a quo* at para. 110, note 57. Mr. Marc Lalonde, Minister of National Health and Welfare from 1972 to 1977, testified as follows: [TRANSLATION] "This was subject to numerous discussions,

henceforth on packages. They were stipulated in rule 12 of the new Voluntary Code:[60]

WARNING: Health and Welfare Canada advises that danger to health increases with amount smoked - avoid inhaling.	AVIS: Santé et Bien-être social Canada considère que le danger pour la santé croit [sic] avec l'usage - éviter d'inhaler.

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exchanges of letters and communications between myself and representatives of the industry throughout the time that I was Minister. It was ... they took a certain number of steps, we asked for more, they resisted, we exerted pressure from time to time. It was necessary to use the threat of introduction of the legislative bill and gradually the industry adopted different amendments to their Code concerning various aspects of advertising, sale nature, content of ... in terms of nicotine and tar in cigarettes and so forth" (testimony of Marc Lalonde, June 17, 2013, at 53).

[60] Exhibit 40005G-1975.

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[44] The regulation accompanying the 1975 Voluntary Code decreed that the warnings had to appear in 10 point or 7 point font according to certain specific terms.[61] These warnings would appear until 1988 on the packages and would have for the most part the same appearance and take up the same space as their previous 1972 version.[62]

[45] A second version of the 1975 Voluntary Code, that of October, provided for the same warnings.[63] The 1976 Code maintained these warnings and added the content in tar and nicotine in milligrams in addition to modifying the font size of characters.[64] The Voluntary Codes of 1984[65] and 1985[66] provided the same warnings.

C. Advertising

[46] The trial judge considered that "[t]he Companies certainly viewed the Codes as a means to avoid legislation in this area."[67] This statement is solidly supported by the evidence. He also concluded, relying upon the evidence offered by the Defence that the appellants "scrupulously complied with the codes."[68] It is necessary, however, to realize that the restrictions to advertising imposed by these codes, although they evolved further to a gradual reinforcement of constraints that the appellants imposed upon themselves, still left room for several other forms of advertising and promotion of their products. The 1972 Code prohibited cigarette advertising on radio and television. The 1975 Code added certain prohibitions that can be found in the 1984 Code[6969] and that remained in effect thereafter.

[47] The prohibitions in the 1984 Code prohibited (i) the promotion of sports and other sponsorships by the same media, i.e., radio and television (rule 1), (ii) any advertising stating that a particular brand improved physical health (rule 8) and (iii) any advertising relying upon "the testimony of athletes or celebrities from the world of entertainment" (rule 9). We note, however, that the authors of the Code reserved the possibility of interpreting this so as to allow for the use of other advertising techniques. Thus, in reference to the three prohibitions just mentioned, a regulation supplements the Code (*Regulations Re Cigarette and Cigarette Tobacco Advertising and Promotion*). In force since January 1, 1976, it states as follows in the January 1, 1985, version:[70]

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[61] Exhibit 40005H-1975.
[62] Exhibit 40005I-1975.
[63] Exhibit 40005K-1975.
[64] Exhibit 40005L-1976, p. at II.3.
[65] Exhibit 40005M-1984, rule 12.
[66] Exhibit 40005N-1985, rule 12.
[67] Judgment *a quo* at para. 400.
[68] Judgment *a quo* at para. 398.
[69] For the French version, see Exhibit 40005M-1984 at 173924.
[70] Exhibit 40005N-1985 at III.1.

> Rule 1 of the Code shall be interpreted to permit broadcast media to use film, video or radio tapes of sports or other popular events sponsored by Member Companies and for which production charges are borne by a manufacturer provided no time or other charges are paid directly or indirectly to the station or network and provide [sic] such films, video, or radio tapes do not infringe on Rules 8 and 9 of the Code.

[48] We are far from the regime that would be implemented by the Canadian Parliament in 1997 and that the Supreme Court of Canada would rule constitutionally valid in 2007. These issues are addressed further on.

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D. Internal newsletters

[49] During the relevant period, certain appellants, the Smokers Freedom Society ("**SFS**") and the CTMC published newsletters addressed to their employees, both active and retired. An overview follows.

[50] For a certain period of time, ITL published *The Leaflet / Le Feuillet*, a newsletter addressed to its employees and their families.[71] Generally, it contained a varied range of articles, for example, on employee retirement conditions and on the harmlessness of secondary smoke, etc. According to the issues, volumes and the years of editions filed in evidence, this newsletter was published commencing in 1964 and up until at least 1994. The judge concluded that this publication drew a favourable portrait of smoking and cultivated scientific controversy in that regard.[72]

[51] The SFS was initially directed by Mr. Michel Bédard, but the effective management of the group, in addition to its financing, appears to have derived in good part from the CTMC,[73] - thus the appellants. The SFS published the first issue of its newsletter *Calumet* during the winter of 1986–1987.[74] Other newsletters would follow. It presented a visual portrait of famous smokers (such as Winston Churchill, John Steinbeck and Simone de Beauvoir). It encouraged letters to the editor. Among other things, the newsletter disclosed that the ban of cigarettes in the workplace would have no impact on the quality of air and that according to a study, secondary smoke did not cause lung cancer. It argued for the accuracy of facts on tobacco and health. In the Autumn 1987 edition, an editorial recalled that the SFS "recognises and accepts that non-smokers are what they are" but that they took issue with those who, as affirmed by the author of the editorial, refused to allow smokers access to health services.[75] It also stated that, according to a Dutch study, keeping birds in cages at home was responsible for half of all lung cancers and that a kilogram of meat cooked on a barbecue contains the same number of carcinogens as 600 cigarettes.[76] Finally, the Spring 1989 edition referred to an epidemiologist named Siemiatycki (one of the expert witnesses cited by the respondents at trial), who concluded that bus drivers

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71 See Exhibit 2A; all the annual versions of Exhibit 105-AAAA-2m; Exhibit 126A; Exhibits 244G to 244M.
72 Judgment *a quo* at paras. 247 and 265.
73 See for example Exhibit 208 at 1; Exhibit 208.1 at 2; Exhibit 433H at 5; Exhibit 441 at 2, point 2.
74 Exhibits 215 to 215H.
75 Exhibit 215A at 1.
76 Exhibit 215A at 2.

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had 50% more chances of suffering lung cancer due to gas exhaust.[77] The publication of *Calumet* continued until 1989. Some copies of the newsletter are found under the English title *Today's Smoker* in 1993.[78]

[52] The CTMC published the *Revue du Tabac / The Tobacco Review*, from at least f1978 to 1980.[79] Then, in as of autumn 1988, the CTMC published the quarterly *Tabacum* "[a] liaison bulletin for the tobacco industry."[80] The first issue reported on the constitutional challenge to the *Tobacco Products Control Act*[81] and voices joining with those of the tobacco industry. The issue concerned the ban against tobacco sales to children under the age of 16. It provided an overview of the 1988 tobacco harvest. In short, the information disclosed was still varied in nature. In the summer of 1989, *Tabacum* published the "*Charter of Rights and Freedoms of Smokers*" formulated by the SFS. One reads therein that an adult smoker is entitled, *inter alia*, "to scientific honesty in the addressing of questions related to tobacco."[82] During the winter of 1990, it strenuously criticized the report of the Royal Society of Canada of August 31, 1989, sponsored by Health and Welfare Canada. The *Tobacco Revue* criticized the Royal Society for coming to the preliminary conclusion that tobacco was addictive and that the definition of dependence (or the definition of addiction therein) was vague, arbitrary and based on vacillating scientific foundations.[83]

[53] For a certain time, RJRM published the journal *Contact*, of which only one example of which appears to have been filed as evidence. That issue (1979) sets out RJRM's position: "We were unable to establish any scientific relationship of cause and effect between tobacco and certain diseases."[84]

2.3. Government Interventions (1988–1998)

A. Legislative framework

[54] On January 1, 1987, the *Act respecting the Protection of non-smokers in certain public places*[85] was adopted in Quebec. It prohibited smoking in various locations including certain zones in public bodies, public transportation (metro, ambulance, etc.) and certain other locations (judicial institutions, childcare centres and the waiting rooms of health professionals).

[55] In 1988, the Surgeon General published a report titled *The Health Consequences of*

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77 Exhibit 215E at 6.
78 Exhibit 215I.
79 Exhibits 951-197809-2m to 951-198012-2m.
80 Exhibit 975.1 at 1.
81 *Tobacco Products Control Act*, S.C. 1988, c. 20.
82 Exhibit 975.3 at 2.
83 Exhibit 975.6 at 52771.
84 Exhibit 959-197909 at 2.
85 *Act respecting the Protection of non-smokers in certain public places*, S.Q. 1986, c. 13, s. 38; R.S.Q., c. P-38.01, ss. 8–17, repealed by S.Q. 1998, c. 33, s. 76.

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Smoking: Nicotine Addiction.[86] According to the findings of this report, cigarettes and other forms of tobacco are addictive and nicotine is the component of tobacco which causes addiction. The pharmacological and behavioural processes that determine tobacco addiction are similar to those of heroin or cocaine. This was the 20th report of the Surgeon General on tobacco.

[56] In 1988, the *Tobacco Products Control Act*[87] was adopted, banning most types of tobacco advertising and imposing new warnings. The same year, the *Nonsmokers Health Act*[88] was adopted, banning smoking in certain types of public transportation including trains and planes. One year later, the *Ordre des pharmaciens du Québec* encouraged its members to cease selling cigarettes.[89]

[57] On August 31, 1989, the Royal Society of Canada published a report titled *Tobacco, Nicotine, and Addiction*[90] at the request of the Ministry of Health and Welfare of Canada, who had asked which term ("addiction", "dependence" or "habit formation") was appropriate to characterize the risk of addiction to nicotine and tobacco products. The Royal Society[91] concluded that smoking induced for the most part an "addiction" and that this term was preferable to the terms "dependence," "habituation" and "habit". The Society wrote in its conclusion:[92]

> Drug addiction is a strongly established pattern of behaviour characterized by (1) the repeated self-administration of a drug in amounts which reliably produce reinforcing psychoactive effects; and (2) great difficulty in achieving voluntary
>
> long-term cessation of such use, even when the user is strongly motivated to stop.
>
> [Emphasis added.]

B. Constitutional challenge

[58] Subparagraph 4(1) of the *Tobacco Products Control Act*[93] provides as follows: "No person shall advertise any tobacco product offered for sale in Canada." Several other provisions of that Act determine the scope of this general prohibition. appellants ITL and JTM (RJRM at the relevant time) challenged the constitutionality of the Act from two standpoints, i.e., that of the separation of federal / provincial legislative powers and that of the protection of freedom of expression. This challenge went as far as the Supreme Court of Canada, where the appellants were partially successful.[94] A majority of the judges of the Supreme Court came to the conclusion that the considerations related to the separation of legislative powers was no impediment to the adoption of this law by the Canadian Parliament. On the other hand, the Court deemed that the

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86 Exhibit 601-1988.
87 *Tobacco Products Control Act*, S.C. 1988, c. 20.
88 *Non-Smokers Health Act*, S.C. 1988, c. 21.
89 Exhibit 20065.6233; testimony of Prof. David Flaherty, May 22, 2013, at 226.
90 Exhibit 212.
91 The members of which had backgrounds in the following areas: pharmacology, clinical and experimental psychology, epidemiology, law and neuropsychology.
92 Exhibit 212 at 22-23.
93 *Tobacco Products Control Act*, S.C. 1988, c. 20.
94 *RJR – MacDonald Inc. v. Canada (Attorney General),* [1995] 3 S.C.R. 199.

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impugned provisions (concerning advertising and promotion of tobacco products) infringed the freedom of expression guaranteed by the *Canadian Charter of Rights and Freedoms*[95] (the "***Canadian Charter***"). Furthermore, for a majority of the judges of the Court, the same provisions did not constitute "reasonable ... limits" as contemplated by section 1 of the *Canadian Charter* and were therefore invalid.

[59] In the wake of this decision, the Canadian Parliament adopted a new law, the *Tobacco Act*[96] of 1997, which was less restrictive than the *Tobacco Products Control Act*,[97] but nevertheless contained numerous prohibitions and requirements in relation to promotion and advertising (*inter alia* "lifestyle" or "attractive for young people") and tobacco product sponsorships, as well warnings on packages. Chief Justice McLachlin described this new broadly drafted scheme at paragraphs 18 to 31 of *Canada (Attorney General) v. JTI-Macdonald Corp*.[98] Once again challenged on constitutional grounds, but this time by the three appellants currently before this Court, the law was upheld by a unanimous Supreme Court: sections 18, 19, 20, 22, 24 and 25 of the Act, and of the *Tobacco Products Information Regulations*,[99] adopted pursuant to the enabling statute, constituted an infringement of freedom of expression, but the infringement was deemed to be a "reasonable ... limit" as contemplated by section 1 of the *Canadian Charter*.

[60] As we have already seen, the claims by the Blais and Létourneau Classes were filed several years prior to this 2007 Judgment and were authorized by the Superior Court in 2005.

2.4. Positions of the Representatives

[61] A few remarks are in order regarding the particular situation of each of the representatives of the two groups.

A. Jean-Yves Blais

[62] In 1997, at the age of 53, Mr. Jean-Yves Blais was diagnosed with lung cancer and underwent a lower right lobectomy. He was monitored thereafter by medical personnel. His total smoking consumption was assessed to be in the order of 100 packs per year by Dr. Desjardins during a 2006 consultation. At that time, his daily smoking was estimated to be 50 cigarettes, and Dr. Desjardins emphasized his heavy addiction to cigarettes. He observed in 2006 a decline in Mr. Blais's pulmonary function and a progression of COPD.[100]

[63] Dr. Desjardins concluded that Mr. Blais's smoking was the most probable cause of his lung cancer and his advanced COPD.[101] The trial judge retained the finding of Dr. Desjardins and

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95 *Canadian Charter of Rights and Freedoms,* part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11.
96 *Tobacco Act*, S.C. 1997, c. 13.
97 *Tobacco Products Control Act*, S.C. 1988, c. 20.
98 *Canada (Attorney General) v. JTI-Macdonald Corp*, 2007 SCC 30.
99 *Tobacco Products Information Regulations*, SOR/2000-272.
100 Exhibit 1382 at 77 *et seq*.
101 Exhibit 1382 at 88.

ruled that Mr. Blais's lung cancer was caused by his smoking.[102]

B. Cécilia Létourneau

[64] The judgment *a quo* mentions only scant details on the particular case of Ms. Cécilia Létourneau, which can probably be explained by the file as constituted, but particularly by the fact that the judge did not make an order for compensatory damages in this file and did not assess the situation of Ms. Létourneau in the same manner as he did for Mr. Blais.

[65] According to the allegations contained in the amended originating application of February 24, 2014, Ms. Létourneau started smoking cigarettes at the age of 19, in 1964, without knowing that nicotine was addictive. Over the years, she attempted to quit smoking on numerous occasions without success. The last attempt mentioned in the claim allegedly failed in January 1998, several months prior to service of the motion for authorization to institute a class action.

3. PROCEDURAL HISTORY

3.1. Superior Court

A. Motions for authorization to institute a class action

[66] On September 30, 1998,[103] Ms. Létourneau served a motion *for authorization to institute* a class action against the appellants[104] on behalf of [TRANSLATION] "all persons residing in Quebec who are or have been dependent on the nicotine contained in cigarettes manufactured by the [defendants] and the legal heirs of the deceased persons comprised within the class."

[67] On November 20, 1998, the *Centre québécois sur le tabac et la santé* and Mr. Blais served a motion *for authorization to institute* a class action against the appellants on behalf of:[105]

> [TRANSLATION]
>
> all persons residing in Quebec who are or have been victims of cancer of the lungs, larynx or throat or who suffer from emphysema, after having directly inhaled cigarette smoke for a prolonged period of time in Quebec, and the successors and heirs of deceased persons who otherwise would have been part of the class.

[68] On November 3, 2000, the Court of Appeal ordered the joinder of the two claims for the purpose of proof and hearing at the authorization stage.[106]

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102 Judgment *a quo* at para. 964.
103 Judgment *a quo* at para. 1, note 1.
104 Operating at the time under the following names: Imperial Tobacco Ltd., RJRM and RBH.
105 Judgment *a quo* at para. 1, note 1.
106 *Conseil québécois sur le tabac et la santé c. J.T.I.-MacDonald Corp.*, 2000 CanLII 28985, rev'g

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B. Authorization and filing of claim

[69] On February 21, 2005, the Superior Court (the Honourable Justice Pierre Jasmin presiding) authorized the class actions, defined the classes in each matter[107] and identified the questions of fact and law to be collectively addressed.[108]

[70] On September 30, 2005, the respondents filed originating applications in the Blais and Létourneau matters. These applications were amended several times.[109]

C. Hearing and composition of the evidence

[71] The hearing of the matter took place on March 12, 2012, and December 11, 2014, during 241 hearing days before the Honourable Mr. Justice Brian Riordan. At trial, the parties produced more than 20,000 exhibits and more than 70 witnesses, including more than 20 experts. The appeal record contains approximately 265,000 pages of evidence.

[72] During the hearing, the trial judge rendered numerous interlocutory judgments, including several that were appealed. For the purpose of facilitating comprehension of the process of the trial hearing, it is appropriate to address three interlocutory judgments of particular importance.

i. <u>May 2, 2012, judgment concerning the authenticity of certain exhibits</u>

[73] On May 12, 2012, the trial judge ruled on the respondents' application seeking the filing of certain documents into evidence and the imposition of sanctions on ITL due to its refusal to recognize the genuineness of exhibits pursuant to article 403 f.C.C.P.[110] By this application the respondents sought (i) a declaration that ITL's notices of denial were abusive, (ii) the striking of these notices, (iii) authorization to file the relevant exhibits into evidence and (iv) a statement that this principle could be used again at a later time.

[74] The judge allowed this application in part, declaring ITL's notices of denial an abuse of procedure pursuant to article 54.1 f.C.C.P., ordered that they be struck and authorized the filing into the court record of the exhibits concerned by such notices.

[75] During the hearing, the judge accepted the filing of several other exhibits pursuant to the principle established by the May 2, 2012, judgment. These exhibits are marked with the suffix "2m." This decision deserves mention because the appellants call into question the factual conclusions drawn from certain exhibits admitted pursuant to the principle established by this decision.

Conseil québécois sur le tabac et la santé c. Blais (2000), AZ-50900627 (Sup. Ct.).

107 The various definitions of the two groups over the course of the proceedings are reproduced as a schedule to this judgment. See *infra*, Schedule III.

108 *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, J.E. 2005-589, 2005 CanLII 4070 (Sup. Ct.).

109 The most recent amended originating applications are dated March 28, 2014, (Blais file) and February 24, 2014, (Létourneau file).

110 *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCSC 1870.

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ii. July 3, 2013, judgment on the amendment of the Class definitions

[76] On July 3, 2013, following the plaintiffs' evidence, the trial judge authorized certain amendments to the definitions of the Blais and Létourneau Classes.[111] In the definition of the Blais Class, the judge specified the exact name of the cancers previously qualified as "throat cancers," adopted the measure of pack years as a unit of calculation of smoking habits of members and added a closing date for membership in the class. In the course of defining the Létourneau Class, the judge clarified the notion of addiction and added a closing date for membership in the class.

iii. May 13, 2014, judgment on access to medical records

[77] On May 13, 2014,[112] in a judgment written by Justice Bich, the Court of Appeal reversed in part a decision of the trial judge.[113] The Court allowed, *inter alia*, the examination by ITL of the successors of Mr. Blais and the examination of Ms. Létourneau, while authorizing the production of medical records of the two representatives, but not those of other members of the class that ITL was authorized to cross-examine.

D. Judgment a quo

[78] In his May 27, 2015, judgment, subsequently corrected on June 9, 2015, the trial judge allowed in part the originating applications of the respondents, amended the class definitions and ordered the appellants to pay eight billion dollars in moral and punitive damages. He also ordered them to pay initial deposits representing a portion of the compensatory damages payable in the Blais file and the full amount of punitive damages in the two matters, for an aggregate sum of $1,131,090,000, within 60 days of the judgment. He ordered the provisional execution of this initial payment.

3.2. Court of Appeal

[79] On June 26, 2015, each of the appellants filed an appeal of the judgment *a quo*, alleging that it contained numerous errors of law and fact that justified the intervention of the Court. Leaving aside the management measures ordered by Justice Savard, the appeal proceedings can be summarized in the following manner.

A. Application to quash the order for provisional execution

[80] On July 23, 2015,[114] a panel of the Court of Appeal allowed the motions of the appellants

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111 *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2013 QCSC 4904. The various definitions of the two groups over the course of the proceedings are reproduced as a schedule to this judgment. See *infra*, Schedule III.

112 *Imperial Tobacco Canada Ltd. c. Létourneau*, 2014 QCSC 944.

113 *Conseil québécois sur le tabac et la santé c. JTI-Macdonald Corp.*, 2013 QCSC 4863.

114 *Imperial Tobacco Canada Ltd. v. Conseil québécois sur le tabac et la santé*, 2015 QCSC 1224.

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seeking to stay the order for partial provisional execution of the judgment *a quo*, ordering them to deposit sums within 60 days of the judgment. The Court specified that there was no extraordinary urgency or sufficient reason to justify the ordering of provisional execution pursuant to article 547 f.C.C.P. The Court dismissed the applications of ITL and RBH for the issuance of an order to place under seal certain documents filed in support of their application.

B. Application for an order to provide security

[81] On October 27, 2015,[115] Justice Schrager allowed in part the motions of the respondents seeking an order against the appellants ITL and RBH[116] to provide security to guarantee the payment of costs of the appeal and the amount of an order in the event that the judgment *a quo* were to be upheld. According to the judge, the respondents had demonstrated the existence of a "special reason" as contemplated by article 497 f.C.C.P. Without the order for security, their rights recognized by the judgment would be at risk: "Both appellants have structured their affairs in a manner that drastically, if not completely, reduces their exposure to satisfy any substantial condemnation that might be made against them in this litigation."[117]

[82] Justice Schrager determined the amount of the security based on the sum of the initial security deposit ordered by the trial judge ($1,131,090,000). He divided the sum between ITL and RBH according to their share of liability, i.e., 67% for ITL ($758,000,000) and 20% for RBH ($226,000,000). In order to protect their right of appeal, he ordered them to deposit the sums by successive instalments based on a calendar to be staggered over the period from December 2015 to June 2017.

C. Motion to stay the trial proceedings

[83] After quashing the order for provisional execution of the order against the appellants, the trial judge wrote to the parties to ask them when and in what manner the respondents intended on complying with paragraph 1247 of the judgment *a quo*, which ordered them to file with the Court within 60 days of the judgment a detailed proposal with respect to distribution of the amounts of compensatory and punitive damages. At the same time, the judge also initiated correspondence with the parties concerning holding a case management conference to rule upon (i) the notice required by article 1043 f.C.C.P., (ii) the powers of the judge with respect to issues not governed by the appeal and (iii) the issue of abuse of procedure.

[84] In this context, the appellants ITL and RBH filed a motion to stay proceedings wherein they alleged that during an appeal, the judge cannot take any measures or render any decision whatsoever with respect to the execution of the judgment, abuse of procedure or the notice required by 1043 f.C.C.P.

[85] On November 13, 2015,[118] a panel of the Court of Appeal dismissed the motion of ITL and RBH on the ground that the issues raised were moot but reiterated [TRANSLATION] "the

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115 *Imperial Tobacco Canada Ltd. v. Conseil québécois sur le tabac et la santé*, 2015 QCSC 1737.

116 The motion against JTM was withdrawn at the opening of the hearing before Schrager J.A.

117 *Imperial Tobacco Canada Ltd. v. Conseil québécois sur le tabac et la santé*, 2015 QCSC 1737 at para. 44.

118 *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1882.

unequivocal wording of the first paragraph of article 497" f.C.C.P., which suspends the provisional execution of the trial judgment.

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D. ITL's motion for particulars

[86] At the same time, ITL filed a "motion ... for directions on the schedule to furnish security," pursuant to which it sought the amendment of the schedule established by Justice Schrager on October 27, 2015, for payment of the security deposit. Notably, ITL sought to decrease the amount of the two initial instalments of the security deposit on the ground that the judge erred by failing to consider a loan of $100,000,000 contracted by the company and payable to a third party.

[87] On December 9, 2015,[119] Justice Schrager dismissed the motion on the ground that it was tantamount to a disguised appeal. He found that "the factual premise of Petitioner's motion is unfounded,"[120] and that the order for payment of the security deposit required no correction. Even supposing that the order was tainted by an error, he added, the doctrine of *functus officio* estopped the motion of ITL.

E. Hearing of the appeals

[88] On September 8, 2016, two months prior to the appeal hearing, the assistant coordinator of the Court wrote to the appellants by email on behalf of the Court in order to specify the terms of the hearing and to ask them to precisely identify the exhibits they were challenging and the arguments in support of their claims, adding that the Court would not consider their arguments in the absence of such particulars due to the hundreds of exhibits related to their arguments.[121] On October 3, 2016, Mr. François Grondin, on behalf of the appellants, responded, *inter alia*, that the appellants did not wish to challenge any exhibits other than those specifically referred to in their respective arguments.[122]

[89] The hearing before the Court of Appeal was held from November 21 to 25 and on November 30, 2016. During the hearing, the Court asked the parties to submit an example of the claim form to be filled by a member in the event that individual recovery of the claims were to be substituted for collective recovery by the Court of Appeal, which they did on November 30, 2016. Upon the conclusion of the last day of the hearing, the Court reserved judgment and granted the parties permission to submit observations in writing within 15 days, which they did on December 15, 2016.

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119 *Imperial Tobacco Canada Ltd. v. Conseil québécois sur le tabac et la santé*, 2015 QCSC 2056.

120 *Imperial Tobacco Canada Ltd. v. Conseil québécois sur le tabac et la santé*, 2015 QCSC 2056 at para. 27.

121 Letter from Ms. Julie Devroede to the parties, September 8, 2016.

122 Response of Mr. François Grondin to Mr. Bertrand Gervais, October 3, 2016, (consulted in the file of the Court of Appeal).

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II. JUDGMENT *A QUO*

[90] This summary of the judgment *a quo* has the objective of presenting a general overview of the reasons and findings of the trial judge. To avoid repetition, the contextual components mentioned previously, concerning class actions, the general chronology and procedural history related to the judgment *a quo*, are for the most part excluded.

[91] Did the appellants manufacture, market and sell a product[123] that was dangerous and harmful to the health of consumers? The judge responded in the affirmative.[124] He defined as "dangerous" a product causing diseases to members of the Blais Class (lung cancer, cancer (squamous cell carcinoma) of the throat, i.e., of the larynx, the oropharynx or the hypopharynx, or emphysema), or causing the addiction of members of the Létourneau Class.

[92] In the event of a safety defect in a thing, however, article 1473 C.C.Q. provides two grounds of defence for the manufacturer, distributor or supplier:[125] (i) the victim knew or could have known of the defect in the thing or could have foreseen the injury; (ii) this defect could not have been known at the time the thing was manufactured, distributed or supplied. The evidence discloses that the appellants knew the risks and dangers associated with the use of their products throughout the entire period covered by the two claims. Consequently, the appellants cannot rely on the latter ground of defence.[126] On the first ground, the judge concluded that the public knew or could have known the risks and dangers of suffering a disease caused by tobacco as of January 1, 1980, i.e., the date of public knowledge in the Blais file.[127] He came to this conclusion by analyzing the impact of the warnings on cigarette packages with respect to the public. The first appeared in 1972, which, furthermore, was not sufficiently explicit with respect to the hazards of tobacco use. It was only towards the end of the 1970s that the warnings became sufficiently clear. In relation to tobacco addiction, the first warnings appeared more precisely on September 12, 1994. The date of public knowledge in the Létourneau file should nevertheless be set as being March 1, 1996, in order to allow the warnings the necessary time to have their full impact on public awareness of addiction, which corresponds to a period of approximately 18 months.[128]

[93] In summary, as of the dates of notoriety set respectively in the Blais and Létourneau files, the responsibility of the appellants in relation to the safety defect of their products is no longer incurred. They may, however, be found liable in regard to other obligations with which they were not compliant for the entire period covered by the two matters.

[94] Firstly, the appellants knowingly marketed an addictive product, a fault likely to

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123 For the definition of "product", see the judgment *a quo* at 15, para. 8.
124 Judgment *a quo* at paras. 41–51.
125 See art. 1468 *et seq. C.C.Q.*
126 Judgment *a quo* at paras. 55–73.
127 Judgment *a quo* at paras. 74–133.
128 Judgment *a quo* at paras. 122–142.

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trigger their civil liability both pursuant to the *Charter* and the *C.P.A.*[129] On the other hand, it was not demonstrated that they chose to use tobacco containing a higher level of nicotine for the purpose of perpetuating this addiction.

[95] The appellants failed to sufficiently inform the public of the risks and dangers of their products, and this omission constitutes a failure to fulfil the general duty not to cause injury to another under article 1457 C.C.Q.[130] In other words, the duty to inform the public does not cease by virtue of the fact that, in accordance with the criterion set forth at article 1473 C.C.Q., the public knew (or could have known) the risks and dangers of cigarette smoking (such knowledge could nevertheless trigger the contributory negligence of the victim). Several factual elements demonstrate that the appellants failed in this duty. They made public statements that they knew to be false or incomplete in relation to the risks and dangers of tobacco use, they demonstrated negligence by deliberately exposing consumers to the dangers of their products during the 22 years when no warning was affixed to cigarette packages. The tobacco industry adhered to a policy of silence on these issues; and finally, by choosing to not inform the public health authorities or the public directly of what they knew, the appellants prioritized their profits to the detriment of the health of users of their products.

[96] The judge then dealt with the common question dealing with the marketing strategies of the appellants. Within the specific context of this question, he was of the view that it could not necessarily be concluded that there was a fault on their part due to the fact that such strategies did not aim to inform the public of issues related to health and tobacco (in the original version of the judgment *a quo*: “were not informative about smoking and health questions”).[131]

[97] On the other hand, the appellants conspired in order to maintain a common front, the objective of which was to prevent users of their products from becoming informed of the dangers inherent to smoking.[132] By engaging in this collusion for several decades in light of the Declaration of Principle and the activities of the Ad Hoc Committee and thereafter the CTMC, the appellants jointly participated in a wrongful act which caused injury, thus triggering their solidary (joint and several) liability pursuant to article 1480 C.C.Q.

[98] Further to the wrongful conduct of the appellants, punitive damages were also justified pursuant to the *Charter* and the *C.P.A.*[133] Firstly, pursuant to sections 1, 4 and 49 of the *Charter*, they intentionally violated the right to life, security and integrity of the members of the Blais and Létourneau Classes. Furthermore, the appellants infringed sections 219 and 228 *C.P.A.* by making, as contemplated by the Act, “false or misleading representations” with respect to the risks and dangers inherent to their products and failing to mention “important facts.” After analyzing *Richard v. Time Inc.*,[134] the judge

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[129] Judgment *a quo* at paras. 143–201.
[130] Judgment *a quo* at paras. 202–378.
[131] Judgment *a quo* at paras. 379–438.
[132] Judgment *a quo* at paras. 439–475.
[133] Judgment *a quo* at paras. 476–544.
[134] *Richard v. Time Inc.*, 2012 SCC 8.

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concluded that the irrebuttable presumption of injury arising out of section 272 *C.P.A.* could apply to any and all failures to fulfil the duties imposed by law, including those of an extracontractual nature.

[99] After having responded to three questions of analysis for each of the classes, the judge concluded that the causal link was proved between the faults committed by the appellants and the diseases or addiction suffered by the members of the Blais and Létourneau Classes, respectively.[135] Within the framework of the class actions undertaken, the evidence of this link is facilitated by section 15 T.R.D.A. This provision allows for the establishment of the causal link by relying solely on the epidemiological or statistical studies of medical and conduct causation. The proof of existence of this link in law is not as stringent as in the field of scientific research. It is sufficient to demonstrate it in accordance with the legal standard of proof on a balance of probabilities as set out in article 2804 C.C.Q.

[100] On the other hand, the members of the Blais Class who started smoking after 1976 and continued to do so after the date of public knowledge of January 1, 1980, must bear a share of responsibility with respect to damages incurred, in accordance with the principles of contributory negligence of the victim (art. 1478 C.C.Q.),. This share is set at 20%.[136] This is also true for members of the Létourneau Class who started smoking after 1992 and who pursued this activity after the March 1, 1996, date of public knowledge. The judge nevertheless concluded that these principles were inapplicable to punitive damages as they are not awarded based on the conduct of the victim.

[101] The trial judge then examined the issue of prescription.[137] Further to the application of the T.R.D.A., no claim for moral damages of the members of the Blais Class is prescribed, contrary to those related to punitive damages, which have been prescribed since November 20, 1995. In the event that this Act was declared unconstitutional,[138] any claim would be prescribed as of that date (art. 2925 *C.C.Q*), with respect to both moral and punitive damages. In the Létourneau matter, the motion for authorization to institute the class action was filed on September 30, 1998. Thus, all the causes of action of the members of this class originated after September 30, 1995. As the date of public knowledge in this matter was set as being March 1, 1996, no claim is prescribed under either the general scheme of the C.C.Q. or that of the T.R.D.A.

[102] On the issue of quantum, in the Blais matter, the appellants were ordered solidarily to pay $6,858,864,000 in moral damages, i.e., $15,500,000,000 with interest and the additional indemnity (arts. 1480 and 1526 C.C.Q. and ss. 22 and 23 T.R.D.A.).[139] An analysis of activities of the appellant ITL during the period covered by the claims, however, demonstrates that its wrongful conduct exceeds that of the other appellants. In

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135 Judgment *a quo* at paras. 647–817.
136 Judgment *a quo* at paras. 818–836.
137 Judgment *a quo* at paras. 837–910.
138 While waiting for the outcome of the appeal of the Declaratory Judgment of March 5, 2014, which was dismissed. For the subsequent developments, see *Imperial Tobacco Canada Ltd v. Québec (Procureure générale)*, 2015 QCCA 1554, leave to appeal to SCC refused, 36741 (5 May 2016).
139 Judgment *a quo* at paras. 911–1016.

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fact, the evidence discloses that ITL was the leader within the industry on several fronts, particularly where it concerns plans to conceal the truth and mislead the public. Taking into account the bad faith of ITL and the market shares of the appellants, their liability is apportioned as follows: 67% for ITL, 20% for RBH and 13% for JTM. In the Létourneau file, the judge refused to award such damages because the evidence did not establish in a sufficiently precise manner the aggregate sum of claims for all the members.[140]

[103] The judge then considered the principles applicable to the award of punitive damages (art. 1621 C.C.Q. and s. 272 C.P.A.).[141] Insofar as the claims under the *Charter* and the *C.P.A.* arise out of the same wrongful actions and attitudes of the appellants, they cannot be penalized twice. Consequently, the analysis is not undertaken separately for these statutes. These damages cannot be quantified on the basis of the market shares of the appellants as they must be assessed "in the light of all the appropriate circumstances" (art. 1621, para. 2 C.C.Q). They must be assessed on the basis of the annual pre-tax profits of each of them. Considering the particularly egregious conduct of ITL during the period covered by the claims, in addition to that of JTM to a lesser degree, it is appropriate to increase the sums for which these appellants are held liable above and beyond the base amount. Thus, the punitive damages set at 1.31 billion dollars are awarded in the following manner: 725 million for ITL, 460 million for RBH and 125 million for JTM. Since the gravity of the faults is more significant in the Blais file, the judge attributed 90% of the total of the sum to his Class and 10% to the Létourneau Class. However, due to the size of the moral damages awarded in the Blais file, the order for punitive damages cannot be as substantial. Further to this consideration, the judge ordered each of the appellants to pay a symbolic sum of $30,000, representing one dollar for the death of each Canadian caused by the tobacco industry each year. In the Létourneau file, the punitive damages were in the amount of $72,500,000 for ITL, $46,000,000 for RBH and $12,500,000 for JTM. Given that this Class includes more than one million persons, this sum represents only about $130 per member. Due to the fact that the judge did not award moral damages in this file, it is not appropriate to proceed with the distribution of a sum to each of the members on the ground that to do so would be impractical or too onerous.

[104] The judge ordered the provisional execution notwithstanding appeal of an initial deposit in the amount of $1,131,090,000,00. This sum includes a portion of moral damages in the Blais file and all of the punitive damages awarded in the two matters.[142]

[105] The judge also dismissed the applications for individual claims in the Blais and Létourneau files, which were discontinued by the respondents.[143]

[106] Finally, the judge ruled on objections taken under reserve and argued during the pleadings regarding the admissibility of exhibits bearing the entry "R" and orders of

[140] Judgment *a quo* at paras. 911–1016.
[141] Judgment *a quo* at paras. 1017–1112.
[142] Judgment *a quo* at paras. 1013–1123 and 1196–1204.
[143] Judgment *a quo* at paras. 1193–1195.

confidentiality with respect to certain documents.[144]

III. GROUNDS OF APPEAL

[107] The appellants have alleged a series of errors in support of their grounds of appeal. Some of their grounds overlap. Furthermore, certain arguments are raised in a dispersed manner within several grounds of appeal. This is notably the case with respect to criticisms concerning the general principles applicable to class actions.

[108] The respondents have replied to these arguments with their own classification of the grounds of appeal and have asked, within the framework of a cross-appeal, for an increase in the quantum of punitive damages in the event the order for compensatory damages is revised downward by the Court of Appeal.

[109] Moreover, prior to and during the hearing, the Court asked the parties to plead on various elements of the appeal including the contractual or extracontractual basis of the class actions, the exhibits, where their admissibility into evidence was called into question, and the terms of any potential individual recovery.

[110] It is thus appropriate to reorganize all these grounds of appeal, the responses given by the respondents, the ground of the cross-appeal and the other considerations that the Court has been called upon to decide based on the broadest possible conceptual schema. The Court will thus deal with the grounds of appeal in accordance with the following configuration:

1. Liability of the appellants under the general law and section 53 *C.P.A.*;
2. *Consumer Protection Act*;
3. *Charter of human rights and freedoms*;
4. Prescription;
5. Award and quantum of punitive damages;
6. Interest and additional indemnity;
7. Appropriate mode of recovery;
8. Interlocutory judgments and evidence;
9. Transfer of MTI obligations;
10. Destruction of documents by ITL.

[111] Due to their scope, the arguments of the parties on each of these subjects will be discussed directly within the analysis.

[144] Judgment *a quo* at paras. 1024–1192.

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IV. ANALYSIS

1. LIABILITY OF THE APPELANTS UNDER THE GENERAL LAW AND SECTION 53 C.P.A.

1.1. Preliminary remarks

A. Standard of review

[112] It is with deference − if not reluctance[145] − that appellate courts will reconsider the findings of fact of trial judges, for all the reasons we know and that have been repeated so often that it is no longer necessary to repeat them.[146] The intervention of an appellate court in this respect hinges on the demonstration of a palpable and overriding error, a strict and demanding standard (which, it bears repeating, [TRANSLATION] "is not in the nature of a needle in a haystack, but of a beam in the eye," to borrow an image from *J.G. c. Nadeau*.)[147]

[113] Nevertheless, the fact is that it is hard to ignore the following passage from *Berthiaume v. Réno-dépôt inc.*, on the appeal from the judgment of Superior Court,[148] following a long trial concerning urea-formaldehyde foam insulation(UFFI): [149]

> [TRANSLATION]
>
> The duty of restraint regarding the general appreciation of the evidence is of critical importance with respect to complex and lengthy trials. Even with exhaustive work, the trial judge cannot analyze every detail of the evidence, accurately explain every aspect of that analysis and provide justification for his or her overall conclusions regarding the quality, weight and effects of the evidence [reference omitted].
>
> …
>
> If there has ever been a long trial in Canadian judicial history, it was this one. However, despite its length and the variety of decisions that Hurtubise J. had to make, his work in assessing the evidence was so impressive that the appellants decided not to directly challenge his basic findings regarding the value of the evidence of the harmful nature of urea formaldehyde foam, its detrimental effects on the health of the occupants

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145 Term used by the Supreme Court, per Lamer, C.J. in *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para. 78.

146 Those reasons were examined in detail in *Housen v. Nicholaisen*, 2002 SCC 33, and in several decisions of the Supreme Court and of this Court. For a recent example, see *Martel-Poliquin v. R.*, 2018 QCCA 1931 at para. 30.

147 2016 QCCA 167 at para. 77.

148 See *Berthiaume c. Val Royal Lasalle ltée*, J.E. 92-71, AZ-92021018 (published in part in [1992] R.J.Q. 76 (S.C.)).

149 *Berthiaume c. Réno-dépôt inc.*, [1995] R.J.Q. 2796 at 2807 and 2808 (C.A.).

of the houses and the physical deterioration of those houses.

[114] These comments, which can be transposed in their entirety to this case, will form the basis for the following consideration of the trial judge's findings of fact.

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B. Main findings of fact

[115] It is not possible to set out the details of each of the trial judge's findings, which run at over 200 pages[150] and are based on a careful analysis of over half a century of abundant and complex evidence that importantly, was contradictory, and that the parties fought over on an imposing factual battleground. Furthermore, it is not necessary, given that many of those findings are not, or not really, challenged on appeal, while other findings − it can be stated immediately − are not vitiated by any overriding error.

[116] The Court will therefore confine itself to the essentials and, specifically, to that which will establish the parameters of one or more liability regimes potentially relevant to the case. As required, in determining whether the parties have established the conditions allowing for a finding of liability or, on the contrary, exoneration, the trial judge's factual findings and the evidence itself will be examined more closely.

[117] However, before turning to the facts of the case, it may be worthwhile to review the underlying thesis of the respondents' class actions, which forms the framework of the proceedings:

> (1) Tobacco products, and specifically cigarettes, are harmful, and medically speaking, their consumption causes various diseases (including lung and throat cancer[151] and emphysema) as well as a strong addiction making quitting impossible or difficult;
>
> (2) The appellants, all manufacturers of cigarettes and other tobacco products, have been fully aware of the characteristics of this substance since the 1950s;
>
> (3) From 1950 to 1998, the appellants, individually and collectively, first failed to disclose the dangers of tobacco and cigarettes, then instituted and pursued a common policy of denying and trivializing the risks associated with those products, created and maintained an artificial scientific controversy on the subject, and, through their various marketing and communication strategies, crafted a misleading counter-discourse;

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[150] And 1,000 paragraphs, excluding everything relating to the distribution process, objections to the evidence, the confidentiality of certain information, individual claims and provisional execution.

[151] The term "throat cancer" is used here in the interests of brevity, but specifically, it means the squamous cell carcinomas of the larynx, oropharynx and hypopharynx covered by the Blais action *(Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2013 QCCS 4904 at paras. 9−16 and 83).

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> (4) Marketing a dangerous product with harmful effects that substantially exceed the benefits (benefits that are practically, if not totally, non-existent in this case), marketing that product without disclosing the risks associated with its consumption, systematically attempting to deny or minimize those risks, and deceptively misleading the user all amount to wrongful conduct of a nature resulting in the appellants' liability, as manufacturers;
>
> (5) As a result of these faults, the appellants are liable for the harm caused to both classes;[152]
>
> (6) In addition, there are grounds for awarding punitive damages.

[118] It should be noted that the first three statements made by the respondents coincide with the provisions of various statutes or with various judicial statements made in the case law prior to the judgment of first instance.

[119] Section 3 of the *Tobacco Products Control Act*,[153] assented to in June 1988, and the main provisions of which were declared unconstitutional in 1995 on the grounds of unjustified violation of the right to freedom of expression,[154] provided as follows:

3. The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular,	**3.** La présente loi a pour objet de s'attaquer, sur le plan législatif, à un problème qui, dans le domaine de la santé publique, est grave, urgent et d'envergure nationale et, plus particulièrement :
(a) to protect the health of Canadians in the light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;	*a)* de protéger la santé des Canadiennes et des Canadiens compte tenu des preuves établissant de façon indiscutable un lien entre l'usage du tabac et de nombreuses maladies débilitantes ou mortelles;
(b) to protect young persons and others, to the extent that is reasonable in a free and democratic society, from inducements to use tobacco products and consequent dependence on them; and	*b)* de préserver notamment les jeunes, autant que faire se peut dans une société libre et démocratique, des incitations à la consommation du tabac et du tabagisme qui peut en résulter;
(c) to enhance public awareness of	*c)* de mieux sensibiliser les

[152] The Respondents made other allegations against the appellants, but they were rejected by the trial judge.

[153] *Tobacco Products Control Act*, S.C. 1988, c. 20.

[154] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199. See *supra* at para [58].

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the hazards of tobacco use by ensuring the effective communication of pertinent information to consumers of tobacco products.	Canadiennes et les Canadiens aux méfaits du tabac par la diffusion efficace de l'information utile aux consommateurs de celui-ci.

[Emphasis added.]

[120] Originally, section 4 of the *Tobacco Act* of 1997,[155] which replaced the 1988 statute, repeated the same theme and formulated the legislator's objective in equally urgent terms:

4. The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular,	**4.** La présente loi a pour objet de s'attaquer, sur le plan législatif, à un problème qui, dans le domaine de la santé publique, est grave et d'envergure nationale et, plus particulièrement :
(a) to protect the health of Canadians in the light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;	*a)* de protéger la santé des Canadiennes et des Canadiens compte tenu des preuves établissant, de façon indiscutable, un lien entre l'usage du tabac et de nombreuses maladies débilitantes ou mortelles;
(b) to protect young persons and others from inducements to use tobacco products and the consequent dependence on them;	*b)* de préserver notamment les jeunes des incitations à la consommation du tabac et du tabagisme qui peut en résulter;
(c) to protect the health of young persons by restricting access to tobacco products; and	*c)* de protéger la santé des jeunes par la limitation de l'accès au tabac;
(d) to enhance public awareness of the health hazards of using tobacco products.	*d)* de mieux sensibiliser la population aux dangers que l'usage du tabac présente pour la santé.

[Emphasis added.]

[121] In the Supreme Court of Canada judgment rendered in 1995 concerning the 1988 legislation, La Forest J.,[156] who, on the basis of the evidence, held that tobacco was an

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[155] *Tobacco Act*, S.C. 1997, c. 13.

[156] Dissenting, but not on this specific point.

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inherently dangerous[157] and addictive[158] product, commented as follows[159]:

> 30 ... A copious body of evidence was introduced at trial demonstrating convincingly, and this was not disputed by the appellants, that tobacco consumption is widespread in Canadian society and that it poses serious risks to the health of a great number of Canadians. …
>
> 31 Apart from shedding light upon the government's intent in introducing this legislation, this speech also gives some indication of the nature and scope of the societal problem posed by tobacco consumption. Statistics show that approximately 6.7 million Canadians, or 28 percent of Canadians over the age of 15, consume tobacco products; see expert report prepared for Health and Welfare Canada by Dr. Roberta G. Ferrence, *Trends in Tobacco Consumption in Canada, 1900-1987* (1989). The harm tobacco consumption causes each year to individual Canadians, and to the community as a whole, is tragic. Indeed, it has been estimated that smoking causes the premature death of over 30,000 Canadians annually; see Neil E. Collinshaw, Walter Tostowaryk, Donald T. Wigle, "Mortality Attributable to Tobacco Use in Canada" (1988), 79 *Can. J. Pub. Health* 166; expert report prepared for Health and Welfare Canada by Dr. Donald T. Wigle, *Illness and Death in Canada by Smoking: An Epidemiological Perspective* (1989). Overwhelming evidence was introduced at trial that tobacco use is a principal cause of deadly cancers, heart disease and lung disease. In our day and age this conclusion has become almost a truism. Nonetheless, it is instructive to review a small sampling of some of the vast body of medical evidence adduced at trial attesting to the devastating health consequences that arise from tobacco consumption. ...
>
> 32 It appears, then, that the detrimental health effects of tobacco consumption are both dramatic and substantial. Put bluntly, tobacco kills. ...
>
> 34 ... Many scientists agree that the nicotine found in tobacco is a powerfully addictive drug. For example, the United States Surgeon General has concluded that "[c]igarettes and other forms of tobacco are addicting" and that "the processes that determine tobacco addiction are similar to those that determine addiction to other drugs, including illegal drugs"; see The *Health Consequences of Smoking — Nicotine Addiction — A report of the Surgeon General* (1988).
>
> [Emphasis added.]

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[157] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, specifically at para. 41.

[158] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 at para. 83.

[159] Later on in his decision, La Forest J. (at para. 66) made several findings pertaining to addiction caused by tobacco products, which he described as “a unique, and somewhat perplexing, phenomenon” and compared to “dangerous drugs” and “poisons” (para. 43).

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[122] In 2007, in the judgment dismissing the constitutional challenge of the 1997 *Tobacco Act*, the Supreme Court, this time per McLachlin C.J., added to those comments in light of new evidence:[160]

> 9 Parliament was assisted in its efforts to craft and justify appropriately tailored controls on tobacco advertising and promotion by increased understanding of the means by which tobacco manufacturers seek to advertise and promote their products and by new scientific insights into the nature of tobacco addiction and its consequences. On the findings of the trial judge in the present case, tobacco is now irrefutably accepted as highly addictive and as imposing huge personal and social costs. We now know that half of smokers will die of tobacco-related diseases and that the costs to the public health system are enormous. We also know that tobacco addiction is one of the hardest addictions to conquer and that many addicts try to quit time and time again, only to relapse.
>
> …
>
> 13 Some 45,000 Canadians die from tobacco-related illnesses every year. By this measure, smoking is the leading public health problem in Canada.
>
> 14 Most smokers begin as teenagers, between the ages of 13 and 16. Tobacco advertising serves to recruit new smokers, especially adolescents. It is completely unrealistic to claim that tobacco advertising does not target people under 19 years of age. Recent tobacco advertising has three objectives: reaching out to young people, reassuring smokers (to discourage quitting), and reaching out to women.
>
> 15 Tobacco contains nicotine, a highly addictive drug. Some 80 percent of smokers wish they could quit but cannot. However, new smokers, especially young people, are often unaware of (or tend to deceive themselves about) the possibility of addiction. Tobacco companies have designed cigarettes to deliver increased levels of nicotine.
>
> [Emphasis added.]

[123] She also stated:

> 61 The inquiry into the justification of the ban imposed by s. 20 of the Act must be set in the factual context of a long history of misleading and deceptive advertising by the tobacco industry. The creative ability of the manufacturers to send positive messages about a product widely known to be noxious is impressive. In recent years, for example, manufacturers have used labels such as “additive free” and “100% Canadian tobacco” to convey the impression that their product is wholesome and healthful. Technically, the labels may be true. But their intent and effect is to falsely

[160] *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30.

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lull consumers into believing, as they ask for the package behind the counter, that the product they will consume will not harm them, or at any rate will harm them less than would other tobacco products, despite evidence demonstrating that products bearing these labels are in fact no safer than other tobacco products. The wording chosen by Parliament in s. 20, and its justification must be evaluated with this context in mind. Parliament's concern was to combat misleading false inferences about product safety and to promote informed, enlightened consumer choice.

62 The specific objection is to the phrase "or that are likely to create an erroneous impression" in s. 20. The manufacturers argue that this phrase is overbroad and vague, and introduces subjective considerations. How, they ask, can they predict what is "likely to create an erroneous impression"? The words false, misleading or deceptive, used as legal terms, generally refer to objectively ascertainable facts. If "likely to create an erroneous impression" adds something to "false, misleading or deceptive", as presumably was Parliament's intent, what is it?

63 The answer is that the phrase "likely to create an erroneous impression" is directed at promotion that, while not literally false, misleading or deceptive in the traditional legal sense, conveys an erroneous impression about the effects of the tobacco product, in the sense of leading consumers to infer things that are not true. It represents an attempt to cover the grey area between demonstrable falsity and invitation to false inference that tobacco manufacturers have successfully exploited in the past.

64 The industry practice of promoting tobacco consumption by inducing consumers to draw false inferences about the safety of the products is widespread. This suggests that it is viewed by the industry as effective. Parliament has responded by banning promotion that is "likely to create an erroneous impression". This constitutes a limit on free expression. The only question is whether the limit is justified under s. 1 of the *Charter*.

…

68 Finally, the impugned phrase meets the requirement of proportionality of effects. On the one hand, the objective is of great importance, nothing less than a matter of life or death for millions of people who could be affected, and the evidence shows that banning advertising by half-truths and by Invitation to false inference may help reduce smoking. The reliance of tobacco manufacturers on this type of advertising attests to this. On the other hand, the expression at stake is of low value — the right to invite consumers to draw an erroneous inference as to the healthfulness of a product that, on the evidence, will almost certainly harm them. On balance, the effect of the ban is proportional

[Emphasis added.]

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[124] Of course, none of these observations were binding on the trial judge, whose findings differ on several points (for example, regarding the allegation that the appellants developed an advertising strategy targeting adolescents), which we will return to later. However, in this case, the evidence adduced by both sides demonstrates, beyond the requisite balance of probabilities, the accuracy of these legislative and judicial findings, with which the trial judge's findings are substantially consistent.

[125] Thus, on the basis of the evidence submitted, the trial judge held that tobacco, more precisely cigarettes, is carcinogenic (lungs and throat) and that its consumption is directly associated with various heart and respiratory diseases, including emphysema. The scientific evidence on file does not allow for any other conclusion. Admittedly, it does not establish that every smoker will develop cancer or emphysema at the end of a latency period, which can be quite long (20 years or more),[161] but it shows that almost all people with lung cancer, throat cancer or emphysema are or were smokers[162].

[126] The judge also held that tobacco is indeed addictive and that it quickly creates a strong addiction in its users,[163] although not insurmountable[164] (which some people are quick to compare to heroin and cocaine addiction).[165] Although the trial judge does not

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[161] Exhibit 30217 at 17. See also Exhibit 1426.1; testimony of Dr. Kenneth Mundt, March 17, 2014, at 59−60.

[162] In regard to lung cancer, this had been known since 1950, as appears (*inter alia*) from Exhibit 758-3: *Sales Lecture no. 3 - October 1957*, by M. Patrick O'Neill-Dunne, President of Rothmans of Pall Mall Canada Limited, specifically at 27, under the heading "Conclusion" (quoted in the judgment *a quo*, note *infra* at 296). The following remarks are also found in Exhibit 1398 (at 8−9), whose authors, after reviewing medical opinions and controversies on the subject and after expressing various reservations, conclude as follows (the first paragraph of this quotation is also found in paragraph 55 of the judgment *a quo*):

> 1. Although there remains some doubt about as to the proportion of the total lung cancer mortality which can fairly be attributed to smoking, scientific opinion in the U.S.A. does not seriously doubt that the statistical correlation is real and reflects a cause and effect relationship.
> 2. There remains an area for debate as to what is meant by "causation". Opinion differs as to whether or not cigarette smoke is likely to exert its effect by direct action on the lung. An indirect mechanism of causation is thought by some to be more likely.
> 3. The direct carcinogenicity of smoke condensate to animal tissue, which is consistent with direct causation, is now fully confirmed but the evidence so far obtained makes it unlikely that this activity is due to any single "super carcinogen" in smoke.

The evidence is replete with documents of this kind, which cannot all be quoted, confirming this knowledge. The risks of throat cancer or emphysema were known more or less concomitantly (see Exhibit 1426.1, *Expert report*, *Dr. Siemiatycki*). In that report, the expert relies on numerous scientific articles demonstrating awareness from the 1960s onwards of these risks (at 83). Knowing that the appellants kept abreast of the scientific research on the products they sold, it can be assumed that they had this knowledge.

[163] Physiological and pharmacological addiction, affecting the brain (see judgment *a quo*, specifically para. 175 *in fine* and para. 179).

[164] See judgment *a quo*, specifically paras. 177 to 182 and 830.

[165] 1988 Report of the Surgeon General of the United States, Exhibit 601-1988 at 37233 *et seq*. (J.S.); 2010 Report of the Surgeon General of the United States, Exhibit 601-2010 at *iii* and Exhibit 601-2010A at *iii* and 105; 2012 Report of the Surgeon General of the United States, Exhibit 601-2012 at 23; 2014 Report of the Surgeon General of the United States, Exhibit

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spell it out in full, it nevertheless appears from the judgment[166] − and the evidence − that the combination of toxicity and addiction increases the risk of developing carcinoma (lung, throat) or emphysema, a risk that increases with use, like the addiction itself.

[127] It is tempting to once again quote La Forest J., who was hardly exaggerating in describing tobacco as the "only legal product sold in Canada which, when used precisely as directed, harms and often kills those who use it."[167] The evidence on this point is clear: tobacco, in this case, that which is smoked, is a product with no real benefit other than to give the smoker the pleasure of satisfying and temporarily soothing the intense need − the drug addiction − that his or her consumption creates and to relieve the stress of (even temporary) abstinence. The appellants know this, and as Robert Bexon (of ITL) stated in a 1985 memo he sent to Wilmat Tennyson (President of ITL): "If our product was not addictive, we would not sell a cigarette next week in spite of these positive psychological attributes" (in other words, according to Mr. Bexon, reduced stress, improved concentration and alleviation of boredom).[168] This says a lot about the merits of cigarettes.

[128] It has been known for a long time that tobacco use causes a strong addiction, the product's primary commercial asset. Going gradually back in time, we note that in 1984 (and this is only one example among many), the same Robert Bexon wrote the following to Wayne Knox (then Director of Marketing at ITL):[169]

> However, we know quitting is not an easy process. For every 100 smokers who try, only five will make it past the first year. Less than two will make it
> permanently. ...

[129] In 1976, in a note to Anthony Kalhok (Vice President Marketing, ITL), Michel Descoteaux (ITL employee) suggested that the industry should encourage moderation among smokers, and added the following:[170]

> A word about addiction. For some reasons, tobacco adversaries have not, as yet, paid attention to the addictiveness of smoking. This could become a very serious issue if someone attacked us on this front. We all know how difficult it is to quit smoking and I think we could be very vulnerable to such criticism.
>
> I think we should study this subject in depth, with a view towards developing products that would provide the same satisfaction as today's

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601-2014B at 30.

166 Judgment *a quo*, specifically at para. 183.

167 *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 at para. 97.

168 Exhibit 266 (transcribed in Exhibit 266A at 1) at 20603 (J.S.).

169 Exhibit 267 at 20623 (J.S.). A 1985 document entitled *Saving the Tobacco Industry* (Exhibit 1110) establishes the cumulative failure rate for smokers trying to quit at 98% over a 104-week period (at 14), noting that "[i]f starting on the first of January 1985, every attempt to quit was successful, the cigarette industry would end at 2:40 a.m. on March 22, 1988" (at 13).

170 Exhibit 11 at 4. Paragraph 135 of the judgment *a quo* refers to the same passage.

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cigarettes without “enslaving” customers.

[130] In 1961, Charles D. Ellis, scientific advisor at BAT (ITL’s parent company), stated as follows in interview notes:[171]

> Smoking demonstrably is a habit based on a combination of psychological and physiological pleasure, and it also has strong indications of being an addiction. It differs in important features from addiction to other alkaloid drugs, but yet there are sufficient similarities to justify stating that smokers are nicotine addicts.

[131] He even suggested that further research be conducted to discover “the causes of the pleasurable physiological effects and the cause of addiction.”[172]. Although at the time the appellants did not know the exact causes of the addiction, it is indisputable that they knew about the addiction.

[132] However, the evidence indicates that publicly, the appellants, like the entire tobacco industry, strongly opposed the use of words “addict” and “addiction” to describe what they present as the habit of someone who “lights up a cigarette only after dinner;”[173] more generally, they argued that one cannot seriously “suggest that to use tobacco is the same as to use crack”[174] or to assimilate smokers to drug addicts. They even resisted the idea of mentioning tobacco addiction on cigarette packages or in their advertisements. Their efforts were successful, and it was not until 1994 that the Canadian government imposed such a requirement, and a statement to that effect began being displayed on packaging.

[133] Nevertheless, internally, they clearly acknowledged the addictive nature of their product, at least since the 1960s. The trial judge was of the view that they had been aware of it since the 1950s (while concealing that knowledge, as he notes elsewhere):

> [565] In the Chapter of the present judgment on ITL, we cited Professor Flaherty to the effect that, since the mid-1950s, it was common knowledge that smoking was difficult to quit, and that by that time “the only significant discussion in the news media on this point concerned whether smoking constituted an addiction, or whether it was a mere habit” [Reference omitted].

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171 Exhibit 1379 at 2.

172 Exhibit 1379 at 2.

173 Exhibit 487 at 26887 (J.S.). Paragraph 466 of the judgment *a quo* cites the same exhibit.

174 Exhibit 487 at 26887 (J.S.). See also (merely two examples among many): (1) the letter from Mr. Neville to Mr. G.E. MacDonald (Exhibit 694, August 31, 1988, at 47826 (J.S.)), part of which is quoted in paragraph 467 of the judgment *a quo*) and (2) the *“Philip Morris International - Spokesperson’s Guide, June 1990,”* which suggests that the spokesperson “*discredit the use of the word addiction in relation to tobacco use*” (Exhibit 846-AUTH). This semantic reluctance was not, however, unique to the appellants or the tobacco industry (see Exhibit 601-2014B, *The Health Consequences of Smoking - 50 Years of Progress: A Report of the Surgeon General*, 2014, at 30).

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> [566] Consistent with our reasoning throughout, we conclude that if the Companies believed that the public knew of the risk of dependence by the 1950s, each of the Companies had to have known of it at least by the beginning of the Class Period.

[134] The appellants did not seriously contest these facts (toxicity of an otherwise addictive product) at trial, nor do they challenge them on appeal, except to assert that, despite the addictive effect of tobacco, many smokers succeed in quitting (something the trial judge did not fail to mention).[175]

[135] The trial judge also held that, throughout the relevant period (1950-1998), the appellants were well aware of the risks and dangers of tobacco,[176] including, as we have just seen, addiction.[177] He also held that they marketed this product without adequately informing users and, through various strategies and actions,[178] falsely created the impression among users and the general public that the product was first harmless and even beneficial, and then relatively harmless. They systematically undermined attempts to inform the public (smokers and non-smokers), perpetuated alleged scientific controversies about the harmful effects of cigarettes and tobacco use, used various

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175 The appellants' reluctance to use the term "addiction" seems to persist, since at trial they were quick to argue, for example, that the *Diagnostic and Statistical Manual of Mental Disorder* (known under the acronym DSM) does not use that term to refer to nicotine addiction (although, as the trial judge noted, the DSM refers to a *tobacco use disorder*, described at paragraph 180 of the judgment *a quo*).

176 Judgment *a quo* at para. 70:

> [70] Although to a large degree the Court rejects the evidence of Messrs. Flaherty and Lacoursière, as explained later, there is no reason not to take account of such an admission as it reflects on the Companies' knowledge. It is merely common sense to say that, advised by scientists and affiliated companies on the subject, the Companies level of knowledge of their products far outpaced that of the general public both in substance and in time. These experts' evidence leads us to conclude that the Companies had full knowledge of the risks and dangers of smoking by the beginning of the Class Period. [Reference omitted]

177 Addiction induces, among other things, the "compensation" phenomenon, which causes a smoker to unconsciously seek to maintain his nicotine level and therefore increases the amount or intensity of his or her consumption when switching from a regular cigarette to one that is "*légère* / light" or "*douce* / mild." The compensation phenomenon ensures that a smoker who believes that he or she is reducing the risk associated with tobacco by smoking a milder cigarette does not receive the expected benefit (see judgment *a quo* at paras. 340 *et seq*.).

178 For example, interviews in the media, statements made during participation in parliamentary commissions and committees of inquiry or other public presentations and communications, support for pressure groups such as the "*Société pour la liberté de fumeurs* / Smokers' Freedom Society"(on this last point, see in particular: judgment *a quo* at paras. 468 and 469), etc.

179 Judgment *a quo* at para. 485.

180 Judgment *a quo* at para. 486.

181 Judgment *a quo* at para. 486

182 Judgment *a quo* at para. 475

183 Judgment *a quo* at paras. 188 to 201.

184 See also paras. 420 to 425 of the judgment *a quo*.

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promotional means to convince people to start or continue using, as the case may be, a product, the toxicity of which they claimed had been exaggerated, and finally, presented smoking as a matter of personal choice and freedom. As the trial judge stated, the appellants "knowingly withheld critical information from their customers, but also lulled them into a sense of non-urgency about the dangers"[179] and "remained silent about the dangers to which they knew they were exposing the public yet voluble about the scientific uncertainty of any such dangers."[180] The trial judge added "In doing so, each of them acted 'with full knowledge of the immediate and natural or at least extremely probable consequences that (its) conduct will cause.'"[181] For most of the period concerned, they even conspired to that end and followed a common policy of denial and misinformation, "in order to impede users of their products from learning of the inherent dangers of such use."[182]

[136] However, the trial judge was of the view that the appellants did not deliberately increase the nicotine content of their cigarettes in order to increase tobacco dependence as the respondents alleged.[183] Nor, in his view, did they specifically target adolescents or, more specifically "Young Teens" under the age at which they can legally obtain cigarettes (16 or 18 depending on the year in question) in their advertising or marketing strategies:[184]

> [419] The evidence is not convincing in support of the allegation of wilful marketing to Young Teens. There were some questionable instances, such as sponsorship of rock concerns and extreme sports but, in general, the Court is not convinced that the Companies focused their advertising on Young Teens to a degree sufficient to generate civil fault.

[137] The judge acknowledged that the appellants undoubtedly may have tried to attract non-smokers generally and induce them to start smoking, but found that this in itself is not unlawful, at least as long as the product remains legal and the advertising is directed at people of a certain age and, as is the case here, does not contain any misinformation:

> [433] Hence, the Court finds that, perhaps only secondarily, the Companies' targeted adult non-smokers with their advertising. So be it, but where is the fault in that? Not only did the law allow the sale of

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> cigarettes to anyone of a certain age, but also the Companies respected the government-imposed limits on the advertising of those products.
>
> [434] There is no claim based on the violation of those limits or, for that matter, on the violation of any of the Voluntary Codes in force from time to time. Consequently, we do not see how the advertising of a legal product within the regulatory limits imposed by government constitutes a fault in the circumstances of these cases.
>
> [435] This is not to say that the Companies' marketing of their products could not lead to a fault. The potential for that comes not so much from the fact of the marketing as from the make-up of it. For a toxic product, the issue centers on what information was, or was not, provided through that marketing, or otherwise. That aspect is examined elsewhere in this judgment, for example, in section II.D.
>
> ...
>
> [438] We find no fault on the Companies' part with respect to conveying false information about the characteristics of their products. It is true that the Companies' ads were not informative about smoking and health questions, but that, in itself, is not necessarily a fault and, in any event, it is not the fault proposed in the Common Question E.

[138] While the first conclusion is not surprising, the others, at least as regards young adolescents, and the absence of fault regarding the conveying of false information about the characteristics of the products in question, warrant several comments.

[139] As the trial judge pointed out, it is self-evident that the appellants wished to entice non-smokers, in that they intended to maintain or increase their market. But the assertion that they did not want to target "Young Teens" is debatable. The evidence establishes that they had a sustained interest in this category of users (or potential users), whose habits and motivations they assiduously analyzed.[185] Their explanations on that subject

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[185] The evidence is too abundant to make useful reference to it, but one can almost randomly select an example, which is not unique, i.e., an excerpt from a November 20, 1984, memo to Mr. Wayne Knox, Director of Marketing (ITL) from Mr. Robert Bexon, employed in the Marketing Department (ITL). Given that smokers are gradually beginning to give up cigarettes, which are attracting fewer new users, Mr. Bexon states that he is considering various strategies to counter this trend and ensure the viability of the tobacco industry in Canada (Exhibit 267 at 2 and 3 of the Appendix):

> In the domestic environment - ensuring future viability for the tobacco industry involves “fixing” two areas - maintaining our current franchise as buyers of our products and creating new users. There are other strategies. These two predominate.
>
> …
>
> Objective
>
> To ensure that the incidence of use of tobacco products is higher in the Canadian population than would be the case if we did nothing. (For number fans, I think we could even get a number.)
>
> Strategies

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were accepted by the trial judge,[186] but in view of the evidence, they remain doubtful.[187] But just because a finding is controversial does not mean that is reversible; the standard of palpable and overriding error requires more, and the Court will therefore rely on the trial judge's finding on this point.

[140] The question of whether the appellants conveyed false or erroneous information about the characteristics of their products will be discussed below. Suffice it to say for the time being that paragraphs 433 to 435 and 438 of the judgment *a quo* cited above, appear to be based on a very narrow view of what constitutes false or misleading information and an even narrower view of the appellants' obligation to provide information under the general law. However, the trial judge seems to reject this way of viewing things when, in a subsequent part of his judgment, he gives the following explanation:

> [458] It is the overall look and feel of the message, however, that most violates the Companies' obligation to inform consumers of the true nature of their products. By attempting to lull the public into a sense of non-urgency about the health risks, this type of presentation, for there were many others, is both misleading and dangerous to people's well-being.

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1. Moderate the perceptions of smoking and smokers to a situation where they are more conducive to continued tobacco use.
2. Develop and introduce new products that can act as an acceptable alternative to both cigarettes and quitting.
3. Initiate projects to insure the continued uptake of tobacco products by young Canadians.

A brief but not exhaustive review of each area, and a plan of attack for next steps, follow.

[Emphasis added.]

Elsewhere in the same memo, it is stated that the young Canadians in question are 15 and older. Mention should also be made of Exhibit 142, Consumer Research Library - Proposal for Imperial Tobacco Ltd. 19 September 1977, which suggests examining "what the smoking young have in mind about smoking," an objective detailed in eight points to be addressed through "four group discussions among smokers aged 16 or 17" (it is true that at the time, it was not illegal to smoke at 16) (at 2 and 4). The results of the study are set forth in Exhibit 142B, October 18, 1977.

See also Exhibit 658A (JTM), *Youth Target 1987, by the Creative Research Group*, June 8, 1987,

which targets young people between the ages of 15 and 24; Exhibit 762 (ITL), *A Strategic Review - The Canadian Tobacco Industry - by C. Ellis,* August 1994, at 13-14, which is aimed particularly at people under 20 years of age.

[186] Judgment *a quo* at paras. 421 to 424.

[187] It should be noted that in 2001, the Superior Court, in *J.T.I. MacDonald Corp. v. Canada (Attorney General)*, [2003] R.J.Q. 181, found:

> [TRANSLATION]
>
> [122] Moreover, the Court does not believe that the advertising of tobacco companies is directed solely at smokers over 19 years of age. All advertising campaigns contain seductive elements for teenagers who are the future of the industry. The industry knows that people start smoking between the ages of 12 and 18, and they systematically target this vulnerable audience in their advertising and marketing.

The Supreme Court accepted this factual finding in its subsequent 2007 decision (*Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30 at para. 14). Of course, there is no *res judicata* in this regard.

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[141] Similarly, the trial judge's comments about the fact that the appellants complied with regulatory requirements are inconsistent with those he subsequently made about the misinformation he accuses them of.

[142] But, let us continue with the inventory of the trial judge's findings. He fixed, and this finding is important, January 1, 1980, as the date on which members of the Blais Class had actual or presumed knowledge of the diseases associated with cigarette smoking (lung or throat cancer, emphysema). The trial judge decided that as of that date, the dangers were public knowledge, and no one could disregard them any longer.

[143] In the Létourneau case, the trial judge was of the view that March 1, 1996, should be fixed as the date that the general public became aware of the fact that cigarettes are addictive. His finding is based on the following equation: in September 1994, the *Tobacco Products Control Regulations*[188] imposed, for the first time, the obligation on the appellants to display the following warning on cigarette packages: "Cigarettes are addictive / *La cigarette crée une dépendance*." According to the trial judge, the information in that message took some time to reach most smokers and register in their minds:

> [129] The addiction Warning was one of eight new Warnings and they only started to appear on September 12, 1994. It would have taken some time for that one message to circulate widely enough to have sufficient force. The impact of decades of silence and mixed messages is not halted on a dime. The Titanic could not stop at a red light.
>
> [130] The Court estimates that it would have taken one to two years for the new addiction Warning to have sufficient effect among the public, which we shall arbitrate to about 18 months, i.e., March 1, 1996. We sometimes refer to this as the "**knowledge date**" for the Létourneau Class.
>
> [Emphasis in original.]

[144] Since a period of 18 months was necessary for effective dissemination of this new warning, the trial judge decided that the addictive nature of cigarettes could be considered a matter of public knowledge only as of March 1, 1996.

[145] Before either of these dates, the Blais and Létourneau Classes (as well as the public as a whole) had little or no reliable information on the subject, or what information was available was conflicting, too general and superficial to be of any use, given the appellants' misinformation on all fronts.

[146] On another point, the trial judge also held that the Blais and Létourneau Classes had suffered harm. As a result of their smoking, the members of Blais Class developed

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[188] The *Tobacco Products Control Regulations*, SOR/89-21, enacted December 22, 1988, proclaimed in force January 1, 1989, and subsequently amended by SOR/89-248, SOR/93-389 and SOR/94-5. SOR/93-389, impose the requirement to state that cigarettes are addictive.

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lung or throat cancer or emphysema, conditions that have caused them significant moral damage (the respondents' claim is limited to compensation for this type of damage). As a direct result of their cigarette consumption, the Létourneau Class also sustained moral damage arising from their addiction.

[147] Ultimately, the trial judge held that the harm resulted from the appellants' wrongful conduct, which caused both classes to begin or to continue smoking.

[148] To summarize, the trial judge's main findings of fact are as follows:

> - Tobacco consumed through cigarettes is addictive; it is also carcinogenic (specifically lung and throat cancer); it causes respiratory diseases, including emphysema;
>
> - During the relevant period, the appellants, individually and in concert, first carefully and deliberately concealed the dangers of tobacco use (specifically smoking), as well as the risks associated with its use, dangers and risks of which they were fully aware;
>
> - When the Government, the medical profession and other groups or bodies began to realize and publicize the nature and importance of the dangers and risks in question, the appellants agreed to disclose certain information (including voluntary warnings, beginning in 1972) and then complied with government requirements in this regard;
>
> - At the same time, however, they agreed on a general and systematic policy of misinformation, which they then applied for decades, thereby deceiving and misleading the public about the real effects of smoking;
>
> - The pathogenic effects of smoking were public knowledge as of January 1, 1980, and its addictive effects were public knowledge as of March 1, 1996;
>
> - Because of their smoking, the members of the Blais Class developed lung or throat cancer, or emphysema, and sustained moral injuries as a result;
>
> - The same applies to the Létourneau Class, whose moral injuries result from their cigarette-induced addiction;
>
> - The appellants' conduct is directly related to the decision the Class members made to smoke or continue smoking.

[149] It should be noted that the appellants do not really challenge the trial judge's first four findings, except incidentally and peripherally. Nor do they deny the harm caused to the members of both Classes. Rather, they challenge the legal treatment of the facts and their resulting liability, mainly in terms of causation, which in their view was not proven

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either collectively or individually.[189] They further deny that their breaches led to the decision to start smoking or continue smoking made by the members of both Classes, and they argue that the respondents have not proved such a causal relationship.

[150] Similarly, the appellants vigorously contest the "knowledge dates" set by the trial judge. In their opinion, both Classes, like the general public, had long been aware of the dangers of smoking, including its addictive nature. They may not have been able to put a precise medical or scientific label on the problems associated with the consumption of their product, but that does not matter and does not in any way detract from their practical and concrete knowledge of the situation. However, since the toxicity of cigarettes was well known or deemed to be known by everyone and therefore by the members of both Classes, the appellants, even if at fault, should be exonerated from all liability.

[151] Although the respondents present a much more negative picture of the situation, they also do not contest the trial judge's findings, except indirectly as regards advertising aimed at adolescents, an issue discussed above, and the "knowledge dates."

[152] Before addressing the issues raised by the appeals, it is important to present the different liability regimes that may be applicable to the situation. A manufacturer's liability may be based on contractual or extracontractual grounds that have varied over time and which must now be considered.

1.2. Regimes of civil liability

A. Background

[153] The Class Period extends from 1950 to 1998, during which time the C.C.L.C. (in force before 1994) was replaced by the C.C.Q. (which came into force, as such, on January 1, 1994); the *Charter*, an instrument of public policy, added to the relevant body of legislation in 1975 (and came into force on June 28, 1976), as did a new C.P.A.,[190] also public policy legislation, in 1978 (and came into force on April 30, 1980, with some exceptions).

[154] The sources (contractual or extracontractual) of and the conditions giving rise to a manufacturer's civil liability have changed over the years and must be differentiated according to when the facts likely to trigger that liability occurred. We will use January 1, 1994, which corresponds to the coming into force of the C.C.Q., as the pivotal date. From 1950 to 1998, the liability of a manufacturer who had not adequately informed the user of the dangers related to the product it was marketing – the main subject of this dispute – therefore fell successively under one of the regimes described hereinbelow:

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189 Neither medical causation, nor [TRANSLATION] "behavioural" causation, to use the appellants' expression, were established, either individually or collectively.

190 This act replaced the *Consumer Protection Act*, S.Q. 1971, c. 74, which did not contain any provisions relevant to the present dispute.

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Before 1994

- Under the C.C.L.C., and for most of the Class Period, such liability was either contractual (arts. 1022, 1065, 1506, 1522 *et seq*. C.C.L.C.) or extracontractual,[191] under article 1053 C.C.L.C., and opting to have the matter dealt with on a contractual or extracontractual basis was not excluded;[192]

- A manufacturer's contractual liability and duty to inform the buyer were embodied in the "warranty against latent defects / *garantie des défauts cachés*" (today the seller's legal warranty) prescribed by the second paragraph of article 1506 and articles 1522 *et seq*. C.C.L.C.,[193] a warranty extended to the subsequent purchaser; the law on implied contractual obligations, governed by article 1024 C.C.L.C., is sometimes associated with the obligation to inform imposed on the seller or manufacturer that markets a product which, although not affected by a design or manufacturing defect, is nevertheless inherently dangerous;

- From an extracontractual perspective, the case law interpreting and applying article 1053 C.C.L.C. imposed on the manufacturer an obligation, based on the general duty to act reasonably so as not to cause harm to others, to properly inform the users of its products, with the presumption that it is aware of the risks and dangers of the products in question and their defects;

- As of June 1976, the provisions of the *Charter* could also be used, specifically section 1 (in the event of bodily or moral injury) and section 49 (variation of civil liability under the general law, the violation of a right protected by the *Charter* is a civil fault, with certain civil faults constituting at the same time a violation of the *Charter*[194]);

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191 At that time the relevant terminology was "*délits* / offences" or "*quasi-délits* / quasi-offences."

192 In some cases, a person entitled to a contractual remedy could opt to base his or her claim on a manufacturer's extracontractual liability instead. The issue of opting between contractual and extracontractual liability, permissible before 1994, will be examined below.

193 Article 1522 C.C.L.C. provided as follows:

1522. The seller is obliged by law to warrant the buyer against such latent defects in the thing sold, and its accessories, as render it unfit for the use for which it was intended, or so diminish its usefulness that the buyer would not have bought it, or would not have given so large a price, if he had known them.

1522. Le vendeur est tenu de garantir l'acheteur à raison des défauts cachés de la chose vendue et de ses accessoires, qui la rendent impropre à l'usage auquel on la destine, ou qui diminuent tellement son utilité que l'acquéreur ne l'aurait pas achetée, ou n'en aurait pas donné si haut prix, s'il les avaient connus.

194 . See *Béliveau St-Jacques v. Fédération des employées et employés de services publics inc.,* [1996] 2 S.C.R. 345 at paras. 119 to 121 (majority reasons per Gonthier J.), subject to the autonomous nature of punitive damages (see *de Montigny v. Brossard (Succession)*, 2010 SCC 51 , which however recognizes the convergence of an action in compensatory damages based on section 49 of the *Charter* and one in damages governed by the C.C.Q. rules of

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- Lastly, as of April 1980, section 53 C.P.A. gave the consumer the right to sue the manufacturer directly, not only in the event of a latent defect, but also if the manufacturer failed to provide information necessary to protect the user against a risk or danger inherent in the product (failure to inform);

- In addition, there are prohibitions against certain practices, including false or misleading representations (advertising and other forms of publicity) (ss. 219 to 222 C.P.A.) or incomplete representations (s. 228 C.P.A.), all of which obviously affect the quality of the information conveyed to consumers. Section 272 C.P.A. prescribes the recourses for the infringement of those provisions.

After January 1, 1994

- Under the C.C.Q., the liability of a manufacturer in breach of its obligation to inform the user of the product continues to be stated in contractual and extracontractual terms, but the possibility of opting between recourses was prohibited as of 1994;[195]

- From a contractual perspective, the legislator modernized the legal warranty against latent defects, now a "warranty of quality," enshrined in articles 1716 and 1726 *et seq*. C.C.Q., expressly imposed on manufacturers by article 1730[196] and implied in article 1442 C.C.Q.; as regards implied contractual obligations, articles 1375 and 1434 C.C.Q.

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liability). See also *Bou Malhab v. Diffusion Métromédia CMR inc.,* 2011 SCC 9 at para 23.

[195] The issue of opting between contractual and extracontractual remedies, prohibited under article 1458 C.C.Q. as of 1994, is discussed below.

[196] Articles 1726 and 1730 C.C.Q. provide as follows:

1726. The seller is bound to warrant the buyer that the property and its accessories are, at the time of the sale, free of latent defects which render it unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if he had been aware of them.

The seller is not bound, however, to warrant against any latent defect known to the buyer or any apparent defect; an apparent defect is a defect that can be perceived by a prudent and diligent buyer without the need to resort to an expert.

1726. Le vendeur est tenu de garantir à l'acheteur que le bien et ses accessoires sont, lors de la vente, exempts de vices cachés qui le rendent impropre à l'usage auquel on le destine ou qui diminuent tellement son utilité que l'acheteur ne l'aurait pas acheté, ou n'aurait pas donné si haut prix, s'il les avait connus.

Il n'est, cependant, pas tenu de garantir le vice caché connu de l'acheteur ni le vice apparent; est apparent le vice qui peut être constaté par un acheteur prudent et diligent sans avoir besoin de recourir à un expert.

1730. The manufacturer, any person who distributes the property under his name or as his own, and any supplier of the property, in particular the wholesaler and the importer, are also bound to a seller's warranty.

1730. Sont also tenus à la garantie du vendeur, le fabricant, toute personne qui fait la distribution du bien sous son nom ou comme étant son bien et tout fournisseur du bien, notamment le grossiste et l'importateur.

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replaced article 1024 C.C.L.C.;

- From an extracontractual perspective, the legislator, codified and strengthened principles previously set out in the case law, implemented a specific liability regime in articles 1468, 1469 and 1473 C.C.Q., applicable to manufacturers in the event of a safety defect (including product failures resulting from the lack or insufficiency of proper information concerning the thing or its use); article 1457 C.C.Q. replaced article 1053 *C.C.L.C.*;

- The above-cited provisions of the *Charter* and the C.P.A. remain in force.

[155] Lastly, some clarification is necessary regarding the application over time of the provisions of the C.C.L.C. or of the C.C.Q. and the regimes they establish regarding manufacturer's liability: the old law continues to apply to legal warranties[197] arising before January 1, 1994; similarly, the old law governs liability related to events that occurred before that date. Sections 83 and 85 of the *Act respecting the application of the reform of the Civil Code*[198] provide as follows:

83. In any contract made before 1 January 1994, the former legislation continues to apply to the warranties, both legal or conventional, to which the contracting parties are obliged between themselves or in respect of their heirs or successors by particular title.	**83.** Pour tout contrat conclu antérieurement au 1er janvier 1994, la loi ancienne demeure applicable aux garanties, légales ou conventionnelles, dues par les parties contractantes entre elles ou à l'égard de leurs héritiers ou ayants cause à titre particulier.
85. The conditions of civil liability are governed by the legislation in force at the time of the fault or act which causes the injury.	**85.** Les conditions de la responsabilité civile sont régies par la loi en vigueur au moment de la faute ou du fait qui a causé le préjudice.

[156] Section 85, which does not distinguish contractual from extracontractual liability, applies to the conditions giving rise to civil liability, but also to those giving rise to exoneration, its opposite. As Professors Côté and Jutras stated:[199]

[TRANSLATION]

It should be noted that the conditions of civil liability are thus governed by the law in force at the time of the fault or prejudicial act, and it follows that

[197] As well as to conventional warranties, which do not concern us in this case.

[198] *Act respecting the Implementation of the Civil Code*, S.Q., c. 57 ("A.I.R.C.C.").

[199] Pierre-André Côté & Daniel Jutras, *Le droit transitoire civil*, looseleaf, Update No, 28, April 18, 2018, (Cowansville, Qc.: Yvon Blais, 1994) at II/85-1.

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> the grounds for exemption from liability, necessarily linked to the conditions of such liability, will also be governed by that same law, as will questions relating to the sharing of liability.

[157] An action brought against a manufacturer on the basis of the legal warranty against latent defects, which arose before 1994, is therefore governed by the C.C.L.C.; the same applies to an action based on a manufacturer's liability (contractual or extracontractual) where the facts that likely triggered occurred before 1994.[200]

[158] This explains why the present case combines the provisions of the C.C.L.C. and those of the C.C.Q., that is, the facts giving rise to the dispute occurred both before and after January 1, 1994, and why it refers concomitantly to the public policy provisions of the *Charter* and the C.P.A., as of 1976 and 1980, as the case may be.

[159] The respondents based their two actions on the general rules of extracontractual liability (arts. 1053 C.C.L.C. and 1457 C.C.Q.), the provisions of the *Charter* that protect the integrity, freedom and dignity of the person (arts. 1, 4 and 49) and the provisions of the C.P.A. dealing with misleading or incomplete advertising (ss. 219, 220(*a*), 228 and 272). They did not rely on articles 1468, 1469 and 1473 C.C.Q., which establish the extracontractual liability regime specifically governing the manufacturer's liability for product safety defects, although the appellants referred to it.[201] However, the Parties [TRANSLATION] "agree that it is the extra contractual liability regime that applies.[202] Therefore, the issues of contractual liability, the warranty of quality or an implied contractual obligation to inform do not arise.

[160] The judgment of first instance, which finds largely in favour of the respondents, is based first and foremost on article 1053 C.C.L.C. (concerning facts pre-dating January 1, 1994) and articles 1468, 1469 and 1473 C.C.Q., but also, and especially, on article 1457 C.C.Q. (concerning facts arising after that date). It is also based on sections 1 and 49 of the *Charter* and sections 219, 228 and 272 C.P.A. (the argument based on s. 220 C.P.A. was rejected), provisions that the appellants' conduct is alleged to have contravened as of 1976 and 1980 respectively. In all cases, the trial judge's reasoning is focused on the information that the appellants did or did not disclose throughout the Class Period, the misleading strategies they continually employed to maintain and reinforce an artificially positive image of their products, which they were aware were harmful.

[161] However, the judgment does not consider the dispute from the perspective of the appellants' contractual liability, which is potentially triggered by those same facts. Specifically, it does not deal with the issue of liability for latent defects. Section 53 C.P.A.

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200 For an example of a judgment combining sections 83 and 85 A.I.R.C.C., see *ABB Inc. v. Domtar Inc.*, 2007 SCC 50 at para 26 *et seq*. (see in particular para. 30: "In the case at bar, Domtar has brought against C.E. an action in contract for damages that is based on the warranty against latent defects. All the facts alleged in support of this action occurred before 1994. In light of ss. 83 and 85 A.R.I..C.C., we conclude that in this case, the issues relating to the warranty against latent defects must be resolved by applying the C.C.L.C."

201 Respondents' Arguments at para 55.

202 Respondents' Arguments at para 24. See also the judgment *a quo* at para 20.

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is also not mentioned. Is this problematic? Could the respondents have brought their actions on a purely extracontractual basis, under the ordinary rules of the general law? Did the trial judge err in confining himself to extracontractual liability?

[162] More precisely, given that, under the C.C.L.C. (art. 1065 or 1522 *et seq*.) and the C.C.Q. (arts. 1375, 1434, 1442 and 1726 *et seq*.), the sub-purchaser of a dangerous product[203] that was harmed by the product, could sue the manufacturer directly on a contractual basis even if that purchaser did not personally contract with it, would it not have been appropriate, or even necessary, to consider the issue of the Appellants' contractual liability? It can be assumed that the vast majority of the members of the Blais and Létourneau Classes are or were purchasers of cigarettes[204] and therefore subsequent purchasers[205] specifically covered by articles 1442 and 1730 C.C.Q. If they had a remedy under these provisions, should they not have availed themselves of it? Lastly, what about section 53 C.P.A.?

[163] As the parties did not address these issues in their factums, the Court wrote to their respective lawyers before the hearing advising them thereof in the following terms:

> [TRANSLATION]
>
> The judgment of first instance is based on an analytical framework based entirely on the principles of extracontractual liability. Would it be useful or appropriate, however, to consider some of the issues involved from a contractual perspective (including the issue of opting between remedies)? Thus, what would happen to the warranty of quality for which the manufacturer may be liable (under art. 1730 C.C.Q. or, under the C.C.L.C., *General Motors Products of Canada Ltd*. v. *Kravitz*, [1979] 1 S.C.R. 790)? What about section 53 of the *Consumer Protection Act*? Could the issue of the appellants' contractual liability be otherwise considered (or not)? Would recourse to these other liability regimes be likely to affect the treatment of the issues in dispute and the outcome of the appeal?

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[203] A thing may be dangerous due to a (latent) design or manufacturing defect (it would then be referred to as a "dangerous latent defect" or a "dangerous defect"): this is the defect that causes the danger. On the other hand, a thing without a defect may, however, by its nature or use, pose a danger of which the potential user is not (or not sufficiently) informed. In both cases, in articles 1468 and 1469 C.C.Q., the legislator refers to a "safety defect / *défaut de sécurité*," but it is nevertheless necessary to distinguish between these two situations. On this distinction, see generally Pierre-Gabriel Jobin and Michelle Cumyn, *La vente*, 4th ed. (Cowansville, Qc.: Yvon Blais, 2017) at 298–299, para. 210. The distinction also exists in the general law, as reflected in *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210, which discusses a product that is "perfectly sound … properly installed" (para 33), but which posed a risk against which the manufacturer and supplier had not warned users.

[204] There may be a few who were not and only ever smoked cigarettes given to them by others, but, given the time and consumption scales set by the trial judge, this seems unlikely.

[205] Unless they had procured all their cigarettes from the manufacturer, and never through an intermediary, which is equally unlikely.

> You will need to address these issues in your respective pleadings at a time that is convenient for you.

[164] The Parties therefore had the opportunity to consider these issues, which will be examined in the following section.

B. Basis of the claims: extracontractual liability, contractual liability, section 53 C.P.A., subsequent purchaser's situation and option

[165] It is the Court's view that the trial judge did not err in deciding the case on the basis of the rules of extracontractual civil liability (art. 1053 C.C.L.C., and articles 1457, 1468, 1469 and 1473 C.C.Q.), the rules of the *Charter* (ss. 1 and 49) and those of the C.P.A. (ss. 219, 228 and 272 C.P.A.). On certain points, he could probably be criticized for having misapplied the rules in question, but not for having made them the basis of his judgment. That being said, had he been required to apply the contractual rules (in particular those of the warranty of quality / warranty against latent defects), the result would have been the same. The judgment *a quo* states:

> [18] The Plaintiffs argue that the rules of extracontractual (formerly delictual) liability apply here, and not contractual. Besides the fact that the Class Members have no direct contractual relationship with the Companies, they are alleging a conspiracy to mislead consumers "at large", both of which would lead to extracontractual liability.
>
> [19] And even where a contract might exist, they point out that, as a general rule, the duty to inform arises before the contract is formed, thus excluding it from the contractual obligations coming later. Here too, in their view, it makes no difference whether the regime be contractual or extracontractual, since the duty to inform is basically identical under both.
>
> [Reference omitted.]

[166] Furthermore, while the trial judge should not have disregarded section 53 C.P.A., this error is of no consequence since that section would simply have provided a further basis for the conclusions of the judgment, as will be seen below.

[167] Ultimately, the question raised by the Court regarding the contractual or extracontractual nature of the actions brought by the respondents and potentially the issue pertaining to opting between remedies are of limited interest with respect to the pre-1994 law.

[168] Until 1979, the subsequent purchaser of a dangerous thing that caused him or her harm[206] was generally held not to be in a contractual relationship with the

[206] Whether it was dangerous because of a latent defect in the strict sense of the word (i.e., a design or manufacturing defect, etc.) or whether it was a thing or product free from defects, but inherently dangerous or potentially dangerous if not handled properly without sufficient information allowing the buyer to be aware of it and to protect himself or herself accordingly.

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manufacturer and had recourse against the latter only under article 1053 C.C.L.C. and the rules of extracontractual liability (i.e., delict or quasi-delict).[207] They imposed a duty on the manufacturer to know its products and their defects, even latent ones, but also to warn potential purchasers of their dangers.[208] With few exceptions, it could not avoid this obligation by proving ignorance, which in itself was regarded as a fault.

[169] In 1979, the Supreme Court, in *General Motors Products of Canada v. Kravitz* formally acknowledged that the sub-purchaser has a contractual right based on the transfer to him or her of the original seller's (the manufacturer's) warranty against latent defects provided to the initial purchaser:[209]

> I think that we must acknowledge the existence of a direct remedy in warranty by a subsequent purchaser against the original seller. A claim in warranty against latent defects is not one that is personal to the purchaser in the sense that he is entitled to it *intuitu personae;* the purchaser is entitled to it as the owner of the thing. As we have seen, it is a claim that is tied to the thing to which it relates. It is therefore transferred to the successors by particular title at the same time as the thing itself, in that the initial seller is liable on it to any purchaser of the thing sold. …
>
> It must therefore be said that when a sub-purchaser acquires ownership of the thing he becomes the creditor of the legal warranty against latent defects owed by the first seller to the first purchaser.

[170] Professors Jobin and Vezina[210] provide the following explanation:

See *supra* note 203.

[207] For a cautiously expressed contrary view, see: Pierre Legrand, "Pour une théorie de l'obligation de renseignement du fabricant en droit civil canadien" (1981) 26 McGill L.J. 207 at 263 and note *infra* at 231. See also, where the danger of the object is due to a latent defect, the decision in *Gougeon c. Peugeot Ltée*, [1973] C.A. 824 (which the Supreme Court distinguished in *General Motors Products of Canada v. Kravitz*, [1979] 1 S.C.R. 790).

[208] See for example *Ross v. Dunstall*, (1921) 62 S.C.R. 393; *Modern Motor Sales Ltd. v. Masoud*, [1953] 1 S.C.R. 149 (specifically the reasoning of Taschereau J. at 157, who (in *obiter*) assimilates the subpurchaser to a third party user, without any contractual relationship); *Cohen v. Coca-Cola Ltd.*, [1967]
S.C.R. 469; *Alliance Assurance Co. v. Dom. Electric*, [1970] S.C.R. 168 at 173 and 174; *National Drying Machinery Co. v. Wabasso Ltd.*, [1979] C.A. 279 (at 285, Mayrand J. for the majority, gives the sub-purchaser as an example of the third party to whom the manufacturer is liable in delict, having failed to inform the sub-purchaser of a danger inherent in a product otherwise free of any particular defect), rev'd *Wabasso Ltd. v. National Drying Machinery Co.*, [1981] 1 S.C.R. 578, but not on that point, which is not really discussed by the Supreme Court; *Mulco inc. v. Garantie (La), Cie d'assurance de l'Amérique du Nord*, [1990] R.R.A. 68 (majority reasons of Gendreau J.), aff'd *Garantie (La), Cie d'assurance de l'Amérique du Nord v. Mulco Inc.*, [1985] C.S. 315 (although the judgment does not mention article 1053 C.C.L.C., its conclusions award the additional indemnity provided by article 1056c C.C.L.C. in the case of damages resulting from a delict or quasi-delict, while article 1078.1 C.C.L.C. applies to the breach of a contractual obligation).

[209] *General Motors Products of Canada v. Kravitz*, [1979] 1 S.C.R. 790 at 813–814.

[210] Jean-Louis Baudouin, Pierre-Gabriel Jobin & Nathalie Vézina, *Les obligations*, 7th ed.

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[TRANSLATION]

> The existence of a direct legal relationship between the sub-purchaser and the manufacturer was first raised in *Ross*, but doubts remained as to whether this remedy could be considered from any perspective other than an extracontractual one. Then, further to a development in the case law, *Kravitz* reversed that position by giving the subsequent purchaser a *contractual* recourse against the manufacturer based on warranties against latent defects. Under this approach, subsequent purchasers do not exercise their own rights; the warranty owed under the first sale is transferred by the intermediary seller as an accessory to the item purchased, thus giving the sub-purchaser the same rights as the *original purchaser*.
>
> [Emphasis in original; reference omitted.]

[171] Consequently, it became accepted law that the sub-purchaser could sue the manufacturer on such a contractual basis. It was still necessary (which was the case in *Kravitz*) to consider the issue of "latent defect" within the meaning of 1522 C.C.L.C., a subject regarding which there was some uncertainty:[211] did such a defect encompass a safety defect resulting from the fact that potential buyers or users had not been informed of the risk inherent in an intrinsically dangerous thing unaffected by any manufacturing defect? Did it encompass a defect resulting from the lack or insufficiency of information regarding its use?

[172] Regarding the last question, in 1965, Professor Crépeau published a landmark article,[212] suggesting that this situation should be distinguished from a situation involving a latent defect. On the basis of article 1024 C.C.L.C., he considered it more appropriate to view the duty to disclose such information as a safety obligation, which, unless expressly excluded by the parties, requires the seller to inform its contracting partner of the precautions required when using or handling the thing sold. This implied contractual obligation, which is not the same as the legal warranty against latent defects, would give rise to an action that need not satisfy the requirements of articles 1522 *et seq*. of the C.C.L.C.

[173] This theory persuaded certain scholarly writers and earned a place in the case law. For example, in 1979, in a judgment subsequently overturned by the Supreme Court on another point (*National Drying Machinery Co. c. Wabasso Ltd.*), Mayrand J. for the majority, stated: [213]

(Cowansville, Qc.: Yvon Blais, 2013) at 903, para. 760.

211 This is illustrated in *Ross v. Dunstall*, (1921) 62 S.C.R. 393. This issue will be addressed again later on in this judgment.

212 Paul-André Crépeau, “Le contenu obligationnel d'un contrat” (1965) 53 R. du B. can. 1, see especially at 16 *et seq*.

213 *National Drying Machinery Co. c. Wabasso Ltd.*, [1979] C.A. 279 at 285. In that case, the buyer purchased a machine from the manufacturer for processing polyester fibers. The manufacturer did not inform the buyer that the upper part of the machine had to be cleaned

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> [TRANSLATION]
>
> 3. This safety obligation is ancillary. arising under the sales contract.
>
> It has been suggested that the obligation arises under article 1527 of the *Civil Code*, but I would hesitate to characterize the particularity of the thing that makes it dangerous, when certain precautions are not taken, as a "defect." If this were true, many drugs would be "defective," since they are dangerous irrespective of dosage. In this case, I would instead base the obligation on article 1024 of the *Civil Code*.

[174] Mayrand J. held that with regard to the sub-purchaser, the manufacturer's liability remains extracontractual, as its obligation to inform is based on the general obligation not to harm others:

> [TRANSLATION]
>
> 4. With regard to a third party,(7) the manufacturer-seller of machinery that poses a non-apparent hazard must take reasonable measures to ensure that the potential user is advised of the precautions that must be taken to prevent damage being caused. This safety obligation is based on article 1053 of the *Civil Code* and gives rise to delictual or quasi-delictual liability.
>
> (7) E.g., a sub-purchaser, neighbour or employee of the purchaser.
>
> [Emphasis added.]

[175] Barely a month later, the Supreme Court rendered judgment in *Kravitz*,[214] which established the rule we all know. If the manufacturer's obligation to inform the buyer of the danger posed by an otherwise non-defective thing is an implicit contractual obligation pursuant to article 1024 C.C.L.C. (now 1434 C.C.Q.), then applying reasoning similar to that of *Kravitz*, could it not be extended to the sub-purchaser[215]?

[176] That point of view does not appear to have been considered by the Court of Appeal in *Royal Industries Inc. c. Jones*.[216] In that case, a garage operator was seriously injured using machinery manufactured by the appellant and purchased from a distributor. In discussing the manufacturer's liability towards the sub-purchaser, Mayrand J stated:[217]

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regularly and that the accumulation of polyester and cotton deposits was dangerous. These deposits ignited, causing a fire that destroyed the buyer's plant.

214 *Kravitz* was decided on January 21, 1979, whereas *National Drying Machinery Co. v. Wabasso Ltd.* was decided on December 27, 1978.

215 Lluelles and Moore suggest this (based on article 1442 C.C.Q., which codifies the principle first recognized in *Kravitz*): Didier Lluelles & Benoît Moore, *Droit des obligations*, 3rd ed. (Montreal, Thémis, 2018) at 1380–1381, para 2309.

216 *Royal Industries Inc. v. Jones*, [1979] C.A. 561. The judgment was handed down November 8, 1979, some 10 months after *Kravitz*.

217 *Royal Industries Inc. c. Jones*, [1979] C.A. 561 at 563–564.

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> [TRANSLATION]
>
> The manufacturer's liability in this case is based on a lack of information rather than on a design or manufacturing defect in its equipment. The manufacturer who places a dangerous product on the market is obliged to inform its buyer and even the potential user who may become the purchaser of the product [reference omitted]. Normally, the obligation is fulfilled by providing written explanations with the product explaining how to avert danger when using it. Such written explanations are normally sent to the various sub-purchasers so that the user benefit from them.

[177] And further on, Mayrand J. held:[218]

> [TRANSLATION]
>
> Moreover, since the victim's recourse against the manufacturer is not contractual but strictly quasi-delictual, I would order appellant Royal Industries to pay Percy Jones an additional indemnity of 3% pursuant to the last paragraph of article 1056c of the *Civil Code*.
>
> [Emphasis added.]

[178] Both passages clearly state that, according to Mayrand J., the manufacturer's duty to inform the sub-purchaser is extracontractual. The trial judge does not seem to have even considered the possibility that this duty could be regarded as accessory to the product sold and give rise to a contractual remedy as per the *Kravitz* approach, of which he was undoubtedly aware.

[179] *Bank of Montreal v. Bail Ltée*,[219] rendered in 1992, sheds little light on the issue, because Gonthier J., for the Supreme Court, acknowledged that, between the contracting parties themselves, the obligation to provide information may be pre--contractual or contractual, depending on the circumstances, and thereby give rise to extracontractual or contractual liability. He noted in passing that articles 1469 and 1473 C.C.Q., the extracontractual liability provisions of the new C.C.Q., enshrine the manufacturer's obligation to provide information.[220] He also pointed out that the manufacturer knows or is presumed to know about the risks and dangers or manufacturing defects affecting its products, which it must disclose, since [TRANSLATION] "[s]uch information has a definite influence on the consumer's decisions regarding the purchase and use of the products in question,"[221] a comment that, in the first case at least, characterizes the manufacturer's obligation with regard to this type of information, as pre-contractual and extracontractual.

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218 *Royal Industries Inc. c. Jones*, [1979] C.A. 561 at 566.

219 *Bank of Montreal v. Bail Ltee,* [1992] 2 S.C.R. 554 at 585 *et seq*.

220 *Bank of Montreal v. Bail Ltee,* [1992] 2 S.C.R. 554 at 585 *in fine.* See also at 588, where the Supreme Court stated that "a duty to inform may also arise independently of any contractual relationship". In that case, where the client was sued by a subcontractor, the Court held that there was extracontractual liability.

221 *Bank of Montreal v. Bail Ltee*, [1992] 2 S.C.R. 554 at 587.

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[180] However, after *Wabasso Ltd. v. National Drying Machinery Co.*,[222] the issue regarding whether the liability of a manufacturer that breaches its duty to inform was contractual or extracontractual became irrelevant. The Supreme Court, per Chouinard J. confirmed in such a situation the legitimacy of opting between contractual or extracontractual liability, an option previously applied by earlier case law.[223] His explanation is as follows:[224]

> I conclude that the same fact can constitute both contractual fault and delictual fault, and that the existence of contractual relations between the parties does not deprive the victim of the right to base his remedy on delictual fault.

[181] On that point, Chouinard J. agreed with Paré J. of the Court of Appeal, specifically regarding the following:[225]

> [TRANSLATION]
>
> [T]he fact that a contracting party, the seller in the case at bar, committed some contractual fault is not a sufficient basis for the conclusion that he is delictually liable under art. 1053 C.C. on account of his fault on the one hand and the damage suffered by the contracting party on the other. Thus, the seller will not be liable under art. 1053 C.C. if he sells a defective item that is unsuited to its purpose and this results in commercial loss for the buyer responsible, under article 1053 C.C.
>
> It is therefore necessary that the fault committed within the framework of the contract be in itself a fault sanctioned by art. 1053 C.C. even in the absence of a contract. In the case at bar, the fault alleged was committed within the contract under consideration, but it would exist whatever the

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222 *Wabasso Ltd. v. National Drying Machinery Co.*, [1981] 1 S.C.R. 578. In that case, the Supreme Court stated that "it was so designed that it appeared that this upper part did not require any maintenance or cleaning" (at 580) and therefore the manufacture should have informed the purchaser that such maintenance was necessary.

223 For an overview of the case law, see e.g., André Nadeau & Richard Nadeau, *Traité pratique de la responsabilité civile délictuelle*, 2nd ed. (Montreal: Wilson & Lafleur, 1971) at 28 to 32, paras. 44 to 46. For a critique, see Jean-Louis Baudouin, *La responsabilité civile délictuelle* (Montreal: Les Presses de l'Université de Montréal, 1973) at 15 to 18, paras 21 to 23.

224 *Wabasso Ltd. v. National Drying Machinery Co.*, [1981] 1 S.C.R. 578 at 590. The Supreme Court agreed with Pigeon J., writing for the Supreme Court in *Alliance Assurance Co. v. Dom. Electric*, [1970] S.C.R. 168 at 173 ("It is true that the existence of contractual relations does in no way exclude the possibility of a delictual or quasi-delictual obligation arising out of the same fact"). Mignault, J. in *Ross v. Dunstall*, (1921) 62 S.C.R. 393, came to the same conclusion in finding that a manufacturer who sold a gun to a purchaser was extracontractually liable. He held that the purchaser's action "can stand, notwithstanding the contractual relations between the parties, upon article 1053 as well as upon articles 1527, 1528 C.C.," and notwithstanding the presence of a latent defect in that case, added "I cannot assent to the broad proposition that where the relations between the parties are contractual there cannot also be an action *ex delicto* in favour of one of them" (at 422).

225 *Wabasso Ltd. v. National Drying Machinery Co.*, [1981] 1 S.C.R. 578 at 590.

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> contract and whatever its nature (I am of course excluding cases of contractual limitations of liability). This liability would exist even if there had been no contract, and respondent had come into possession of the dangerous object only as the result of appellant's inaction. Indeed, from the viewpoint of art. 1053 C.C., it is not so much the sale which gives rise to liability here, but rather the fact that appellant permitted respondent to use an object made by it, knowing the risks of using it, without warning respondent of those risks. This duty to warn becomes the basis of the liability, and it exists whether or not there is a contract. It is an aspect of negligence which could be cited without recourse to the contract, for anyone who places an object which he knows to be dangerous in use in the hands of another has a duty to warn him of this.
>
> [Emphasis added.]

[182] The manufacturer's failure to warn the user of the danger of a thing or product was therefore a delict under article 1053 C.C.L.C. and, notwithstanding the fact that it could also constitute a contractual fault (the manufacturer (the contracting party) having failed in its duty to provide information), the buyer could just as well bring an action on an extracontractual basis.

[183] Subsequently, in 1989, in *Air Canada v. McDonnell Douglas Corp.*, Gonthier J., writing for the Supreme Court, further stated:[226]

> I see nothing in *Canadian Motor Sales Corp.,* which would support a statement of principle to the effect that where a plaintiff alleges a hidden defect or danger in a thing sold to him the action is necessarily based on the warranty against latent defects in arts. 1522 *et seq. C.C.L.C.* Such a principle would be contrary to this Court's decision in *Wabasso* which held that a plaintiff who is party to a contract may choose to pursue the defendant either on the basis of the contract or on the basis of a quasi-delict, provided of course that the facts constitute delictual as well as contractual fault. The facts alleged by the respondents in the case at bar may ground several causes of action. But paragraph 13 of the respondents' declaration clearly indicates that the respondents have opted to base their action on art. 1053 *C.C.L.C.* The fact that the respondents make no mention in their declaration of the contract of sale between Air Canada and McDonnell Douglas can only support the conclusion that the respondents' action is not contractual in nature.
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> [Emphasis added.]

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226 *Air Canada v. McDonnell Douglas Corp.*, [1989] 1 S.C.R. 1554 at 1567–1568. In that case, an aircraft purchased by the appellant was affected by various defects, which constituted a serious danger. The aircraft's fuel tank exploded, resulting in the loss of the aircraft and damage to the hangar that housed it. It appears that the manufacturer had not informed the buyer of the aircraft's defects, either at the time of sale (when it was actually unaware of them) or after it became aware of them.

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[184] In 1990, in *Houle v. Canadian National Bank,* L'Heureux-Dube J., writing for the Court, restated the rule in the following terms:[227]

> In order to find delictual liability between the contracting parties themselves however, there must exist, independently of the contract, a legal obligation deriving from art. 1053 *C.C.L.C.*, which would apply generally, not only to the contracting parties. In *Air Canada*, the action was not based on the contract but on art. 1053 *C.C.L.C.*, alleging the extra-contractual fault of the failure to warn the purchaser of a hidden danger in the goods sold.

[185] In *Wabasso*, like in *Air Canada*, it was the purchaser who exercised the recourse, but there is no doubt that the subsequent buyer (sub-purchaser) would have had the same option.

[186] Given that opting between contractual and extracontractual liability was permissible as long as the facts giving rise to the damage would also be considered a fault that, by its nature, would contravene article 1053 C.C.L.C., it therefore did not matter whether articles 1024 or 1522 C.C.L.C. or article 1053 C.C.L.C. were relied on. When a manufacturer put a dangerous product on the market (irrespective of the source of the danger: defect, nature of the object, lack of instructions regarding use of the product), it has an obligation to inform, and breach of that obligation is a fault in all cases. If a manufacturer puts a dangerous product on the market (whether by effect of its nature, its handling or the defect affecting it) and fails to disclose that fact, it commits a fault.

[187] Consequently, and to return to the case at hand, even if the respondents could have taken the contractual liability route, they validly opted for the extracontractual liability route with respect to facts occurring before January 1, 1994, in accordance with article 1053 C.C.L.C. Did the coming into force of the C.C.Q. change anything regarding this conclusion?

[188] Article 1458 C.C.Q. now prohibits this type of election, at least between the contracting parties themselves:

1458. Every person has a duty to honour his contractual undertakings.	**1458.** Toute personne a le devoir d'honorer les engagements qu'elle a contractés.
Where he fails in this duty, he is liable for any bodily, moral or material injury he causes to the other contracting party and is bound to make reparation for the injury; neither he nor the other party may in such a case avoid the	Elle est, lorsqu'elle manque à ce devoir, responsable du préjudice, corporel, moral ou matériel, qu'elle cause à son cocontractant et tenue de réparer ce préjudice; ni elle ni le cocontractant ne peuvent alors se soustraire à l'application des règles

[227] *Houle v. Canadian National Bank*, [1990] 3 S.C.R. 122 at 165.

rules governing contractual liability by opting for rules that would be more favourable to them.	du régime contractuel de responsabilité pour opter en faveur de règles qui leur seraient plus profitables.

[Emphasis added.]

[189] Authors Lluelles and Moore (the latter is now a judge of the Superior Court) write that this [TRANSLATION] "exclusion of option is based on public order and 'is incumbent on all the parties to the contract.'"[228] Contractual and extracontractual liabilities would henceforth belong to watertight silos, and one would not have recourse to the latter if one had access to the first. The conditional is used here not because the proposition is contested, but simply because it does not necessarily have the very broad scope some might want to attribute to it.

[190] As regards the recourses that are the subject of this appeal, a reading of article 1458 para. 2 C.C.Q. raises two questions, which we will address in turn: (1) does this provision apply to the recourse launched *after* January 1, 1994, based on faults or facts occurring *before* this date? (2) Does it apply to the sub-purchaser of a dangerous product (whether the danger stems from a latent defect affecting the product or from the absence or insufficiency of information pertaining to the inherent danger of a product without defects)?

[191] *Syndicat du garage du Cours Le Royer v. Gagnon* answers the first of these questions in the negative. In that case, the appellant brought a suit in September 1994 against the real estate developer and the architect of a real estate complex based on facts occurring *before* the coming into force of the C.C.Q. Basing its decision on section 85 A.I.R.C.C.,[229] Brossard J., speaking for the Court, held as follows:[230]

> [TRANSLATION] On the whole, I am therefore of the opinion that article 1458 of the new *Civil Code of Québec* does not apply in the case at bar and that the former legal rules must be applied to the legal effects of civil liability resulting from the legal situation of the parties created before the new Code came into force.

[192] Because Brossard, J.'s conclusion is of general scope, it applies to the sub-purchaser of a dangerous product in all the cases referred to above.

[193] That being the case, the preceding conclusion of the Court is confirmed:

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[228] Lluelles & Moore, *supra* note 215 at 1885, para. 2958. See also Baudouin & Jobin, *supra* note 210 at 887, para. 752; Nathalie Vézina, "L'indemnisation du préjudice corporel sur le fondement de l'obligation de sécurité en droit québécois: solution efficace ou défectueuse?" in Barreau du Québec, Service de la formation continue *Le préjudice corporel (2006)*, vol. 252 (Cowansville, Qc.: Yvon Blais, 2006) 115 at 122.

[229] This provision has already been reproduced *supra* in para. [155] of this decision, as has section 83 A.I.R.C.C.

[230] *Le Royer v. Gagnon*, [1995] R.J.Q. 1313 at 1320.

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notwithstanding the fact that they brought their action in 1998 (after the coming into force of the C.C.Q.), the respondents were, in light of section 85 A.I.R.C.C., required to rely on the former law as regards the faults allegedly committed by the appellants before 1994. Because they had the right to choose in this regard, they could base their claim on the extracontractual liability of the appellants, even if a contractual claim against the appellants was available to them (which, under section 83 A.I.R.C.C., would also have been based on the pre-1994 law as to the facts occurring at that time).

[194] But what about that portion of the recourses pertaining to the conduct – and thus the liability –- of the Appellants as of January 1, 1994? To answer this question, one must first determine whether the respondents had, in this regard, a contractual recourse available to them. Only on this condition does the second paragraph of article 1458 C.C.Q. come into play. This brings us to the second question posed above: does this provision apply to the sub-purchaser of a product, and does it make the contractual path available to it obligatory?

[195] The issue divides the authors; as for case law, it is unclear and often adjudicates without addressing the second paragraph of article 1458 C.C.Q. and the prohibition against the option,[231] especially since the outcome of the litigation would, in many cases, be the same regardless of the path taken.[232]

[196] To properly understand the controversy, let us first remember that, since the coming into force of the C.C.Q., the sub-purchaser has enjoyed the benefit, against the manufacturer, of the warranty of quality set forth in articles 1726 *ff.* C.C.Q., via two distinct channels. On the one hand, article 1442 C.C.Q., a provision that enshrines the lessons of *Kravitz*[233] by generalizing them, states that:

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[231] That was the case, for example, in *Desjardins Assurances générales inc. c. Venmar Ventilation inc.*, 2016 QCCA 1911, in which a malfunctioning air exchanger caused a fire in the insureds' residence. The equipment was already in place when they bought the building and had been installed in 1996. The evidence showed that the manufacturers had been informed, as early as 1998, that there was a problem with the overheating motor on the equipment, which furthermore had insufficient thermal protection. They kept this to themselves. The trial judge applied articles 1468, 1469 and 1473 C.C.Q., which the Court confirmed, without addressing article 1458 C.C.Q.:

> [TRANSLATION]
>
> [4] The judge was correct to apply article 1468 C.C.Q., which provides that the manufacturer of a thing is bound to make reparation for injury caused to a third person by reason of a safety defect in the thing. He was right to apply this provision to the sub-purchaser of the thing, and to the insurer subrogated in the rights of the sub-purchaser [reference omitted].

In another case, the Court had previously recognized the contractual nature of the recourse exercised by the sub-purchaser against the manufacturer under articles 1442 and 1730, once again without much discussion of or reference to article 1458 C.C.Q. See *Ferme Avicole Héva inc. v. Coopérative fédérée de Québec (portion assurée)*, 2008 QCCA 1053 at paras. 74–75.

[232] As noted by Prof. Nathalie Vézina in 2006 (*supra* note 228 at 122–123) and it remains accurate. See also Nathalie Vézina & Françoise Maniet, "La sécurité du consommateur au Québec. deux solitudes: mesures préventives et sanctions civiles des atteintes à la sécurité", (2008) 49 C. de D. 5795 at 75 *in fine*.

[233] *General Motors Products of Canada v. Kravitz*, [1979] 1 S.C.R. 790.

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1442. The rights of the parties to a contract pass to their successors by particular title if the rights are accessory to the property which passes to them or are closely related to it.	**1442.** Les droits des parties à un contrat sont transmis à leurs ayants cause à titre particulier s'ils constituent l'accessoire d'un bien qui leur est transmis ou s'ils lui sont intimement liés.

[197] The seller's warranty of quality is such an accessory; furthermore, it is closely related to the product and ensures the usefulness thereof, and therefore runs with this product into the hands of the sub-purchaser.

[198] On the other hand, the sub-purchaser enjoys, against the manufacturer (and the other participants in the product distribution chain), the direct recourse available to him or her under article 1730 C.C.Q.:

1730. The manufacturer, any person who distributes the property under his name or as his own, and any supplier of the property, in particular the wholesaler and the importer, are also bound to a seller's warranty.	**1730.** Sont également tenus à la garantie du vendeur, le fabricant, toute personne qui fait la distribution du bien sous son nom ou comme étant son bien et tout fournisseur du bien, notamment le grossiste et l'importateur.

[199] As regards article 1442 C.C.Q., [TRANSLATION] "the legal warranty of quality that the manufacturer owes to the first purchaser ..., is passed on to any sub-purchaser and confers upon him or her a direct contractual right against the manufacturer."[234] The sub-purchaser thus exercises the rights of the first buyer. As regards article 1730, the sub-purchaser exercises the personal right that falls to him or her by reason of the sale entered into with his or her own seller against any of the participants in the distribution chain, up to and including the manufacturer (initial seller). More precisely:[235]

> [TRANSLATION]
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> Whereas article 1442 prescribes a transfer of rights, article 1730 creates a legal fiction, in the felicitous words of two authors. The first rule is a general provision susceptible of applying to the sub-purchaser and, as we have seen, allowing him or her to invoke the warranty due by the manufacturer to the first buyer in the chain of successive sales. However,

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[234] Jobin & Cumyn, *supra* note 203 at 341, para. 235.

[235] Jobin & Cumyn, *supra* note 203 at 344 and 345, para. 236. In the same vein, see also Baudouin & Jobin, *supra* note 210 at 903 to 905, para. 760; Lluelles & Moore, *supra* note 215 at 1385, para. 2316. This explanation, which is generally accepted by the authors of legal commentary, seems preferable to the one that suggests that the sub-purchaser enjoys the warranty of the last seller as against the manufacturer. On this topic, see e.g., Lluelles & Moore, *supra* note 215 at1386-1387, paras. 2318 to 2320.

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> the buyer who invokes article 1730 does not exercise the rights of a previous owner of the product, but his or her own rights resulting from *his or her purchase contract.*
>
> … Indeed, under this article, the rights of the first purchaser do not pass to the sub-purchaser; instead, one or more *additional debtors* are added to the last seller, as debtors of the warranty due under the *last sale*.
>
> [Emphasis in original; references omitted]

[200] In brief, the sub-purchaser of a product affected by a latent defect may exercise against the manufacturer, the contractual rights (this classification is generally accepted) conferred upon it under articles 1442 and 1730 C.C.Q. and may *a fortiori* do so in the case of a dangerous latent defect, i.e., a non-apparent defect that creates or constitutes a danger.

[201] Can he or she do so as well in the case of a product, which although not affected by a defect, nevertheless represents a danger, whether by its very nature (as in the case of cigarettes) or by reason of the specifics of the handling thereof?

[202] Here again there is controversy (which is not new[236]) and we must, in this regard, open a lengthy parenthesis.

[203] A few authors, in fact, are of the opinion that this type of failure, as regards the manufacturer/sub-purchaser tandem, falls under the regime of extracontractual liability

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[236] The question was already being asked in *Ross v. Dunstall*, (1921) 62 S.C.R. 393, which involved a rifle whose breech, if improperly assembled, provoked a dangerous recoil action to which the respondents, two experienced hunters, had fallen victim. The manufacturer had neither disclosed nor explained how to avoid this danger. After much consideration, Anglin J. held that "it is perhaps not so clear that it [the warranty against latent defects] also covers the unusual latent sources of danger not amounting to defects" (at 401). Mignault J. concluded for his part that "there was a hidden and undisclosed danger and this certainly was a defect in the rifle and a latent one," within the meaning of article 1522 C.C.L.C. (at 420). This did not prevent him from concluding (as did his colleague Anglin J., in fact) that the manufacturer's failure to adequately inform potential users of this danger constituted a fault within the meaning of article 1053 C.C.L.C.
A short passage in *Air Canada v. McDonnell Douglas Corp.*, [1989] 1 S.C.R. 1554 at 1567 *in fine*, implies that an undisclosed inherent danger, like a dangerous latent defect, is a "latent defect" within the meaning of article 1522 C.C.L.C., but this is not clear, and the Court held that, in any case, in the presence of a dangerous defect coupled with a failure to inform, as in the case at bar, the appellant enjoyed a delictual recourse based on article 1053 C.C.L.C. One presumes that this is the reason why the case law at the time did not clearly distinguish between a dangerous defect and the inherent danger of a non-defective product. Because the delictual recourse was available, the issue did not have the same importance.
As we saw earlier in *National Drying Machinery Co. v. Wabasso Ltd.*, [1979] C.A. 279, the Court, in reasons written by Mayrand J., instead viewed the manufacturer's duty to warn its buyer of the dangers of a product, which was otherwise completely functional, as an implicit contractual obligation governed by article 1024 C.C.L.C., and this same duty constituted an obligation governed by article 1053 C.C.L.C. in the case of the sub-purchaser.

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established by articles 1468, 1469 and 1473 C.C.Q.[237] They say that under no circumstances would this be a latent defect (no more so than it would be a latent defect under the former law).[238] If they are right, then the second paragraph of article 1458 is no longer relevant: there is no option, the only recourse available to the sub-purchaser being extracontractual.

[204] Others, on the contrary, view the safety defect related to the absence or insufficiency of required information as a form of latent defect, and thus subject to the warranty of quality under article 1726 C.C.Q., which the sub-purchaser may assert against the manufacturer under articles 1442 or 1730 C.C.Q. According to the proponents of this point of view, including the author Edwards (now a Court of Quebec judge), there is no need in this regard to rely on a theory based on the obligation to inform, since [TRANSLATION] "[t]he product sold is defective within the meaning of the warranty, as it is unaccompanied by instructions or disclosures sufficient for the safe use thereof,"[239] which forms an integral part of the use for which any product is intended. In this sense, a safety deficiency would necessarily be included in the use deficiency that defines a latent defect according to article 1726 C.C.Q., even if, strictly speaking, the product contains no defect. In a way, the undisclosed danger would be the defect. And if that is the case, the second paragraph of article 1458 C.C.Q., according to some, would prevent the sub-purchaser, who is the holder of a recourse against the manufacturer by the effect of article 1730 or article 1442 C.C.Q., from taking the extracontractual path under articles 1468 and 1469 C.C.Q.

[205] This latter proposition is attractive, but was refuted by the Supreme Court in *ABB Inc. v. Domtar Inc.*, which defines "latent defect" more narrowly, both within the meaning of article 1522 C.C.L.C. (the relevant facts having occurred prior to 1994) and of article 1726 C.C.Q.[240] LeBel and Deschamps JJ. stated:

> 47. The legislature has not expressly defined what constitutes a "defect".

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[237] See for example Jobin & Cumyn, *supra* note 203 at 198, para. 157 (where they distinguish between a dangerous defect and the "failure to warn the buyer of an inherent danger," as the basis for the liability regime is not the same), at 201, para. 159 (as regards the sub-purchaser, subject to article 1442 C.C.Q.) and at 299, para. 211. See also Guylaine Vaillancourt, *La responsabilité pour le défaut de sécurité des biens: de l'importance de différencier les fondements de la garantie de qualité de ceux de l'obligation de sécurité* (Thesis, University of Ottawa Faculty of Law, January 2004).

[238] See the description of latent defects by Professors Jobin and Cumyn, *supra* note 203 at 210 to 214, para. 168.

[239] Jeffrey Edwards, *La garantie de qualité du vendeur en droit québécois*, 2nd ed. (Montreal: Wilson & Lafleur, 2008) at 150, para. 322 (see generally at 147 to 151, paras. 318 to 325). In the same vein, see Mathieu Gagné & Mélanie Bourassa Forcier, "Le devoir du fabricant d'assurer la qualité et la sécurité des médicaments: responsabilité" in *Précis de droit pharmaceutique*, 2nd ed. (Cowansville, Qc.: Yvon Blais, 2017) at 302 *et seq*.

[240] The Supreme Court, in reasons written by LeBel and Deschamps JJ., stated that "whether it is the C.C.L.C. or the C.C.Q. that is applied will have no impact on the outcome of the case, since the C.C.Q. essentially reproduces the C.C.L.C.'s rules where the warranty against latent defects in issue here is concerned, despite certain changes in the wording of the provisions relating to the issues of this case." (*ABB Inc. v. Domtar Inc.*, 2007 SCC 50 at para. 31).

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> Article 1522 C.C.L.C. does, however, contain some useful information. For example, the first criterion for determining whether a latent defect exists is the loss of use it causes. The purpose of the warranty against latent defects is thus to ensure that the buyer of a good will be able to make practical and economical use of it.
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> 48. There are three main types of latent defects: the material defect, which relates to a specific good; the functional defect, which relates to the good's design; and the conventional defect, which arises where the buyer has disclosed that the good is to be put to a particular use. Material and functional defects are assessed in light of the normal use to which buyers put the good, whereas a conventional defect is assessed in light of the particular use indicated by the buyer to the seller. However, it is necessary, in discussing this classification, to briefly consider the problem of technological change.
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> 49. Technological change is a modern-day reality that is characterized by the rapid pace at which improvements are made to products. The trial judge rightly noted that manufacturers are constantly redesigning their products: [2003] R.J.Q. 2194, at para. 161. He was wary, and rightly so, of a tendency to condemn a manufacturer simply because a different version of the original product has since emerged on the market. Selling an improved or better performing version of a product does not render the previous version defective. Differences in quality and possible use between these two versions of the product cannot be characterized as a latent defect. The key factor in the analysis resides in the loss of use, as assessed in light of the buyer's reasonable expectations.
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> 50. The categories of defects can sometimes overlap. In the case at bar, Domtar complains that the tie welds, which were integral to the superheater, compromised the normal operation of the boiler by causing cracks and unforeseeable shutdowns. According to Domtar, the argument that it should not have to accept untimely shutdowns flows from the very nature of the equipment purchased and from the fact that this equipment operates continuously. In this sense, the defect of which Domtar complains is both functional and conventional. However, regardless of how the defect is characterized, it must have four characteristics, all of which are essential to the warranty: it must be latent, must be sufficiently serious, must have existed at the time of the sale and must have been unknown to the buyer.

[206] Further, they add that:

> 107. The trial judge found that C.E. had breached its duty to inform, whereas in the Court of Appeal's view, the issue related to the warranty against latent defects. The two concepts overlap, but it is important to distinguish them in order to identify the circumstances in which each rule will be applied.

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> 108. Whereas the warranty against latent defects is expressly provided for in the C.C.L.C. and the C.C.Q., the duty to inform derives instead from the general principle of good faith *(Bank of Montreal v. Bail Ltée,* [1992] 2 S.C.R. 554, at p. 586; arts. 6, 7 and 1375 C.C.Q.) and the principle of free and informed consent. Furthermore, the scope of the general duty to inform is much broader than that of the disclosure of a latent defect. This duty encompasses any information that is of decisive importance for a party to a contract, as Gonthier J. stated in *Bail* (see pp. 586-87). It is therefore easy to imagine a situation in which a seller would be in breach of the duty even though no latent defect exists.
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> 109 Where a seller fails to discharge the duty to disclose a defect, on the other hand, it can probably be said at the same time that he or she has also breached the general duty to inform the buyer of a factor of decisive importance in respect of the good sold, namely the existence of a latent defect. The instant case is one example of this. If a party invokes the seller's warranty against latent defects, the duty to inform is in a sense subsumed in the analysis of the seller's liability for latent defects, and there is no need for the court to conduct a separate analysis on the seller's duty to inform. As a result, our analysis and conclusion regarding C.E.'s liability under the warranty against latent defects are sufficient to dispose of the case before the Court.
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> [Emphasis added.]

[207] Read in parallel, these passages from *ABB Inc.* indicate that the danger of a product that is marketed without information about the risk associated with the use thereof or the information required to use it safely is not a "defect" within the meaning of article 1522 C.C.L.C., nor a "defect" within the meaning of article 1726 C.C.Q., unless such danger is the result of a material defect (i.e., a manufacturing, production or storage defect), a functional defect (i.e., a design defect) or even, imaginably, a conventional defect (i.e., the impossibility or difficulty of using the product for a specific purpose intended by the buyer and disclosed to the seller).[241] In other words, the danger derived

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[241] In this sense, see also *Gouin Huot v. Équipements de ferme Jamesway inc.*, 2018 QCCA 449 at para. 8; Jobin & Cumyn, *supra* note 203 at 210 to 214, para. 168; Jean-Louis Baudouin, Patrice Deslauriers &Benoît Moore, *La responsabilité civile*, 8th ed., vol. 2 (Cowansville, Qc.: Yvon Blais, 2014) at 400, para. 2-389 [*La responsabilité civile*, vol. 2]; Dany Lachance, "La garantie légale revisitée" (2014) 2 C.P. du N. 323 at 330–332; Pierre-Gabriel Jobin, "Précis sur la vente", in Barreau du Québec and Chambre des notaires du Québec, *La réforme du Code civil*, vol. 2 (Obligations, contrats nommés) (Ste-Foy, Qc.: Les Presses de l'Université Laval, 1993) at 462, para. 150.
It should be noted in passing that the legislature imported into article 1469 C.C.Q., at least in part, this definition of "defect," which is specific to articles 1522 C.C.L.C. and 1726 C.C.Q.*:* the safety defect referred to in this provision may in fact result from a "defect in design or manufacture", or from "poor preservation or presentation," it being understood that, even if it is not affected by such a defect, a product may nevertheless present a safety defect resulting from "the lack of sufficient indications as to the risks and dangers" the product contains "or as to the means to avoid them." The buyer of a product presenting a safety deficiency related to

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from a material or functional (or even conventional) defect would be a defect giving rise to the warranty of quality and related contractual recourse,[242] but not the danger related to a product containing no defect of the kind, as the absence of a defect prevents the triggering of the warranty of quality set out in articles 1522 *et seq*. C.C.L.C. or 1726 *et seq*. C.C.Q.[243]

[208] According to Prof. Vézina, whose words are applicable to the manufacturer:[244]

> [TRANSLATION]
>
> It is true that the seller's warranty of quality is designed to apply in quite a number of situations where the buyer falls victim to a dangerous product, as the danger that such product presents is often attributable to a defect that the buyer could not discern. In other words, the warranty applies each time the danger results from the defect of the product.
>
> The warranty of quality must nevertheless be distinguished from the obligation to provide information about a dangerous product where this obligation pertains rather to a situation where the product contains an inherent danger and not strictly speaking a defect.
>
> **Example**
>
> Many products present an inherent danger, which is separable from the intended use thereof, like the cutting edge of a blade or the corrosiveness of a solvent.

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a defect may invoke article 1726 C.C.Q. against its own seller or the manufacturer, in which case article 1458 C.C.Q. prevents such buyer from opting for the extracontractual recourse provided in articles 1468 and 1469 C.C.Q.

242 See Jobin & Cumyn, *supra* note 203 at 216, para. 169

243 The earlier case law had also made this distinction and, in this vein, ee e.g., *Royal Industries Inc. v. Jones*, [1979] C.A. 561 at 563–564; and *National Drying Machinery Co. v. Wabasso Ltd.*, [1979] C.A. 279 at 284 *in fine* and 285 of the majority reasons of Mayrand J. (as we know, the Supreme Court set aside the Court of Appeal's decision, but not on this point). The same distinction underlies *O.B. v. Lapointe*, [1987] R.J.Q. 101, in which the safety defect of the product resulting from lack of information was not viewed as a latent defect.
This distinction was already made, conceptually, by Prof. Crépeau in his 1965 article (even though he did not focus on differentiating between the pre-contractual and contractual stage), in addressing the seller's safety obligation and its duty to inform the buyer about the proper use of the product which, without such information, presented a danger: P.-A. Crépeau, *supra* note 212 at 1617. See also Thérèse Rousseau-Houle, "Les lendemains de l'arrêt Kravitz: la responsabilité du fabricant dans une perspective de réforme" (1980) 21 C. de D. 5 at 10; P. Legrand, *supra* note 207 at 231–233.

244 Nathalie Vézina, "Obligation d'information relative à un bien dangereux et obligation de sécurité: régime général et droit de la consommation", in *Droit de consommation et de la concurrence*, fasc. 4, Jurisclasseur Québec, loose-leaf (Montreal: LexisNexis Canada, 2014, update no. 7, August 2018) at 4/7 and 4/8 para. 12 [*Droit de la consommation*].

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> When the danger does not constitute a defect, the warranty of quality does not apply, and one must then turn to the obligation to provide information. Indeed, the criticism does not lie in the fact that the seller provided a defective product but rather in the fact that it omitted to point out the inherent danger presented by the product and the means to avoid such danger.
>
> [Emphasis added.]

[209] If the sub-purchaser does not have the right to sue the manufacturer contractually under the warranty of quality (which warranty is available to the sub-purchaser by way of article 1442 or article 1730), is the second paragraph of article 1458 para. 2 C.C.Q. not inapplicable? In this respect, wouldn't the only liability regime applicable to the harm resulting from the danger engendered by the manufacturer's or the seller's failure to inform be the extracontractual regime (in this case the regime established by articles 1468 and 1469 C.C.Q.)? These two questions must *a priori* be answered in the affirmative.

[210] Before coming to this conclusion, however, we must consider another possibility. Is it possible that the intrinsic danger of a product not affected by a defect within the meaning of *ABB Inc.* can nevertheless give rise to a contractual recourse which would here be related to the combined effects of articles 1434 and 1442 C.C.Q.? We already asked this question above when examining article 1024 C.C.L.C., but without having to answer it. However, the question needs to be asked anew by reason of article 1434 C.C.Q., which succeeded article 1024 C.C.L.C. On this issue, similar to the answer proposed by Prof. Crépeau in 1964, the authors Baudouin, Deslauriers and Moore suggest the following:[245]

> [TRANSLATION]
>
> **2-392** - ... When the safety defect arises from a defect of design or manufacture, the seller's warranty of quality logically applies to the extent that the usefulness of the product is thereby affected. The same applies, fairly easily, when the safety defect results from a lack of information related to such latent defect. The question is trickier when the harm was caused by lack of information related to the inherent danger of the product sold and the use thereof. In such case, it may be difficult to connect this safety defect to the seller's obligation of quality. It is then possible to fall back on article 1434 C.C.Q. to graft an implicit obligation to provide information and safety onto the contract of sale or other contract.
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> [Emphasis added; references omitted.]

[211] Pushing the reflection in this direction and asking what constitutes an "accessory to the property" within the meaning of article 1442 C.C.Q., the authors Lluelles and

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[245] Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 2, *supra* note 241 at 406. See also Baudouin & Jobin, *supra* note 210 at 406.

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Moore add the following:[246]

> [TRANSLATION]
>
> **2309.** However, there is still some uncertainty about a few personal rights. Thus, what about the *obligation to warn* that a seller/manufacturer owes to its buyer as to the dangers of using a product or the methods for the optimal use thereof? Would the personal rights generated by this implicit obligation, based on equity (art. 1384) or even good faith (art. 1375), be as indispensable to the property as those stemming from the legal warranty for latent defects? A negative answer would be surprising. Subject to a possible "*intuitu personae*," a solution that is favourable to the sub-purchaser should therefore come as no surprise.
>
> [References omitted.]

[212] The proposition that emerges from these remarks may be formulated as follows:

> - in addition to the legal warranty of quality required of the manufacturer under articles 1726 *et seq*. C.C.Q., the manufacturer has the contractual obligation under article 1434 C.C.Q. (reinforced by article 1375 C.C.Q.) to inform and warn the buyer of any danger relating to a non-defective product or to the handling thereof;
>
> - this obligation is an accessory to the property and is closely related therewith, so that the benefit would pass to the sub-purchaser under article 1442 C.C.Q.

[213] In other words, the manufacturer's obligation to inform about a dangerous but non-defective product would be a sort of safety warranty, an accessory that would run with the product into the hands of the sub-purchaser. And if that is the case, a safety defect affecting a product would give rise to a contractual recourse based on the first paragraph of article 1458 C.C.Q., which recourse would be available to the sub-purchaser by reason of article 1442 C.C.Q. The second paragraph of article 1458 C.C.Q. would then deprive the sub-purchaser of the ability to commence an action against the manufacturer on an extracontractual basis, that is, on the basis of articles 1468 and 1469 C.C.Q.

[214] In the opinion of the Court, however, this proposition raises more problems than it solves and seems to emerge from a willingness to artificially contractualize that which, at first blush, is not contractual or, at least, not always contractual.

[215] Indeed, as we have already seen, the manufacturer's duty to inform often has a pre-contractual dimension, which can lead only to an extracontractual sanction.[247] Let us

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[246] Lluelles & Moore, *supra* note 215 at 1380. This is a point of view that authors Jobin and Cumyn appear to share: Jobin & Cumyn, *supra* note 203 at 157 to 159, para. 123 and at 340, para. 234. See also N. Vézina & F. Maniet, *supra* note 232 at 73 *in fine* and 74.

[247] See *Bank of Montreal v. Bail Ltée*, [1992] 2 S.C.R. 554. In 2009, Prof. Jobin even wrote that [TRANSLATION] "[the] obligation to inform at the time the contract is formed is not part of the

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consider here a product which, by its very nature, is dangerous, even when used as intended and as recommended by the manufacturer. Medication, for example, when administered as it should be, may have side effects about which users must be forewarned. Cigarettes are another example: here is a product which, when used precisely as it is intended to be used, the right way, nevertheless presents a danger to health. Such danger must be disclosed to the buyer before the product is even acquired, as this information is essential to the decision to procure the product.[248] Information of this kind, wrote Gonthier J., cited above, "will have a definite influence on the consumer's decisions as to whether to purchase and use such products."[249]. Such a pre-contractual obligation does not fall under article 1434 C.C.Q. and does not easily tie in with article 1442 C.C.Q., which is a provision which pertains to the effects of contracts, but fits naturally with the extracontractual regime of articles 1468, 1469 and 1473 C.C.Q.

[216] In brief, a safety defect that is not the result of a defect in the product but of a failure to fulfil the manufacturer's obligation to inform is not, as per the Supreme Court in *ABB Inc. v. Domtar Inc.*, *supra*, a latent defect within the meaning of articles 1726 *et seq.* C.C.Q. and does not trigger the warranty of quality (whether by way of article 1730 or article 1442 C.C.Q.). Furthermore, as the nature of the defect in this case requires pre-contractual disclosure, article 1434 C.C.Q., once again combined with article 1442 C.C.Q., is not any more applicable. The sub-purchaser of the product affected by such defect cannot therefore invoke contractual liability on the part of the manufacturer, and no other contractual path is open to him or her. This being the case, the second paragraph of article 1458 C.C.Q., even presuming that it concerns the sub-purchaser, is wholly inapplicable and cannot preclude him or her from having recourse to the rules of the extracontractual regime.

[217] Finally, note that the second paragraph of article 1458 2 C.C.Q. does not apply to recourses set forth in the C.P.A., which function in a completely autonomous framework

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contract and is governed by extracontractual liability," which [TRANSLATION] "is not controversial" (Pierre-Gabriel Jobin, "Les ramifications de l'interdiction d'opter. Y a-t-il un contrat? Où finit-il?" (2009) R. du B. can. 355 at 363). In their book on sale in which they address the obligation of the seller (who may be a manufacturer) to provide its direct buyer with instructions on use, maintenance and preservation, Profs. Jobin and Cumyn distinguish between the information which is provided at the time of, and with a view to, the formation of the contract, and the information stemming from such formation, referring to the contractual or extracontractual regime, as the case may be (Jobin and M. Cumyn, *supra* note 203 at 157, para. 122). Regardless of this distinction, they nevertheless place the seller's obligation to warn its buyer of a danger inherent to the product in the realm of the implicit contractual obligation of article 1434 C.C.Q. (at 157-158, para. 123).

248 For other examples of the obligation to inform as a pre-contractual obligation, see *Option Consommateurs v. Infineon Technologies, AG*, 2011 QCCA 2116 at paras. 30 to 32 (affirmed by the Supreme Court of Canada, without expressly discussing the issue, except to ratify the extracontractual nature of the claim – See *Infineon Technologies AG v. Option Consommateurs,* 2013 SCC 59). See also *Sudenco inc. v. Club de golf de l'île de Montréal (2004) inc.*, 2016 QCCA 439; *Mignacca v. Provigo inc.* J.E. 2004-1777 (C.A.). Paragraph 19 of the judgment *a quo* takes note of the pre-contractual nature of the manufacturer's duty to inform about the dangers of the product at issue.

249 *Bank of Montreal v. Bail Ltée*, [1992] 2 S.C.R. 554 at 587.

(of public order).[250] Article 270 C.P.A.[251] leaves no doubt about this:

270. The provisions of this Act are in addition to any provision of another Act granting a right or a recourse to a consumer.	**270.** Les dispositions de la présente loi s'ajoutent à toute disposition d'une autre loi qui accorde un droit ou un recours au consommateur.

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[218] Consumers may therefore, at their option, base their action solely on the C.P.A. or, concurrently with the C.C.L.C. or the C.C.Q. This form of cumulation is allowed, even though, it goes without saying, the plaintiff may not cumulate the compensatory damages associated with the harm incurred.[252] There is therefore nothing wrong with the fact that the respondents based their claims on articles 219, 228 and 272 C.P.A. (just as they could have invoked section 53 C.P.A., which will be addressed below).

[219] This is also true for the recourse under the *Charter*.

[220] In brief, at the end of this lengthy parenthesis, the Court finds that the respondents could validly base their recourse on the extracontractual liability of the appellants, just as they could invoke the *Charter* and the C.P.A. The trial judge did not err in accepting this juridical framework.

C. Civil liability of the manufacturer marketing a dangerous product: general regimes

[221] Given the claims of the parties, the evidence and his findings of fact, did the trial judge err in applying the rules pertaining to the appellants' liability under the C.C.L.C., the C.C.Q., the C.P.A. and the *Charter*? We know what he ultimately faults the appellants for: (1) as manufacturers of a product that is intrinsically harmful, they deliberately failed to fulfil their duty to inform their (existing and potential) customers on the dangers and risks associated with the consumption of cigarettes and (2) for decades, they just as deliberately orchestrated and conducted, on all fronts, a campaign of disinformation in that regard. We also know that, in his opinion, this conduct gives rise to civil liability under articles 1053 C.C.L.C. and 457 C.C.Q., article 1468 C.C.Q., articles 219, 228 and 272 C.P.A. and sections 1 and 49 of the *Charter*. What can be said about this? If we examine things in the light of section 53 C.P.A., are the same conclusions justified?

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[250] Lluelles & Moore, *supra* note 215 at 1381 to 1384, paras. 2311 to 2314; Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 2, *supra* note 241 at 376 *et seq*., para. 2-359 *et seq*.; Luc Thibaudeau, *Guide pratique de la société de consommation*, t. 2 (*Les garanties*) (Cowansville, Qc.: Yvon Blais, 2017) at 5–6, para. 8, and at 11, para 19.

[251] This provision has not been amended since its adoption in 1978 and coming into force in 1980.

[252] Jobin & Cumyn, *supra* note 203 at 358-359, para. 243; Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 2, *supra* note 241, in particularl at 376 at para. 2-359.

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[222] Before addressing these questions, however, we should take a detailed look at the legal treatment which the trial judge applied to the various issues in dispute.

i. Summary of the judgment *a quo* regarding liability

[223] We should note, preliminarily, that at no point does the trial judge find that the cigarettes manufactured by the appellants were affected by a defect, i.e., a defect in design or manufacture, whether within the meaning of article 1469 C.C.Q. or of articles 1522 C.C.L.C. or 1726 C.C.Q. (and the same is true within the meaning of section 53 C.P.A.). Furthermore, the trial judge did not view the danger inherent in the consumption of cigarettes as a defect in design or manufacture within the meaning of the aforementioned provisions, nor the consequence of such a defect. Admittedly, he did not explicitly examine the issue, which was not raised before him, but nothing suggests that that could have been the case.

[224] For if cigarettes are dangerous, and that is exactly what emerges from the evidence and the judgment, it is not because they are defective (or because of poor preservation, the other hypothetical case contemplated in article 1469 C.C.Q. and, implicitly, articles 1522 C.C.L.C. or 1726 C.C.Q.), nor because they do not satisfy one's expected use thereof. What is the purpose of a cigarette? To smoke, essentially, answered one of the appellants' lawyers,[253] and this sober but correct answer clearly shows that we are not in the realm of the use deficiency associated with a product defect, a notion which, as we have seen, has a precise meaning. A perfect cigarette is no less harmful: the problem, as in this case, is with the information relating to such harmfulness.

[225] And, on that subject, the trial judge first held that, to the extent that no law prohibits the sale or distribution thereof, the marketing and merchandizing of a product that is intrinsically dangerous to health do not ordinarily constitute faults[254] (whether within the meaning of the C.C.L.C.*, the* C.C.Q., the *Charter or* the C.P.A.). He therefore rejects the proposition that merely marketing such a product or simply promoting the consumption thereof are intrinsically wrongful acts that are sufficient to engender civil liability in the case of harm.

[226] The respondents did not reiterate these arguments on appeal and, had they done so, the Court in the circumstances, let us say it forthwith, would not have overruled the conclusions of the trial judge on this point.

[227] Certainly, we cannot totally exclude the possibility that the marketing of a product which is intrinsically dangerous,[255] but the distribution of which is not prohibited by the State, can in and of itself constitute a fault susceptible of giving rise to civil liability on the part of a manufacturer, regardless of the transparency and breadth of the information

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253 Stenographic notes of November 30, 2016 (SténoFac) at 112.

254 Judgment *a quo* at paras. 221 to 226, 384 and 482.

255 This term means a product or object that is not in any way defective but which, by its very nature, is dangerous.

provided by such manufacturer.[256] By the same token, we cannot assert that the distribution of such a product is invariably wrongful.

[228] It is true that, in *Alliance Assurance Company Limited v. Dominion Electric*, Pigeon J. speaks of the "duty lying upon the manufacturer not to put such things on the market",[257] a duty which is "independent of his contractual obligation, as vendor."[258] Given the context of such decision, it is not certain that the intention was to suggest that the marketing of a dangerous product was a fault in and of itself, which adequate information could not remedy. It is also true that, in a case originating in British Columbia, Sopinka J.,[259] comparing the liability of a physician who prescribes, uses or administers a dangerous product (to wit, a biological substance) to that of a manufacturer who marketed it, says tersely that:[260]

> 95 ... the physician cannot control the safety of these products beyond exhibiting the reasonable care expected of a professional to ensure that the biological substance is free from harmful viruses. By contrast, in the commercial world, the manufacturer has control over the goods. If they cannot be manufactured to be safe, then the products ought to be removed from the market.
>
> [Emphasis added.]

[229] Does this imply that the manufacturer that places and leaves such products on the market *ipso facto* commits a fault that could give rise to its liability? The inference would be audacious to the extent that the problem in that case was, in large part, gaps in the information dispensed by the manufacturer. Sopinka J. continued by emphasizing that some potentially dangerous products – he gives blood as an example – on the other hand sometimes present advantages such that the abandonment thereof cannot be considered, unless the risks are excessive[261] (risks that "the patient is entitled to

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256 Profs. Jobin and Cumyn formulate the problem in these terms: [TRANSLATION] "One day, aside from cases of legal or regulatory prohibition, the question will arise as to whether a product, by reason of its extreme dangerousness, should not be totally prohibited, despite all the warnings and information that may be given to the buyer and third parties" (Jobin & Cumyn, *supra* note 203 at 159, para. 123). They also state (specifically citing the judgment *a quo*) that: [TRANSLATION] "In the most serious cases, the question arises as to whether an extremely dangerous product should not have been marketed, whatever the warnings may be" (at 289, para. 211 – See also at 331, para. 227).

257 *Alliance Assurance Co. v. Dom. Electric*, [1970] S.C.R. 168 at 174.

258 *Alliance Assurance Co. v. Dom. Electric*, [1970] S.C.R. 168 at 174.

259 Writing the majority opinion for the Supreme Court.

260 *Ter Neuzen v. Korn*, [1995] 3 S.C.R. 674. In that case, HIV-contaminated sperm was administered to the appellant as part of artificial insemination therapy. She became infected and sued the doctor who had not warned her of the risk of HIV transmission.

261 *Ter Neuzen v. Korn*, [1995] 3 S.C.R. 674. It is a sometimes criticized, sort of cost-benefit or risk-utility equation: See Jobin & Cumyn, *supra* note 203 at 315 *in fine*, 316 and 331, paras. 219. However, see Geneviève Viney, "La mise en place du système français de responsabilité des producteurs pour le défaut de sécurité de leurs produits," in *Propos sur les obligations et quelques autres thèmes fondamentaux du droit - Mélanges offerts à Jean-Luc Aubert* (Paris: Dalloz, 2005) 328 at 345. In the U.S., this equation is resolved by use of the "Learned Hand formula," named after the judge who developed it in *U.S. v. Carroll Towing*,

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weigh,"[262] which of course implies that the patient be informed thereof).

[230] In the end, if we can theoretically contemplate that the commercialization of a dangerous product, the marketing of which is not prohibited by the State, can constitute a fault, even when the manufacturer provides all the information required, we must at the same time acknowledge that, in practice, this will be an exception.

[231] Dangerous products[263] in free circulation abound, and a number of them are very commonly used.[264] They are frequently useful, even indispensable, and the dangers they present range from minor to most serious. Unless we are prepared to jeopardize entire swaths of industry and commerce, it is hard to imagine finding fault solely in the manufacture and marketing of such products, that is to say to view them, within the meaning of articles 1053 C.C.L.C. or 1457 C.C.Q., as a breach of the general obligation imposed on each of us not to harm others by [TRANSLATION] "neglecting a pre-existing duty or the breach of a standard of conduct."[265]

[232] Nevertheless, some could perhaps be tempted to find fault in the case of products that have little or no usefulness, procure no particular pleasure and present inordinate risks associated with substantial dangers (these same people might think that cigarettes are a typical example of such a product). There are, however, in this statement elements of a subjectivity so great that it necessarily requires specific examination. It cannot be a general rule. Furthermore, in this case, the centuries-old history of tobacco consumption, its penetration into the habits of the people and its gradual disgrace, as well as the events of the Class Period (1950–1998), including active

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159 F. 2d 169 (2d Cir. 1947). This formula, used in connection with "negligence" and applied to the liability of the manufacturer, remains highly controversial. See for example Barbara A. White, "Risk-Utility Analysis and the Learned Hand Formula: A Hand that Helps or a Hand that Hides" (1990), 21 Ariz. L. Rev. 77; Benjamin C. Zipursky, "Reasonableness In and Out of Negligence Law", (2015), 163 U. Pa. L. Rev. 2131; Gregory C. Keating, "Must the Hand Formula Not Be Named" (2015), 163 U. Pa. L. Rev. Online 367.

262 *Ter Neuzen v. Korn*, [1995] 3 S.C.R. 674 at 718.

263 By which we still mean products which, without in any way being defective, represent an inherent danger, great or small.

264 At the limit, it could be said that the majority of ordinary objects, though considered harmless, present some danger or potential danger based on the use they are put to, from the smallest LEGO® brick (which must not be swallowed by a child) to a plastic bag (which must not be used to wrap around the head at the risk of causing asphyxia), or a ballpoint pen or screwdriver (which can be used as a weapon to stab an opponent in the eye) or a key (which can be used to injure) or a toaster (which should not be immersed in water when plugged in). Mayrand J., in *National Drying Machinery Co. v. Wabasso Ltd.*, [1979] C.A. 279 at 285, even observed in passing that many medications are dangerous if not properly dosed. That decision was set aside by the Supreme Court, but not on this point.

265 Jean-Louis Baudouin, Patrice Deslauriers and Benoît Moore, *La responsabilité civile*, 8th ed., vol. 1 (Cowansville, Qc.: Yvon Blais, 2014) at 163, para. 1-162 [*La responsabilité civile,* vol. 1]. If marketing a product that is dangerous but in no way defective is not in and of itself a fault, the same cannot be said about the marketing of a defective product, especially where the defect creates a danger that would not otherwise exist. Some view this as an objective fault (See Geneviève Viney, *supra* note 261 at 330), others see it as the affirmation of an irrebuttable presumption of fault. But this is not the issue in this appeal.

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government involvement,[266] ensure that it would be perilous to conclude that the very fact of having marketed, and continuing to market, tobacco products (and more particularly cigarettes) constitutes a fault.

[233] Rather, it is in the duty to inform, which is incumbent upon designers, manufacturers, sellers, distributors and other participants in the distribution chain, and in the corollary thereto, the knowledge of the user, that the law usually sees the means of managing the risk associated with products that are inherently dangerous, and of regulating the civil liability of those who market such products (when not prohibited by the State). As stated by the trial judge, to whom we must now return:

> [482] To start, the Court held above that the Companies manufactured, marketed and sold a product that was dangerous and harmful to the health of the Members. As noted, that is not, in itself, a fault or, by extension, an unlawful interference. That would depend both on the information in the users' possession about the dangers inherent to smoking and on the efforts of the Companies to warn their customers about the risk of the Diseases or of dependence, which would include efforts to “disinform” them.

[234] As to the question of whether it may be wrongful to engage in the advertising (in whatever form, including labelling) and merchandizing of a dangerous product, the answer, there again, depends entirely on the circumstances. Certainly, one does not expect the manufacturer to denigrate its own product, but does the advertising of such product comply with applicable governmental standards (if any) and, in the affirmative, is this sufficient? Who is the target audience for such advertising? Is the advertising accompanied by adequate information? On the contrary, is it misleading? This, in the case at bar, is the crux of the issue and that is exactly what, ultimately, we find at the heart of the analysis by the trial judge: “portraying smoking in a positive light” is perhaps not, in and of itself, a fault,[267] but to do so in the way the appellants did would be.

[235] For if the marketing of a dangerous product, and the advertising accompanying it, cannot, as such, be considered faults, according to the trial judge, the same cannot be said, he found, about failing to disclose the very substantial risks associated with the consumption of such product, risks which the appellants knew (and, furthermore, had to know). This is where there is breach of the manufacturer’s obligation to inform, both under articles 1468 and 1469 C.C.Q. and under the rules in force in accordance with the case law before 1994.

[236] But there is more. According to the trial judge, not only did the appellants fail to

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[266] We note, in particular, the role played by the government in the development of strains of so-called “light” tobacco and the promotion of these products. See in this regard the report of the historian Robert John Perrins, 1 October 2013, Exhibit 40346, Chapter 7 (“The development of government positions on lower tar cigarettes in Canada”) at 129 *et seq*.

[267] More precisely, the trial judge stated:

> [384] ...As for portraying smoking in a positive light, we hold further on that advertising a legal product within the regulatory limits imposed by government is not a fault, even if it is directed at adult nonsmokers.

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fulfil their obligation to inform, they also committed a gross fault within the meaning of articles 1053 C.C.L.C. and 1457 C.C.Q. by circulating through various means information which was deliberately misleading about their products and through a concerted effort (the trial judge speaks of conspiracy and collusion) to conceal the actual nature and scope of the risks and dangers inherent in the use of cigarettes or to confuse perception and comprehension (particularly by the systematic undermining of governmental, scientific and other efforts in this regard).

[237] The trial judge found that this same behaviour was also an attack on the right to life, security and inviolability of the members of the two classes, contrary to section 1 of the *Charter,*[268] hence the application of section 49, including in terms of punitive damages, as such interference was illicit and, what is more, deliberate. Finally, by acting in this manner, the appellants contravened sections 219 and 228 C.P.A., thus triggering the application of section 272 of that Act.[269]

[238] Furthermore, as we have also seen, the trial judge found no fault or breach in the appellants' attitude in respect of the compensation phenomenon described above,[270] given the predominant role played by the government in the promotion of low-tar, low-nicotine cigarettes as well as in the dissemination of related information, but also given the state of knowledge at the time (which would trigger the ground of defence set forth in the second paragraph of article 1473 C.C.Q.).[271] The trial judge dismissed the argument that the use of qualifiers such as "light," "mild," "low tar," "low nicotine" and the like on cigarette packs (or in advertising) was wrongful[272] and, by the same token, dismissed the same argument in respect of paragraph 220(*a*) C.P.A.[273] Other alleged faults were ruled out and need not be listed here.

[239] To sum up, according to the trial judge, the Appellants' fault lies in the fact that they continually failed to fulfil the obligation to inform, incumbent upon them as manufacturers of an inherently dangerous (although not defective) product, a failure which comes under articles 1468 and 1469 C.C.Q., and the corresponding former law, under article 1053 C.C.L.C. But that is not their only fault. By means of skillful and concerted strategies, they also propagated fallacious and specious information about cigarettes, thereby intentionally misleading users and the public in general, which constitutes a fault within the meaning of articles 1053 C.C.L.C. and 1457 C.C.Q., a fault

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[268] In the relevant portion of his judgment, the trial judge occasionally refers to the notion of dignity of the person, that of the smoker in this case, within the meaning of section 4 of the *Charter*, and seems to indicate implicitly that the appellants violated the right enshrined in this provision (see e.g., judgment *a quo* at paras. 183 and 638). However, he does not make this one of the express reasons of his decision.

[269] We know that section 219 prohibits false or misleading representations by any means whatsoever; section 228 prohibits merchants, manufacturers or advertisers from failing to mention an important fact in any representation made to a consumer; section 272 lists the recourses that a consumer may exercise in the event of the failure to fulfil any of these provisions. See *infra* at para. [867] *et seq*.

[270] See *supra* note 177.

[271] Judgment *a quo*, particularly at paras. 353 to 356.

[272] Judgment *a quo*, particularly at paras. 412 and 413.

[273] Judgment *a quo* at para. 542 to 544.

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that is distinct from, and in addition to, the preceding one, while contravening sections 1 and 49 of the *Charter* as well as sections 219 and 228 C.P.A.

[240] In addition to these faults, the trial judge also noted the existence of harm among the members of the two classes: Mr. Blais and the other members of his class developed lung or throat cancer or emphysema (and many have died thereof since the launch of this class action), bodily harm which engenders an inseparable moral prejudice; Ms. Létourneau and the other members of her class are addicted to cigarettes, a drug dependence of which they are unable to free themselves (like a large part of the members of the Blais Class), which here again results in moral prejudice.

[241] Finally, the trial judge addressed the issue of causation between the appellants' faults and the harm incurred by the members of the Blais and Létourneau Classes. Considering what he termed a "multi-link chain involving several intermediate steps,"[274] he concluded in a way that could be summarized thus as concerns the members of the Blais Class: the appellants' faults are the cause of the consumption of cigarettes by these persons[275] (or at least are a direct and significant cause, even if not the only one), the use of which cigarettes, beyond a specific quantity,[276] is in itself the cause, medically speaking, of the diseases affecting each member,[277] and which constitute bodily harm, to which substantial moral prejudice is closely related (moral and physical pain and suffering, loss of life expectancy, loss of quality of life, worries, trouble and inconvenience related to both the diseases and the treatment thereof).[278] The appellants' faults may therefore be held to be the cause of this moral prejudice and this causality (causality by transitivity, we might say[279]) is sufficiently direct to result in their civil liability.

[242] The trial judge used the same type of reasoning in respect of the Létourneau Class: the appellants' faults caused the consumption of cigarettes by the members of

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274 Judgment *a quo* at para. 647.

275 Judgment *a quo* at para. 791 *et seq*.

276 Judgment *a quo* at para. 671: "The Court is satisfied that the principal cause of lung cancer is smoking at a sufficient level"*;* para. 673: "The Court is satisfied that the principal cause of cancer of the larynx, the oropharynx and the hypopharynx is smoking at a sufficient level"; para. 675: "The Court is satisfied that the principal cause of emphysema is smoking at a sufficient level." The level of consumption required was determined by the judge based on epidemiological evidence and incorporated into the final description of the two classes (at paras. 1208 and 1233 of the conclusions of the judgment *a quo*).

277 Paragraphs 668 *et seq*. of the judgment *a quo* address the question of medical causation on two levels: the scientific links between the consumption of cigarettes and each of the diseases affecting the members of the Blais Class, and the link between the personal consumption of each member and the development of the disease contracted. The trial judge concluded that the consumption of cigarettes is, generally speaking, the main cause of the diseases at issue and of the addiction to tobacco; he further concluded that it is the main cause of the disease or addiction of each member.

278 Paragraphs 657 to 663 of the judgment *a quo* explain, disease by disease, the moral prejudice caused to the members of the Blais Class.

279 The Court will return to this issue as regards causation, the principal ground for appeal, and the various theses prevailing in Quebec case law, particularly that of adequate causation (see *infra* at para. [660] *et seq.*).

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this class[280] and the resulting tobacco dependence in each of them[281] (or at least they are a direct and significant cause, even if not the only one), tobacco dependence which, in and of itself, is bodily harm (of a physico-psychological nature) to which is closely related substantial moral prejudice (fear of contracting a fatal disease, curtailed life expectancy, social reprobation, loss of self-esteem, humiliation).[282] Thus, the causality between the appellants' faults and the harm caused to the members of the Létourneau Class is established.

[243] It should be noted that in deciding this way, the trial judge dismissed two of the appellants' main arguments in connection with causation:

> (1) the argument relating to the absence of evidence on a balance of probabilities of medical causation: if, scientifically speaking, a link can be made between the consumption of cigarettes and lung or throat cancer, emphysema and, more generally, tobacco dependence, this medical causation has still not been established on an individual basis in respect of each member, which is indispensable. In other words, even if it can be said that, statistically speaking, cigarettes are the main cause of any of these diseases, the evidence does not demonstrate that each of the members of the Blais Class or each of the members of the Létourneau Class owes his or her personal pathology to his or her consumption of cigarettes directly.
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> (2) the argument relating to the absence of evidence on a balance of probabilities of conduct causation: proof was not made that, but for the appellants' faults, the members of the class would not have started

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[280] Judgment *a quo* at para. 810 *et seq*.

[281] Tobacco dependence, which the judgment *a quo* defines more precisely in paras. 770 *et seq* It is not sufficient to have smoked once or even to smoke once a day to be able to call it an addiction. The trial judge also proposed a ""workable definition" of tobacco dependence" (para. 771), which he established after analyzing the evidence (paras. 772 to 785):

> [786] Based on the above, the Court holds that the threshold of daily smoking required to conclude that a person was tobacco dependent on September 30, 1998 is an average of at least 15 cigarettes a day. The Companies steadfastly avoided making any evidence at all on the point, so there is nothing to contradict such a finding.
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> ...
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> [788] Consequently, the Court finds that medical causation of tobacco dependence will be established where Members show that:
>
> a. They started to smoke before September 30, 1994 and since that date they smoked principally cigarettes manufactured by the defendants; and
> b. 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
> c. 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.

This lead to a redefinition of the Letourneau Class (para. 1233 of the conclusions of the judgment *a quo*).

[282] Paras. 665 to 667 of the judgment *a quo* provide a detailed description of the moral prejudice caused by addiction to cigarettes.

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> smoking or continued to smoke. Many factors can explain these decisions, factors which vary according to individuals, and nothing allows for the conclusion on a balance of probabilities that each smoked because of the faults alleged against the appellants.

[244] With regard to the Blais Class, the trial judge excluded the first of these claims on the one hand, based on the lessons of the Supreme Court in *Quebec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*[283] and, on the other hand, on s. 15 of the T.R.D.A. According to the trial judge, this provision is applicable to the case pursuant to ss. 24 and 25 T.R.D.A. and allowed him to find individual medical causation on the basis of epidemiological evidence.[284] H concluded that this evidence was established[285] on a balance of probabilities in accordance with the standard prescribed by article 2804 C.C.Q.:[286] "The Court finds that each of the Diseases in the Blais Class was caused by smoking at least 12 pack years before November 20, 1998."[287].

[245] With regard to the Létourneau Class, the trial judge dismissed the appellants' claim concerning medical causation, as tobacco dependence cannot, as he pointed out, result from a factor other than the consumption of this product.[288]

[246] With respect to conduct causation, the trial judge concluded that it is inferred from a series of facts which establish, by presumption under article 2849 C.C.Q., the direct link between the appellants' faults and the consumption by each member of both classes (whether to start smoking or not to stop smoking). The appellants failed to rebut that presumption. Admittedly, he stated, other factors may have played their part in these decisions ("peer pressure, parental example, the desire to appear "cool", the desire to rebel or to live dangerously, etc."[289]), but, ultimately:

> [807] In spite of those, this conclusion is enough to establish a presumption of fact to the effect that the Companies' faults were indeed one of the factors that caused the Blais Members to smoke. This, however, does not automatically sink the Companies' ship. It merely causes, if not a total shift of the burden of proof, at least an unfavourable inference at the Companies' expense.
>
> [808] The Companies were entitled to rebut that inference, a task entrusted in large part to Professors Viscusi and Young. We have

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283 *Quebec (Public Curator)* v. *Syndicat national des employés de l'hôpital St-Ferdinand* [1996] 3 SCR 211.

284 Judgment *a quo* at paras. 678 to 694.

285 Judgment *a quo* at para. 695 *et seq*. In this regard, the judgment essentially retains the view of the expert Siematycki (paras. 695 to 718), not without considering that of the appellants' experts (para. 719 *et seq*.). Moreover, the judge took into account the criticisms made by the latter and adapted the findings he drew from the report and from the expert Siematycki's testimony (particularly with regard to the level of consumption).

286 Judgment *a quo* at paras. 724 to 730.

287 Judgment *a quo* at para. 767.

288 Judgment *a quo* at paras. 768 and 769.

289 Judgment *a quo* at para. 806.

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> examined their evidence in detail in section II.D.5 of the present judgment and we see nothing there, or in any other part of the proof, that could be said to rebut the presumption sought.
>
> [809] Consequently, the question posed is answered in the affirmative: the Blais Members' smoking was caused by a fault of the Companies.
>
> **VI.F. WAS THE LÉTOURNEAU MEMBERS' SMOKING CAUSED BY A FAULT OF THE COMPANIES?**
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> [810] Much of what we said in the previous section will apply here. The only additional issue to look at is whether the presumption applies equally to the Létourneau Class Members.
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> ...
>
> [813] The first point is rebutted on the basis of the same presumption we accepted with respect to the Blais Class in the preceding section, i.e., that the Companies' faults were indeed one of the factors that caused the Members to smoke. Our conclusions in that regard apply equally here.
>
> [814] As for the second, sufficient proof that each Class Member is tobacco dependent flows from the redefinition of the Létourneau Class in section VI.D above. Dr. Negrete opined that 95% of daily smokers are nicotine dependent and the new Class definition is constructed so as to encompass them. This makes it probable that each Member of the Létourneau Class is dependent.
>
> …
>
> [817] Consequently, the question posed is answered in the affirmative: the Létourneau Members' smoking was caused by a fault of the Companies.
>
> [Emphasis in original]

[247] In brief, the trial judge found that the appellants' faults are probably not the only cause of smoking by the Blais Class, but they are nevertheless a determining factor. The same can be said for the Létourneau Class.

[248] In principle, therefore, as fault, injury and the causal connection between the two have been established, the appellants' liability with regard to the members of both classes ensues, regardless of whether their liability arises under the general law (article 1053 C.C.L.C.; articles 1457, 1468 C.C.Q.) or under ss. 1 and 49 of the *Charter* or ss. 219, 228 and 272 C.P.A.

[249] Could the knowledge that users, informed through other channels, may have had of the risks and dangers associated with smoking exonerate the appellants from this liability? The trial judge answered this question in the negative. He found that it was not

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until January 1, 1980, that it became known – and thus presumed to be common knowledge – that tobacco causes a number of deadly diseases, including lung and throat cancer, as well as emphysema. As for addiction, it was not until March 1, 1996, 18 months after labels to this effect were affixed to cigarette packaging, that the addictive effect of cigarettes became known as well. Prior to these respective knowledge dates, the information regarding the toxicity of tobacco was insufficient to speak of true knowledge of the danger and risk among users.

[250] Finally, taking into account the knowledge dates established in 1980 (diseases) and 1996 (addiction), the trial judge attributed a portion of liability, up to 20%, to the members for the harm suffered. In his opinion, there is indeed, in the conduct of people who started smoking in 1976 or 1992 or after (the period of addiction development being set at four years[290]) and who did not stop doing so in 1980 or 1996, when they were still able to, an acceptance of risk and therefore a contributory fault.[291] This results, in the case of some of the members of the Blais Class, in a corresponding decreased compensation for the moral damages of each.[292] In the case of the Létourneau Class, because only punitive damages are awarded, this contributory fault has no impact and does not diminish the compensation, "given the continuing faults of the Companies and the fact that awards of this type are not based on the victim's conduct."[293]

[251] Was it appropriate to conclude that such a contributory fault existed and, consequently, apportion liability? One may disagree (and the Court shall revisit this matter), but it should again be noted that the respondents, in their cross-appeal, have not taken issue with this conclusion, nor its consequences for the Blais Class. For their part, the appellants are not contesting this finding, nor the ensuing apportionment, at least not from this point of view, as they argue instead that, even if they are at fault, they should have been exonerated of *all* liability as of the knowledge dates determined by the trial judge, and even earlier.[294]

ii. General comments on the rules of liability

[252] Despite the above summary, it must be acknowledged from the outset that it is sometimes difficult to distinguish, in the trial court decision, what falls under the general civil liability regime, governed by articles 1053 C.C.L.C. and 1457 C.C.Q., from what derives from the specific regime of articles 1468, 1469 and 1473 C.C.Q., previous case law or the provisions of the C.P.A. or even the *Charter*. The chronological dimension and the evolution of the law during this time period further increases the difficulty (although the evolution of the law went one way, by the broadening and reinforcement of manufacturers' liability rules). Even if we may, from this point of view, criticize the text for

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290 Judgment *a quo* at paras. 773 to 776.

291 Judgment *a quo* at paras. 818 to 836.

292 As such, in the case of members with lung or throat cancer, the $100,000 indemnity was reduced to $80,000 for members who started smoking as of January 1, 1976; for members with emphysema, the $30,000 indemnity was reduced to $24,000.

293 Judgment *a quo* at para. 836.

294 It should be recalled that the appellants are challenging these dates, which they allege to be much earlier.

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a certain confusion of the genres, and even some errors, it remains, however, that there is no reason to intervene, and nothing that goes beyond rectification, a rectification that does not go against the main conclusions of the decision or its findings.

[253] What relates to the general law will be examined first, then, secondly, the C.P.A. and, finally, the *Charter*.

[254] It should be noted that the following pages will refer generally to the duty or obligation to provide information or to inform, to designate the manufacturer's duty or obligation to warn the purchaser or user of the danger inherent in the product or of the danger that may be caused by its misuse. Some have already criticized this terminology, arguing that the manufacturer is not only required to warn of the danger, but that it must, generally speaking, inform the buyer or the user of the characteristics and instructions for use of the product even when it does not present any particular danger.[295] These would be the two facets of the obligation to provide information,[296] [TRANSLATION] "which are nonetheless closely related."[297] Indeed:[298]

> [TRANSLATION] The relationship between the two aspects of the general duty to provide information cannot be doubted. Indeed, insofar as this machine conceals potential dangers, the latter will materialize only as a result of the inadequate use of the product. If the instructions provided are accurate and complete, with adequate warnings, the purchaser does not have to fear these dangers, which are potential. They become threatening only in the event that the instructions prove to be erroneous or insufficient. The materialization of danger, therefore, appears as the consequence of flawed instructions, the latter being the cause of the former.

[255] On this basis, these reasons shall use the term *duty or obligation to provide information or to inform* to designate the obligation incumbent on the manufacturer to warn users of the danger of the product or its use and means of avoiding its materialization, which corresponds to the factual framework of the case. From time to time, the terms duty or obligation *to warn* or *to provide warning* shall be alternatively used to mean the same.

[256] Furthermore, we have already defined a *dangerous product* several times as one which, without being defective, poses a danger by its very nature or by the use made of it. Here again, the distinction between these two situations is sometimes fine or evasive. Hence, are circular saws and explosives dangerous by their very nature, or do they become so only because of improper handling? No doubt there is a difference between the product that poses a danger even when it is used in the manner recommended by the manufacturer, under strict observance of its instructions, and the product whose

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[295] Legrand, *supra* note 207 at 224 *et seq*.
[296] Legrand, *supra* note 207 at 224 *et seq*.
[297] Legrand, *supra* note 207 at 230.
[298] Legrand, *supra* note 207 at 230–231.

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danger results from an awkward or inappropriate use.[299] In each case, however, it is a *dangerous product*, and it is in this sense that, unless otherwise indicated, this term shall be used.

iii. Obligation to provide information and civil liability of the manufacturer: article 1053 C.C.L.C.; articles 1457, 1468, 1469 and 1473 C.C.Q.

[257] Whether under the C.C.L.C. or the C.C.Q., the principle is firmly established, and it is not disputed here: a dual obligation of safety is imposed upon the manufacturer to the benefit of users (even potential ones) of a movable thing that it has put on the market. Firstly, the manufacturer must ensure that the impugned product is not affected by any defect or loss causing danger (i.e., "dangerous defect") and, if it is the case, it must warn users. Its failure to do so can be sanctioned contractually[300] or extra-contractually,[301] depending on the circumstances. Secondly, even in the case where the product is free of defect, the manufacturer must inform the user about the inherent danger and the means to avoid or remedy it. If it fails to do so, it shall in principle be liable, extracontractually, for the harm resulting from the materialization of the danger and to repair the damage caused to the user.

[258] As we know, this case concerns the second part of this obligation of safety and the duty to provide information relating to the product which, without being defective or otherwise altered, that is to say affected by a defect, is nevertheless dangerous. The analysis will be divided into two parts, one regarding the application of the provisions of the C.C.L.C. (article 1053) and of the C.C.Q. (articles 1457, 1468, 1469 and 1473), the other relating to s. 53 C.P.A.

a. Overview of the manufacturer's obligation to provide information pursuant to the C.C.L.C. or the C.C.Q.

[259] Let us present in broad strokes the obligation to provide information which the law imposes on the manufacturer, as well as the parameters of extracontractual liability that apply to it in the event of a default. Specific aspects of this regime shall be examined later in detail.

[260] The following is the text of the relevant legislative provisions:

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299 This is a distinction that Professor Jobin had already made in 1975 in the following book: Pierre-Gabriel Jobin, *Les contrats de distribution de biens techniques* (Québec: Les Presses de l'Université Laval, 1975) at 221, para 183.

300 The manufacturer is, of course, obliged to disclose the defects affecting the product it puts on the market, defects which, in principle, it is presumed to know, a presumption which is difficult to rebut and which rebuttal could itself establish the existence of a fault. Regarding this last point, see *Ross v. Dunstall*, [1921] 62 SCR 393, in particular at 400 and 403 (Anglin J.), as well as at 419-420. See also *General Motors Products of Canada v. Kravitz*, [1979] 1 SCR 790 at 797–798.

301 We may think here of a third party who would be harmed by a defective product used in his or her presence by the purchaser.

C.C.L.C.

1053. Every person capable of discerning right from wrong is responsible for the danger caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

1053. Toute personne capable de distinguer le bien du mal, est responsable du dommage causé par sa faute à autrui, soit par son fait, soit par imprudence, négligence ou inhabileté.

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Civil Code of Quebec

1457. Every person has a duty to abide by the rules of conduct incumbent on him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is liable for any injury he causes to another by such fault and is bound to make reparation for the injury, whether it be bodily, moral or material in nature.

He is also bound, in certain cases, to make reparation for injury caused to another by the act, omission or fault of another person or by the act of things in his custody.

1457. Toute personne a le devoir de respecter les règles de conduite qui, suivant les circonstances, les usages ou la loi, s'imposent à elle, de manière à ne pas causer de préjudice à autrui.

Elle est, lorsqu'elle est douée de raison et qu'elle manque à ce devoir, responsable du préjudice qu'elle cause par cette faute à autrui et tenue de réparer ce préjudice, qu'il soit corporel, moral ou matériel.

Elle est aussi tenue, en certains cas, de réparer le préjudice causé à autrui par le fait ou la faute d'une autre personne ou par le fait des biens qu'elle a sous sa garde.

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1468. The manufacturer of a movable thing is bound to make reparation for injury caused to a third person by reason of a safety defect in the thing, even if it is incorporated with or placed in an immovable for the service or operation of the immovable.

The same rule applies to a person who distributes the thing under his name or as his own and to any supplier of the thing, whether a wholesaler or a retailer and whether or not he imported the thing.

1468. Le fabricant d'un bien meuble, même si ce bien est incorporé à un immeuble ou y est placé pour le service ou l'exploitation de celui-ci, est tenu de réparer le préjudice causé à un tiers par le défaut de sécurité du bien.

Il en est de même pour la personne qui fait la distribution du bien sous son nom ou comme étant son bien et pour tout fournisseur du bien, qu'il soit grossiste ou détaillant, ou qu'il soit ou non l'importateur du bien.

1469.A thing has a safety defect where, having regard to all the circumstances, it does not afford the safety which a person is normally entitled to expect, particularly by reason of a defect in design or manufacture, poor preservation or presentation, or the lack of sufficient indications as to the risks and dangers it involves or as to the means to avoid them.

1469. Il y a défaut de sécurité du bien lorsque, compte tenu de toutes les circonstances, le bien n’offre pas la sécurité à laquelle on est normalement en droit de s’attendre, notamment en raison d’un vice de conception ou de fabrication du bien, d’une mauvaise conservation ou présentation du bien ou, encore, de l’absence d’indications suffisantes quant aux risques et dangers qu’il comporte ou quant aux moyens de s’en prémunir.

1473. The manufacturer, distributor or supplier of a movable thing is not bound to make reparation for injury caused by a safety defect in the thing if he proves that the victim knew or could have known of the defect, or could have foreseen the injury.

Nor is he bound to make reparation if he proves that, according to the state of knowledge at the time that he manufactured, distributed or supplied the thing, the existence of the defect could not have been known, and that he was not neglectful of his duty to provide information when he became aware

1473. Le fabricant, distributeur ou fournisseur d’un bien meuble n’est pas tenu de réparer le préjudice causé par le défaut de sécurité de ce bien s’il prouve que la victime connaissait ou était en mesure de connaître le défaut du bien, ou qu’elle pouvait prévoir le préjudice.

Il n’est pas tenu, non plus, de réparer le préjudice s’il prouve que le défaut ne pouvait être connu, compte tenu de l’état des connaissances, au moment où il a fabriqué, distribué ou fourni le bien et qu’il n’a pas été négligent dans son devoir d’information lorsqu’il a eu connaissance de l’existence de ce défaut.

of the defect.

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[261] Long before the coming into force of the *C.C.Q.*, the courts, on the basis of article 1053 C.C.L.C. and the general obligation not to harm others, had gradually imposed upon the manufacturer the obligation to inform users of the danger of the product it produces and markets, in a manner that allows them not only to be aware of such danger, but to avoid it. The manufacturer's failure to comply with this obligation triggered its extracontractual liability towards the user who suffered harm in relation to such danger.

[262] The issue was so well-established that in 1992, the Supreme Court, in a judgment written by Gonthier J., was able affirm that "[t]he obligation to inform is now well established in Quebec law," the law of manufacturers' liability being "probably the area in which this obligation is most highly developed," as evidenced, he said, by "several decisions of this Court,"[302] including *Ross v. Dunstall*, [303] rendered in 1921.

[263] The situation did not change with the coming into force of the C.C.Q., including articles 1468, 1469 and 1473 C.C.Q., which enshrined the previously acknowledged obligation to provide information while, as we will see, strengthening the liability regime applicable to the manufacturer who breaches it.

[264] Let us see what the situation was, starting with the law prior to 1994.

[265] *Ross v. Dunstall* is certainly one of the milestones in the history of the duty to provide information and manufacturers' liability, which Duff, Anglin and Mignault JJ. already acknowledged in that case.

[266] The first found negligence, and thus fault, within the meaning of article 1053 C.C.L.C., by not notifying the potential purchaser of a latent danger that the manufacturer could not have not detected after a "competent and careful inspection and testing."[304] Referring to an English decision,[305] which confirmed the manufacturer's liability "if he negligently manufactures and puts into circulation a mischievous thing which is or may be trap to people using it," he added that this same statement "is, in my opinion, a principle of responsibility which by force of Art. 1053 C.C. is part of the law of Quebec."[306]

[267] The second, going further, insisted that the manufacturer, bound to know the thing it produces, cannot claim ignorance of the danger, nor attempt to prove this ignorance, as it cannot exonerate itself through its incompetence:[307]

> The failure of the appellant to take any reasonable steps to insure that warning

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302 *Bank of Montreal v. Bail Ltée*, [1992] 2 SCR 554 at 585.
303 *Ross v. Dunstall*, (1921) 62 SCR 393.
304 *Ross v. Dunstall*, (1921) 62 SCR 393 at 395.
305 *George v. Skivington*, [1869] L.R. 5 Ex.1.
306 *Ross v. Dunstall*, (1921) 62 SCR 393 at 396.
307 *Ross v. Dunstall*, (1921) 62 SCR 393 at 399–400 and 403.

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> of the latent danger of the misplaced bolt – whether it did or did not amount to a defect in design – should be given to purchasers in the ordinary course of the sporting rifles which he put on the market in my opinion renders him liable to the plaintiffs in these actions. His omission to do so was a failure to take a precaution which human prudence should have dictated and which it was his duty to have taken and as such constituted a fault which, when injury resulted from it to a person of a class who the manufacturer must have contemplated should become users of the rifle, gave rise to a cause of action against him.
>
> The cases fall within the purview of Art. 1053 C.C. Taking no steps to warn purchasers of the rifle of its peculiar hidden danger was "neglect" and "imprudence" on the part of the defendant (whether his knowledge of it was actual or should be presumed) which caused injury to the plaintiff in each instance. If his failure to make an effort to give such warning was due to ignorance of the danger, such ignorance may well be deemed "want of skill" *(imperitia)* under the circumstances.
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> …
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> The duty of a manufacturer of articles (such as rifles), which are highly dangerous unless designed and made with great skill and care, to possess and exercise skill and to take care exists towards all persons to whom an original vendee from him, reasonably relying on such skill having been exercised and due care having been taken, may innocently deliver the thing as fit and proper to be dealt with in the way in which the manufacturer intended it should be dealt with. The manufacturer of such articles is a person rightly assumed to possess and to have exercised superior knowledge and skill in regard to them on which purchasers from retail dealers in the ordinary course of trade may be expected to rely. From his position he ought to know of any hidden sources of danger connected with their use. The law cannot be so impotent as to allow such a manufacturer to escape liability for injuries—possibly fatal—to a person of a class who he contemplated would use his product in the way in which it was used caused by a latent source of danger which reasonable care on his part should have discovered and to give warning of which no steps have been taken.
>
> [Emphasis added.]

[268] We know that Anglin J. was hesitant regarding the characterization of the issue: does the danger posed by the rifle originate from a design defect (which would be covered by the warranty against latent defects provided for at the time by articles 1522 *et seq*. C.C.L.C.) or a latent safety defect, independent of any defect (it would be a latent danger, characteristic of the weapon)?[308] That, however, did not prevent him from concluding that, regardless of this characterization, the manufacturer is under an obligation to provide information in both cases and to remedy the harm caused by this "latent source of danger."

[269] Mignault J. did not say otherwise:[309]

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[308] See *supra* note 236.

[309] *Ross v. Dunstall*, (1921) 62 SCR 393 at 420–421.

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> After due consideration, I have come to the conclusion that the possibility of the rifle being fired in an unlocked position, when to the ordinary and even cautious user the bolt action would appear to be locked, is a latent defect of the Ross rifle entailing the civil liability of the appellant as its manufacturer for the damages incurred by the respondents. I have been careful to say that I do not consider the design of the rifle defective, as a design, for a properly constructed locking device was provided, but there was a hidden and undisclosed danger and this certainly was a defect in the rifle and a latent one, as an inspection of the rifle locked or unlocked shows. That such a defect might have been detected by an expert is no reason to hold the defect to be other than latent, or to free the appellant from liability, for it suffices that a reasonably prudent user could be deceived by the appearance of the rifle into thinking that it was properly locked and ready to fire. <u>And to put on the market without proper instructions or warning such a rifle—whether the liability be contractual or delictual—is a fault for the consequences of which the appellant must be held liable</u>.
>
> [Emphasis added.]

[270] Admittedly, he wrote, “I have no intention to hold that every manufacturer or vendor of machinery must instruct the purchaser as to its use,” but he immediately specified that “where as here there is a hidden danger not existing in similar articles and no warning is given as to the manner to safely use a machine, it would appear contrary to the established principles of civil responsibility to refuse any recourse to the purchaser,” each case being otherwise unique.[310]

[271] The case law that followed until 1994, when the C.C.Q. entered into force, solidified the manufacturer’s duty to provide information and the liability for its breach.[311] For example, in 1965, Chief Justice Dorion recalled that:[312]

> [TRANSLATION]
>
> One must examine whether the machine was dangerous in itself and, in this case, whether the manufacturer, namely the defendant, gave the necessary instructions for its handling. Indeed, the manufacturer is liable for the damage caused by the use of a non-defective item, when the dangers of use, unknown by the purchaser, are such that the seller had to give special instructions.

[272] Without it being necessary to review each of these decisions, their teachings may be summarized as follows:[313]

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310 *Ross v. Dunstall*, (1921) 62 SCR 393 at 421.

311 The obligation to inform and ensuing liability may not yet have been very well conceptualized (see Jobin, *supra* note 299 at 216 *et seq*., paras. 181 *et seq*.), but they were nevertheless acknowledged and implemented, although, until the 1970s and even the 1980s, the case law was not particularly abundant (like the commentary, which is also scant).

312 *Gauvin v. Canada Foundries and Forgings Ltd.*, [1964] C.S. 160 at 162. In that case, the plaintiff (a sub-purchaser) purchased a mower from a hardware store and cut his foot using it for the first time. He sued the manufacturer who did not warn him of the dangers of the machine.

313 Regarding the duty to provide information or the obligation to inform incumbent on the manufacturer under the *Civil Code of Lower Canada*, see in particular: Jobin, *supra* note 299 at 216 *et seq.,* paras.

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- the manufacturer is presumed to know not only the defects, but also the dangers of the product (in other words, the dangers arising from the very nature of the product or its use) that it manufactures, a quasi-irrebuttable factual presumption that it cannot normally avoid by establishing that it was not aware of the dangers in question;[314]

- it must inform the users and potential users, in other words, provide them in this regard with truthful (which goes without saying), understandable and sufficient information to understand the existence of the danger and how to avoid or remedy it, and make sure the information reaches them;[315]

- if it fails to do so, it commits a fault pursuant to article 1053 C.C.L.C. and is liable for the harm caused to the user by the materialization of the danger (at least when it is a danger inherent in the normal or foreseeable use of the product[316]), without, in principle, being able to claim its own ignorance as a defence;

- as for the rest, the specific obligational content, or the intensity of this duty to provide information or to inform, varies according to the circumstances, in other words, the nature of the product, the use that can be made of it, the identity of the clientele for whom it is intended, the more or less apparent magnitude and character of the danger, the seriousness of the harm likely to result from its materialization, etc.

[273] However, the manufacturer is not left without grounds of defence. Obviously, it is entitled to the general means available to defendants sued under extracontractual liability: it can thus attempt to establish that, notwithstanding its own failure, the harm of the plaintiff results from

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181 *et seq*.; Pierre-Gabriel Jobin, *La vente dans le Code civil du Québec* (Cowansville, Qc.: Yvon Blais, 1993) at 112 and 114–115, paras. 144 and 146; Thérèse Leroux & Michelle Giroux, "La protection du public et les médicaments: les obligations du fabricant", (1993) 24 R.G.D. 309 at 324 *et seq*.; Lise Côté, "La responsabilité du fabricant vendeur non-immédiat en droit Québecois", (1975) 35 R. du B. 3 at 16 *et seq*. See also: Jean-Louis Baudouin, *La responsabilité civile*, 4th ed. (Cowansville, Qc.: Yvon Blais, 1994) at 581 *et seq*., paras. 1114 *et seq*., and especially at 591–592, para. 1127, which includes a summary; Claude Masse, "La responsabilité civile" in Barreau du Québec et Chambre des notaires du Québec, *La réforme du code civil*, vol. 2 (Obligations, contrats nommés) (Ste-Foy, Qc.: Les Presses de l'Université Laval, 1993) at 235 *et seq.*, para 73, and 297 [*La responsabilité civile*].

314 It should be noted that the courts have not always applied this factual presumption, despite *Ross v. Dunstall*. Professor Claude Masse even expressed the opinion that this refusal of the presumption was one of the weaknesses of the regime based on article 1053 C.C.L.C., at least in the case of a dangerous defect, which is not at issue in this case where the fault alleged is one of information (Masse, *La responsabilité civile*, *supra* note 313 at 292, para. 70). See, however, what he writes regarding the failure to [TRANSLATION] “inform purchasers and users of the latent dangers that may arise from the normal use of its product” (at 298, para. 73). Moreover, it is clear that the manufacturer who, *in fact*, knows the danger of its product and remains silent, commits a fault triggering its civil liability if damage is caused by the materialization of that danger (unless it can exonerate itself by establishing that the victim also knew of the danger).

315 This is a subject dealt with in *Royal Industries Inc. v. Jones*, [1979] C.A. 561, in which the Court noted that potential users are usually reached through written explanations accompanying the product.

316 In this case, the danger associated with the consumption of cigarettes is of this kind.

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superior force or from the causal fault of the victim of the harm (who failed in his or her duty of prudence or used the product for unforeseeable purposes) or another *novus actus interveniens*. It can also counter the plaintiff's evidence by attempting to establish the absence of fault[317] (i.e., demonstrating that sufficient information, warnings and instructions were provided[318]), the absence of harm, or the absence of a causal link between the fault and the harm.[319]

[274] On another issue, although in principle the manufacturer cannot claim its ignorance of the danger of the product it has marketed,[320] can it be excused for its failure to inform by demonstrating that the state of scientific or technical knowledge did not allow it to know the danger, hence the reason why it did not warn potential users? The answer to this question, with respect to the pre-1994 law, is not entirely clear: *Ross v. Dunstall* does not address this issue (although it may suggest a negative response) and Quebec case law on the topic stands out for its paucity. Admittedly, with regard to latent defects, case law has, over time, been able to answer this question in the affirmative,[321] although there remains a debate which the Supreme Court pointed out in *ABB Inc. v. Domtar Inc.*[322] In any event, it is not necessary to rule on the state of the law in this regard, as, in this case, the appellants are not pleading this defence as the evidence reveals that they were well aware, for a long time, of the dangers associated with the use of cigarettes and the importance of the associated risk.

[275] Finally, the manufacturer may also attempt to demonstrate that the danger and the risk of its materialization were known to the user or entirely foreseeable and, as implied, accepted by it, which is an obstacle to what would otherwise be its liability, or free it from liability. Not to mention the situation where the manufacturer has provided all necessary information to the user, thus informed of the danger (or who had at his or her disposal all the means to be so informed). This knowledge can also result from the fact that the user is a professional aware of the characteristics of the product and of the danger it poses (or should have been).[323] It may also be because the danger in the product is apparent, can be visually assessed and obviously requires

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317 The burden of establishing fault lies, of course, with the plaintiff, but the manufacturer may wish to rebut the evidence provided by the plaintiff.

318 This was the case in *Gauvin v. Canada Foundries and Forgings Ltd.*, [1964] C.S. 160. It is understood that, normally, the user who has failed to take cognizance of this information or who has not taken it into account shall be considered as the author of his own misfortune, in whole or in part.

319 The issue of causation and the burden of the relevant proof shall be discussed below in more detail.

320 This is quite clear from *Ross v. Dunstall*, [1921] 62 SCR 393, but also *Samson & Filion v. The Davie Shipbuilding & Repairing Co.*, [1925] SCR 202 at 209 *in fine et seq*. (majority reasons of Anglin J.), although that case concerns a latent defect.

321 See for example *London & Lancashire Guarantee & Accident Co. of Canada v. La Compagnie F.X. Drolet*, [1944] SCR 82 (although it does not concern a manufacturer in the strict sense of the term, but an elevator installer; the Supreme Court found that, given the nature of the knowledge available at the time when the elevator was installed and the industry standards at that time, the negligence of the manufacturer was not established); *Samson & Filion v. The Davie Shipbuilding & Repairing Co.*, [1925] SCR 202; *Manac Inc./Nortex v. The Boiler Inspection and Insurance Company of Canada*, 2006 QCCA 1395.

322 *ABB Inc. v. Domtar Inc.*, 2007 SCC 50 at para. 72.

323 See e.g., *Inmont Canada Ltd. v. National Insurance Company of Canada*, J.E. 84-884 (C.A.). In that case, the Court exonerated the manufacturer who did not affix a warning on containers of a highly inflammable product subject to spontaneous combustion, characteristics which in the Court's view, should have been known to the purchaser, itself a manufacturer of furniture and a professional and regular user of the product in question.

taking precautions,[324] or because it is a characteristic of common knowledge, which cannot be ignored by an ordinary, reasonable person[325] (including common sense),[326] etc. In these cases, the user's knowledge (actual or presumed) is an obstacle to the manufacturer's liability.

[276] The general rules relating to the duty to provide information incumbent on the manufacturer and the liability it incurs in the event of a default thus being established, it is appropriate to pay a little more attention to the intensity of the duty to inform imposed by the case law. Under what conditions is the manufacturer relieved of this obligation? What is sufficient information?[327]

[277] In order to answer these questions, let us first consider *Mulco inc.* c. *La Garantie, compagnie d'assurance de l'Amérique du Nord*. The facts are the following: the insured purchased a flammable glue which, after coming into contact with the pilot light of the furnace, caused his house to burn down. The label affixed to the glue container clearly indicated the flammable nature of the product but, as Beauregard J. stated in dissent, [TRANSLATION] "did not warn the consumer of the risk of using the glue in a place where there was a pilot light of a heater of some sort."[328] Drawing on the similarity between common law and civil law in this matter, Gendreau J.A., writing for the majority, stated:[329]

> [TRANSLATION]
>
> Surprisingly, this file is, for all intents and purposes, identical to *Lambert v. Lastoplex Chemicals Company Limited*, [1972] SCR 569.

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[324] See e.g., *Gauvin v. Canada Foundries and Forgings Ltd.*, [1964] C.S. 160. The judge, after finding that the instruction booklet formally warned the user of the risk of putting a foot or a hand under the mower, noted:

> [TRANSLATION] Moreover, one may wonder if it was necessary to draw the attention of the purchaser of the machine, as, ultimately, every owner knows or should know that the grass is cut by means of a rotating blade, which turns at a speed of several hundred revolutions per second, and which is certainly dangerous while it is in motion.
>
> The purpose proposed by the plaintiff in purchasing this machine was precisely to obtain a tool equipped with a blade rotating at a considerable speed and used to cut the grass. It is obviously unnecessary to have scientific knowledge to realize that when using such a machine, one should be careful not to place fingers or feet where the blade turns. (at 164)

The judge also found that [TRANSLATION] "the only dangers that this machine could present were those inherent in any tool used in the ordinary course of life, such as scissors, knives, etc." (at 165).

[325] See e.g., *Fortin v. Simpsons-Sears*, [1978] C.S. 1154 (the judge found that the user should have guarded himself against the obvious danger inherent in the elasticity of a strap having a metal hook at the tip: [TRANSLATION] "Everyone knows that by stretching an elastic object, there is a danger, when released, that a rapid return movement may cause pain or injury"(at 1156), hence the obvious need to take precautions).

[326] In some cases, moreover, the case law does not really differentiate the apparent from the commonly known.

[327] Beyond the essence of the information provided, there is also the issue of the clarity of the information given by the manufacturer, according to the target audience – clarity on a material level (the information must be able to be decrypted) and on an intellectual level (the information must be understandable). Incomprehensible information is not information. This is not, however, one of the issues in this dispute, and it is not necessary to delve further into the subject.

[328] *Mulco inc. c. Garantie (La), Cie d'assurance de l'Amérique du Nord*, [1990] R.R.A. 68 (C.A.) at 69.

[329] *Mulco inc. c. Garantie (La), Cie d'assurance de l'Amérique du Nord*, [1990] R.R.A. 68 (C.A.) at 70–71.

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> In both cases, a fire broke out when the highly flammable vapours from a product used in construction came into contact with the pilot lamp placed inside a water heater or a furnace operating on natural gas. The container, in *Lambert*, bore, in four (4) languages, the following warning: "Caution, inflammable – do not use near open flame or while smoking. Ventilate room while using"; here, the cautions are in two (2) languages: "Danger - Extremely inflammable - Harmful vapour. Warning: Use in a ventilated space"; in addition, information on first aid was given in case of ingestion. Mr. Lambert was a mechanical engineer and Mr. Laniel, the insured of La Garantie, was an experienced handyman. The Supreme Court unanimously found that the manufacturer was at fault when it neglected, while providing a general warning, to specify "that the likelihood of fire may be increased according to the surroundings in which it may reasonably be expected that the product will be used"(at 575), per Laskin J.
>
> The Supreme Court had therefore, nine years prior to Mr. Laniel's accident, established a rule of conduct that should be known by all manufacturers of dangerous products offered to the public.(1) In this case, the appellant is one of these manufacturers, and it is clear that it did not comply with the lessons of the courts. Its conduct therefore constitutes a fault in my opinion.
>
> With respect for the contrary opinion, I believe this fault gives rise to liability. Indeed, the trial judge found that the fire was caused by the use of glue made by the appellant while the pilot lights were still active. However, this use by the Respondent's insured of Mulco's product was not in itself at fault. No information warned him that he had to proceed other than he did. Furthermore, he did not know that his way of doing things could be dangerous.
>
> (1) [TRANSLATION] "The impugned conduct must have been contrary to either the standard imposed by the legislator or to that recognized by the case law. It is thus the departure from the conduct judged acceptable by law or case law that carries with it the obligation to remedy the harm caused," J.L. Baudouin, *La responsabilité civile délictuelle*, Montreal, Yvon Blais, 1985, at 54, no. 87.

[278] *Lambert v. Lastoplex Chemicals*[330] is indeed particularly interesting. Despite being a common law case, what the Supreme Court wrote in the words of Laskin J. (who was not yet Chief Justice) echoes the extracontractual rules found in civil law and resonated in some judgments of the Quebec courts, in addition to *Mulco*.[331] Some excerpts follow:[332]

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330 *Lambert v. Lastoplex Chemicals*, [1972] SCR 569. Reference to common law here responds to a concern for comparison, in the mind of Gendreau J., not standardization. See Professor Gardner's warning in: Daniel Gardner, *L'harmonisation des solutions en droit privé canadien : un regard sur quelques arrêts de la Cour suprême*, Conférences Roger-Comtois (Montreal: Thémis, 2017).

331 See e.g., *Fortin v. Simpsons-Sears Ltée*, J.E. 78-998, [1978] C.S. 1154; *Didier v. G.S.W. Ltée* (1981), J.E. 81-781 (Sup. Ct.); *Plamondon v. J.E. Livernois Ltée*, [1982] C.S. 594 (aff's on somewhat different grounds, *J.E. Livernois Ltée v. Plamondon*, J.E. 85-619, AZ-85011206 (C.A.); *Compagnie d'assurances Wellington v. Canadian Adhesives Ltd.*, [1997] R.R.A. 635 (C.Q.).

332 *Lambert v. Lastoplex Chemicals*, [1972] SCR 569 at 574–575. See also, in the same vein, *Rivtow Marine Ltd. v. Washington Iron Works*, [1974] SCR 1189, in which the Supreme Court, per Ritchie J., acknowledged the "liability for breach of the duty to warn" of the manufacturer who markets a machine

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> The appellants founded their action against the respondent on negligence, including in the specifications thereof failure to give adequate warning of the volatility of the product, and it was argued throughout on that basis and on the defence, inter alia, that the male appellant was the author of his own misfortune. The hazard of fire was known to the manufacturer, and there is hence no need here to consider whether any other basis of liability would be justified if the manufacturer was unaware or could not reasonably be expected to know (if that be conceivable) of particular dangers which its product in fact had for the public at large or for a particular class of users.
>
> Manufacturers owe a duty to consumers of their products to see that there are no defects in manufacture which are likely to give rise to injury in the ordinary course of use. Their duty does not, however, end if the product, although suitable for the purpose for which it is manufactured and marketed, is at the same time dangerous to use; and if they are aware of its dangerous character they cannot, without more, pass the risk of injury to the consumer.
>
> The applicable principle of law according to which the positions of the parties in this case should be assessed may be stated as follows. Where manufactured products are put on the market for ultimate purchase and use by the general public and carry danger (in this case, by reason of high inflammability), although put to the use for which they are intended, the manufacturer, knowing of their hazardous nature, has a duty to specify the attendant dangers, which it must be taken to appreciate in a detail not known to the ordinary consumer or user. A general warning, as for example, that the product is inflammable, will not suffice where the likelihood of fire may be increased according to the surroundings in which it may reasonably be expected that the product will be used. The required explicitness of the warning will, of course, vary with the danger likely to be encountered in the ordinary use of the product.
>
> [Emphasis added.]

[279] This Court's decision in *Mulco*, quoted above, applies the same principles, which are part of Quebec law. The same is true of *O.B. Canada Inc. v. Lapointe*,[333] a case concerning a safety defect affecting an aerial bucket truck, the arm of which came into contact with a wire and caused the user to be electrocuted. In a context where the amount of information provided by the manufacturer was not however insignificant, Monet J., writing for the Court, noted that:[334]

> [TRANSLATION]
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> Regarding the obligation to provide information, including the conditions of use of the thing, an obligation imposed on the manufacturer, the notes of Geneviève

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that is, to its knowledge, dangerous and of a nature to cause damage, even when used for the purposes for which it was designed and intended (the analogy with cigarettes is striking). It should be noted that the reasons of the majority delivered by Ritchie J. are founded in part on *Ross v. Dunstall*. It should also be noted that the minority, per Laskin J., were of the same opinion on this point, differing solely in their opinion on the issue of compensation for economic loss.

333 *O.B. v. Lapointe*, [1987] R.J.Q. 101.

334 *O.B. v. Lapointe*, [1987] R.J.Q. 101 at 106–107.

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> Viney [reference omitted] and Philippe Malinvaud [reference omitted] are of particular interest.
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> Not only was that duty to inform not met but, in addition, the information provided by the manufacturer was itself misleading and likely to [TRANSLATION] "lull" "sedate" the user into a false sense of security.
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> ...
>
> It is important to emphasize the purpose of the machine itself: work "near or in contact with live electrical equipment." It goes without saying that the manufacturer is fully aware of the obvious danger to which the user is exposed and in respect of which the latter has no control. This is why the manufacturer must not only indicate, in black on white, the danger, but also of how to avoid such danger. During the demonstration made by its representative to the employees of *B.G. Checo,* which was attended by the respondent, however, it was not even mentioned. (See testimony of a companion of the Respondent, Mr. Lafontaine: A.F. 920.) Moreover, drawings and instructions are silent on this point; there seems to be more interest in spare parts than in the user. These are factual findings of the judge (*supra* at 6 and 7).
>
> For the user, considered from the viewpoint of the traditional "*bon père de famille*," the danger posed by the arm was not obvious. Indeed, the morning of the accident, the respondent used it without any problem. (See Lafontaine's testimony: A.F. 816–819.) It goes without saying that if the situation, in the respondent's opinion, could reasonably have lead him to suspect a danger, he would not have then, no more than before (A.F. 893–894), acted recklessly or even carelessly. What the respondent knew, because the appellant's product clearly showed him, was that the yellow colour meant safety. This was not the case however. The appellant had to know this, but the "*bon père de famille*" was not, under the circumstances, required to know.
>
> [Emphasis added.]

[280] *Royal Industries Inc. v. Jones*[335] is also worth citing:

> [TRANSLATION]
>
> The liability of the manufacturer here lies more in a lack of information than in a defect in design or in manufacture of its device. The manufacturer who puts on the market a product presenting some danger has the obligation to inform its purchaser, as well as the potential user who may acquire it [reference omitted]. This obligation is usually fulfilled by handing over written explanations with the product on how to avoid danger when using it. These written explanations are normally transmitted to the various sub-purchasers so that the user can benefit from them.

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[335] *Royal Industries Inc.* v. *Jones*, [1979] C.A. 561 at 563–564.

> The extent of the manufacturer's obligation varies according to various factors. It is not required to warn against danger that is manifest to all. On the other hand, the complexity of the product, its novelty and the gravity of the dangers it poses intensify the obligation of the manufacturer [reference omitted].
>
> The appellants point out that their device is not intended for laypersons but for car maintenance professionals. As an experienced car mechanic, the respondent should have realized, according to them, the risk involved in using it. Just as the obligation of the specialized seller is more onerous than that of the ordinary seller (article 1527 C.C.Q.), the obligation to inform decreases according to the knowledge of the product and its dangers that the purchaser or the user may have. Despite his experience as a mechanic, however, the respondent is neither an engineer, nor a physicist, nor a machine designer. He purchased a new type of device that presented advantages over previous devices with respect to the speed of execution. It was natural for him to rely on the written instructions he was provided; ...

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[281] On this point, Quebec law at the time was generally aligned with that of the other provinces. Thus, in *Hollis v. Dow Corning Corp.*, LaForest J., writing for the majority of the Supreme Court, stated:[336]

> 22 The nature and scope of the manufacturer's duty to warn varies with the level of danger entailed by the ordinary use of the product. Where significant dangers are entailed by the ordinary use of the product, it will rarely be sufficient for manufacturers to give general warnings concerning those dangers; the warnings must be sufficiently detailed to give the consumer a full indication of each of the specific dangers arising from the use of the product. This was made clear by Laskin J. in *Lambert*, *supra*, where this Court imposed liability on the manufacturer of a fast-drying lacquer sealer who failed to warn of the danger of using the highly explosive product in the vicinity of a furnace pilot light. The manufacturer in *Lambert* had placed three different labels on its containers warning of the danger of inflammability. The plaintiff, an engineer, had read the warnings before he began to lacquer his basement floor and, in accordance with the warnings, had turned down the thermostat to prevent the furnace from turning on. However, he did not turn off the pilot light, which caused the resulting fire and explosion. Laskin J. found the manufacturer liable for failing to provide an adequate warning, deciding that none of the three warnings was sufficient in that none of them warned specifically against leaving pilot lights on near the working area. At pages 574-75, he stated:
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> ...
>
> 23 In the case of medical products such as the breast implants at issue in this appeal, the standard of care to be met by manufacturers in ensuring that consumers are properly warned is necessarily high. Medical products are often designed for bodily ingestion or implantation, and the risks created by their improper use are obviously substantial. The courts in this country have long recognized that manufacturers of products that are ingested, consumed or otherwise placed in the body, and thereby have a great capacity to cause injury to consumers, are subject to a correspondingly high standard of care under the law of negligence; see *Shandloff v. City Dairy*, [1936] 4 D.L.R. 712 (Ont. C.A.), at p. 719; *Arendale v. Canada Bread Co.*, [1941] 2 D.L.R. 41 (Ont. C.A.), at pp. 41-42; *Zeppa v. Coca-Cola Ltd.*, [1955] 5 D.L.R. 187 (Ont. C.A.), at pp. 191-93; *Rae and Rae v. T. Eaton Co. (Maritimes) Ltd.* (1961), 28 D.L.R. (2d) 522 (N.S.S.C.), at p. 535; *Heimler v. Calvert Caterers Ltd.* (1975), 8 O.R. (2d) 1 (C.A.), at p. 2. Given the intimate relationship between medical products and the consumer's body, and the resulting risk created to the consumer, there will almost always be a heavy onus on manufacturers of medical products to provide clear, complete and current information concerning the dangers inherent in the ordinary use of their product.

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[336] *Hollis* v. *Dow Corning Corp.*, [1995] 4 SCR 634.

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…

> 26 In light of the enormous informational advantage enjoyed by medical manufacturers over consumers, it is reasonable and just to require manufacturers, under the law of tort, to make clear, complete and current informational disclosure to consumers concerning the risks inherent in the ordinary use of their products. A high standard for disclosure protects public health by promoting the right to bodily integrity, increasing consumer choice and facilitating a more meaningful doctor-patient relationship. At the same time, it cannot be said that requiring manufacturers to be forthright about the risks inherent in the use of their product imposes an onerous burden on the manufacturers. As Robins J.A. explained in *Buchan*, *supra*, at p. 381, "drug manufacturers are in a position to escape all liability by the simple expedient of providing a clear and forthright warning of the dangers inherent in the use of their products of which they know or ought to know".
>
> [Emphasis added.]

[282] It can be seen from these decisions that the intensity of obligation imposed on the manufacturer to provide information is directly proportional to the level of the danger and the potential harm associated with the use of the product[337] and must be adjusted to the nature of the clientele. The mass market product intended for the public or for lay users usually requires more in this respect[338] than the niche product intended for experts or professionals,[339] although in the latter case, as exemplified by *Lapointe*[340] and *Jones*,[341] they are also entitled to information of a scope and precision proportional to the danger they incur by using the product. Moreover, the product intended to be ingested or implanted or introduced into the body requires a particularly high level of information, especially when the harm likely to result from its use is serious or the probability of its materialization is not insignificant.

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337 Along these lines, see also *J.E. Livernois Ltée v. Plamondon*, J.E. 85-619, AZ-85011206 at 4 (C.A.) (in particular: [TRANSLATION] "[t]he danger of the product, in the context of its use, imposed a particularly heavy obligation [of information] on Livernois here"). See generally Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 2, *supra* note 241 at 370, para. 2-342, para 2-354; Jobin & Cumyn, *supra* note 203 at 332, para. 227.

338 See *Livernois Ltée v. Plamondon*, J.E. 85-619, AZ-85011206 (C.A.) at 4. See generally Jobin & Cumyn, *supra* note 203 at 330 *in fine* and 331, para 228.

339 This is a distinction that underlies this Court's decision in *Trudel v. Clairol Inc. of Canada*, [1972] C.A. 53, and that of the Supreme Court in *Trudel v. Clairol Inc. of Canada*, [1975] 2 SCR 236. In that case, the respondent marketed a product distributed on the one hand to the general public and on the other hand to hair care professionals. Containers intended for the public were accompanied by precise information and instructions for use and indicating the problems to which the user is exposed. Information for professionals is less detailed. Concerned about its liability to individuals, the respondent sought to prevent the appellant from selling to the public the containers he purchased as a hair care professional.

340 *O.B. v. Lapointe*, [1987] R.J.Q. 101.

341 *Royal Industries Inc. v. Jones*, [1979] C.A. 561.

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[283] In any event, however, the presence of a danger must be indicated, and general information will not be deemed sufficient. The information provided by the manufacturer must be accurate and complete; the warnings or instructions must be sufficient in order for the user to fully understand the danger and risk associated with the use of the product, as well as its possible consequences and know what to do (or not do) to avoid them or, if necessary, remedy them. *Lambert*, *Mulco*, *O.B. v*. *Lapointe* and *Hollis* eloquently illustrate the fact that even seemingly detailed information may be considered insufficient. Conversely, and this goes without saying, as otherwise the manufacturer's duty would be largely neutralized, the user who has only a general idea of the danger and consequently does not assess it correctly cannot be found to possess knowledge if he or she was not adequately informed.[342]

[284] The reason for this is explained by Gonthier J. in *Bank of Montreal v*. *Bail*, rendered two years before the coming into force of the C.C.Q.:[343]

> The advent of the obligation to inform is related to a certain shift that has been taking place in the civil law. While previously it was acceptable to leave it to the individual to obtain information before acting, the civil law is now more attentive to inequalities in terms of information, and imposes a positive obligation to provide information in cases where one party is in a vulnerable position as regards information, from which damages may result. The obligation to inform and the duty not to give false information may be seen as two sides of the same coin. As I noted in *Laferrière v. Lawson, supra,* both acts and omissions may amount to fault, and the civil law does not make a distinction between them. Like P. Le Tourneau, "De l'allégement de l'obligation de renseignements ou de conseil", D. 1987. Chron., p. 101, however, I would add that the obligation to inform must not be defined so broadly as to obviate the fundamental obligation which rests on everyone to obtain information and to take care in conducting his or her affairs.
>
> [Emphasis added.]

[285] Inequality in terms of information is in fact the recurring theme of the manufacturer's extracontractual liability in the event of a safety defect of a product that is not otherwise affected by any defect in the strict sense of the term. This is a

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342 As was the case, for example, in *Mulco inc.* c. *Garantie (La), Compagnie d'assurance de l'Amérique du Nord*, [1990] R.R.A. 68 and *Lambert v. Lastoplex Chemicals*, [1972] SCR 569, and in *J.E. Livernois Ltée v*. *Plamondon*, JE 85-619, AZ-85011206 (C.A.), where knowledge that the user could have had of the dangers of the product, in particular due to the notices appearing thereon, was not considered sufficient to exonerate the manufacturer of its failure to provide all necessary information and its silence regarding one of the safety dangers inherent in the product. In *Plamondon*, however, this general knowledge led to an apportioning of liability (a subject which shall be discussed later). See also, on the inadequacy of information intended for the normal and uninformed user of the danger of a deep fryer, a product offered to the general public, the handling of which required instructions that were not provided by the manufacturer: *Didier v*. *G.S.W. Ltée*. (1981), J.E. 81-781 (Sup. Ct.).

343 *Bank of Montreal v*. *Bail Ltée*, [1992] 2 SCR 554 at 587.

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fundamental theme in *Ross v. Dunstall*, but also in *Lambert*, *Hollis*, *Mulco* and *Lapointe*, to name just a few. It is this inequality that justifies that the manufacturer, except when the exception regarding scientific and technical knowledge applies, usually assumes the risk associated with bringing its manufactured product to market.

[286] The same theme, moreover, underlies articles 1468, 1469 and 1473 C.C.Q., which we will now examine. These provisions are drawn from the *Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products* (the "***European Directive***""), as well as from s. 53 C.P.A. (which will be discussed later). In a more explicit manner, they embody, reinforce and regulate the obligation of safety incumbent on the manufacturer, and the liability it incurs in the event of a safety defect of the product, while increasing user protection by reducing the burden of proof.[344] They therefore impose on the manufacturer a heavy burden of liability, without fault,[345] in the nature of a safety guarantee.[346]

[287] As prescribed by article 1468, the manufacturer is indeed required to remedy the harm caused by the "safety defect in the thing/*défaut de sécurité du bien*." And what is a safety defect? Article 1469 provides a definition based in part on the first paragraph of article 6 of the *European Directive*.[347] As Professor Geneviève Viney explains, although the notion of "defect" or "defectiveness" specific to this Directive, now implemented in French domestic law (article 1245-3, formerly 1386-4 of the French *Code civil*)[348] conveys at first sight [TRANSLATION] "a material imperfection, an

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[344] Regarding latent defects, the regime created by these provisions is similar to that of the regime created in the contractual context by articles 1726 and 1730 C.C.Q.

[345] See *Desjardins Assurances générales inc.* c. *Venmar Ventilation inc.*, 2016 QCCA 1911 at para. 5.

[346] The terms "safety guarantee" or "guarantee against safety defects" are used in the commentary. See e.g., Gagné & Bourassa Forcier, *supra* note 239 at 306.

[347] This provision states:

> *Article 6*
>
> 1. A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:
>
> (a) the presentation of the product;
> (b) the use to which it could reasonably be expected that the product would be put;
> (c) the time when the product was put into circulation.
>
> 2. A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.

[348] Article 1254-3 of the French *Code civil*) provides:

> [TRANSLATION]
> A product is defective within the meaning of this Title when it does not provide the safety that a person is entitled to expect.
> To determine the safety that one is entitled to expect, all the circumstances must be taken into account, including the presentation of the product, the use to which it could reasonably be expected that the product would be put, and the time when the product was put into circulation
> A product should not be considered defective solely because another improved product has been subsequently put into circulation.

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alteration",[349] but is not restricted thereto:[350]

> [TRANSLATION]
>
> Within the meaning of this text, a product in perfect condition may be [TRANSLATION] "defective." To be defective, it is sufficient to show that [TRANSLATION] "it does not present the safety that can legitimately be expected."

[288] This is indeed the essence of the definition put forth in article 1469 C.C.Q.: there is a safety defect when, in the circumstances, the product does not provide the safety that a person is normally entitled to expect. The provision also lists some of the potential origins of such a defect,[351] which may thus be attributable to a defect in design or manufacture, poor preservation or presentation of the thing (the "dangerous defect"), but also "the lack of sufficient indications as to the risks and dangers it involves or as to the means to avoid them / *l'absence d'indications suffisantes quant aux risques et dangers qu'il comporte ou quant aux moyens de s'en prémunir*,"[352] which is the issue in this dispute. However, it is not the origin of the defect that matters,[353] no more than the issue of whether the manufacturer was at fault or not, but rather the defect itself; in other words, the danger and risk it involves for the user, taking into account the expectations that can normally be entertained with regard to the safety of the product.

[289] It has been noted that the legislator establishes the manufacturer's obligation to inform in the negative here: if it does not provide users with sufficient information as to the risks and dangers of the product and as to the means to avoid them, it causes a safety defect, which, if harm is caused, triggers liability under article 1468 C.C.Q. The result is a positive obligation to provide such information, without which the product will not offer the safety to which one is normally entitled to expect in accordance with article 1469 C.C.Q. In this respect, the requirements of the earlier law apply: the manufacturer's obligation to provide information is owed to all potential users of the product; it increases in intensity with the danger and risk inherent in the product and with the seriousness of the possible consequences of the lack of safety; the information provided by the manufacturer must be accurate (i.e., true), exact, understandable and complete and accurately reflect the nature and seriousness of the danger, the risk of its materialization and the significance of the harm that may result.

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349 Viney, *supra* note 261 at 340.

350 Viney, *supra* note 261 at 340.

351 With regard to the non-exhaustive nature of the causes of the safety defect defined by this provision, see, *inter alia*, Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 2, *supra* note 241 at 389, para. 2-377.

352 The wording of this safety defect is similar to that of the second paragraph of s. 53 C.P.A., a provision that allows the consumer to exercise a direct action against the manufacturer of a product in the event of "lack of instructions necessary for the protection of the user against a risk or danger of which he would otherwise be unaware / *défaut d'indications nécessaires à la protection de l'utilisateur contre un risque ou un danger dont il ne pouvait lui-même se rendre compte*."

353 By analogy, see Viney, *supra* note 261 at 340.

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[290] How do we determine whether the product affords the safety that a person is normally entitled to expect? We are not concerned with the victim's particular and personal expectations of safety, but rather that the reasonable expectations of the ordinary user, which refers to an objective individualized standard of evaluation under the "circumstances," which depends on the nature of the product and the danger it involves, the clientele to which it is destined, the use for which it is intended or to which it can lend itself, etc. Indeed, it is these same elements, as has been observed, which determine the intensity of the manufacturer's obligation to inform. This coalescence of concepts is not surprising since, in the case of an inherently dangerous product, which is not affected by any defect, it is information flaws that cause the safety defect: the same measure is therefore used to determine the adequacy of information (in such case, the manufacturer fulfills its obligation) or inadequacy (which causes the safety defect).

[291] When discussing the intended use of the product or the use to which it may lend itself, it should be specified that the expectation of safety is based on the normal use of the product. This is a flexible concept, however, and case law has extended it to the reasonably foreseeable use that can be made of it, even when that use is inappropriate. One example is *Bombardier Inc. v. Imbeault*,[354] where the manufacturer was blamed for failing to inform snowmobile users about the dangers of using a certain hook (a trailer hitch) for purposes that were not necessarily the same for which it was intended, but which were otherwise common, and which it could not ignore, thereby creating a safety defect. Of course, and to borrow from McLachlin J. in *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [355] manufacturers "do not have the duty to warn the entire world about every danger that can result from improper use of their product," which is equally true under Quebec law, but they must nevertheless be particularly aware of the potential uses – and dangers – of their products, especially when they are placed in the hands of lay users or the general public and are susceptible to misuse or to unusual, but predictable use.[356]

[292] In short, pursuant to article 1469 C.C.Q., the manufacturer has the duty to inform users of the risks and dangers of the product and the means to avoid them, failing which it will be liable under article 1468 C.C.Q., because the product does not provide the safety to which one is normally entitled to expect.

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[354] *Bombardier inc. v. Imbeault*, 2009 QCCA 260 at paras. 25 and 26.

[355] *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 SCR 1210 at para 19.

[356] This principle is also found in case law prior to 1994, although the issue was not frequently discussed.

See *J. E. Livernois Ltee v. Plamondon,* J.E. 85-619, AZ-85011206 (C.A.) at 11 (in which the manufacturer's obligation to inform the lay user of the danger of misuse of the product was recognized).

It should be noted that the courts of other Canadian provinces recognize that "[m]anufacturers have a duty to warn of dangers arising from not only normal use of their products, but also reasonable foreseeable misuses" (Lawrence G. Theall et al., *Product Liability*: *Canadian Law and Practice* (Aurora, Ont.: Canada Law Book, 2001, looseleaf, update No. 21, October 2017), L3: 10.20 at L3-7).

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[293] The manufacturer sued by the victim for the harm caused by such a safety defect in the product can defend itself, as was previously the case, by attempting to rebut the evidence of the existence of this defect, by challenging the causal link between this defect and the harm or by invoking *superior force* or the causal fault of the victim or a third party. If the circumstances do not lend themselves to these grounds of defence, however, or if they fail and the safety defect is established, along with causation, the manufacturer is liable, subject, however, to the two means of exoneration available to it under article 1473 C.C.Q.:

> 1. (article 1473, para. (1)) the victim knew or could have known of the defect, or could have foreseen the injury, or
>
> 2, (article 1473, para. (2)) the lack of safety "according to the state of knowledge at the time that he manufactured, distributed or supplied the thing ... could not have been known,"[357] and, this condition being manifestly cumulative, "he was not neglectful of his duty to provide information when he became aware of the defect".

[294] The first ground of defence, taken from earlier law, exonerates the manufacturer of the liability which would otherwise be incurred: if the danger inherent in the product or its use is manifest,[358] or if, for whatever reason, the user knows (actual knowledge) or should have known of it (presumed knowledge), the manufacturer is not required to remedy the harm resulting from the safety defect in the product. Dealing with a means of exoneration intended to free the manufacturer from liability under article 1468 C.C.Q., the first paragraph of article 1473 must be interpreted and applied strictly. Once again, as a corollary to the duty to provide information, we can speak of knowledge when its level allows the user to correctly evaluate the danger, as well as the risk of its materialization, and to assume them.

[295] The first part of the second ground of defence (lack of knowledge) aims to apportion the risks associated with technological innovation.[359] Again, as a means of

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[357] This is what is called the development risk defence, which, it should be noted at the outset, does not apply in the context of an action pursuant to s. 53 C.P.A.

[358] Or, when it is a badly designed or defective product, if the defect is apparent and, likewise, the danger which results from it.

[359] The legislator created this exception in order [TRANSLATION] "to preserve the essential role of research and development of new products for the benefit of society" (Ministère de la Justice, *Commentaires du ministre de la Justice - Le Code civil du Québec,* vol.1, (Québec: Les Publications du Québec, 1993) at 902 (article 1458 C.C.Q*.).* This is an exception which also exists under article 7, para. (c) of the *European Directive*. See also Jobin & Cumyn, *supra* note 203 at 334 *et seq*., paras. 230 to 233; Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 2, *supra* note 241 at 395–396, paras 2-384; Marie-Ève Arbour, "Portrait of Development Risk as a Young Defence" (2014) 59 McGill L. J. 911; Marie-Ève Arbour, "Itinéraires du risque de développement à travers des codes et des constitutions" in Benoît Moore, ed., *Mélanges Jean-Louis Baudouin* (Cowansville, Qc.: Yvon Blais, 2012) at 677 *et seq*.; Nathalie Vézina, "L'exonération fondée sur l'état des connaissances scientifiques et techniques, dite du "risque de développement" : regard sur un élément perturbateur dans le droit québécois de la responsabilité du fait des produits" in Pierre-

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releasing the manufacturer of its liability, strictness is required. The manufacturer cannot simply show that it has taken reasonable precautions in this regard and, as Professors Jobin and Cumyn explain:[360]

> [TRANSLATION]
>
> Indirectly, the manufacturer is therefore obliged to stay up-to-date on the scientific knowledge concerning its product and to verify the quality of the products it puts on the market. A very specific exception is created for the development risk which was impossible for *everyone* to know when the product was put on the market; in other words, if the development risk was unknown to the impugned manufacturer, but known in the scientific or industrial community, there will be liability.
>
> [Emphasis in original.]

[296] It is not, therefore, its own ignorance of science or technology that the manufacturer must establish, but rather the impossibility of detecting or identifying the danger in consideration of the state of the science or technology at the time it was required to know.

[297] The second part of this same ground of defence (continuous information) confirms a rule that adds to the manufacturer's obligation, which the Supreme Court already endorsed in 1995 in *Hollis v. Dow Corning Corp.*,[361] a common law case which, like *Lambert*, corresponds to Quebec law. On behalf of the majority, La Forest, J., stated:[362]

> 20 It is well established in Canadian law that a manufacturer of a product has a duty in tort to warn consumers of dangers inherent in the use of its product of which it has knowledge or ought to have knowledge. This principle was enunciated by Laskin J. (as he then was), for the Court, in *Lambert v. Lastoplex Chemicals Co.*, [1972] S.C.R. 569, at p. 574, where he stated:
>
> > Manufacturers owe a duty to consumers of their products to see that there are no defects in manufacture which are likely to give rise to injury in the ordinary course of use. Their duty does not, however, end if the product, although suitable for the purpose for which it is manufactured and marketed, is at the same time dangerous to use;

Claude Lafond, ed., *Mélanges Claude Masse : en quête de justice et d'équité* (Cowansville, Qc.: Yvon Blais, 2003) at 435 *et seq*. [*Mélanges Claude Masse*].

360 Jobin & Cumyn, *supra* note 203 at 325–326, para. 225. See also *Desjardins Assurances générales inc.* c. *Venmar Ventilation inc.*, 2016 QCCA 1911. See also Jobin, *supra* note 313 at 125, para. 157 (the comment deals with dangerous latent defects but applies equally to dangers inherent in products not affected by any defect).

361 *Hollis v. Dow Corning Corp.*, [1995] 4 SCR 634.

362 The dissent of Sopinka J. (McLachlin J., concurring) is not on this point. On the contrary, Sopinka J. wrote that he "agree[s] with Justice La Forest in his analysis of the principles relating to the duty to warn" (at para. 64). Their divergence relates to causation.

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> and if they are aware of its dangerous character they cannot, without more, pass the risk of injury to the consumer.
>
> The duty to warn is a continuing duty, requiring manufacturers to warn not only of dangers known at the time of sale, but also of dangers discovered after the product has been sold and delivered; see *Rivtow Marine Ltd. v. Washington Iron Works*, [1974] S.C.R. 1189, at p. 1200, per Ritchie J. All warnings must be reasonably communicated, and must clearly describe any specific dangers that arise from the ordinary use of the product; see, for example, *Setrakov Construction Ltd. v. Winder's Storage & Distributors Ltd.* (1981), 11 Sask. R. 286 (C.A.); *Meilleur v. U.N.I.-Crete Canada Ltd.* (1985), 32 C.C.L.T. 126 (Ont. H.C.); *Skelhorn v. Remington Arms Co.* (1989), 69 Alta. L.R. (2d) 298 (C.A.); *McCain Foods Ltd. v. Grand Falls Industries Ltd.* (1991), 116 N.B.R. (2d) 22 (C.A.).
>
> [Emphasis added.]

[298] The manufacturer's obligation to inform is therefore not limited to the dangers that could not have been known at the time of the initial putting onto the market of the product, but extends to those which are revealed to it afterwards and that it must, therefore, disclose to the users. Its obligation in this respect lasts and remains as long as the product is on the market.

[299] Once again, it is the inequality of information, and the nature of implicit relationship of trust between the manufacturer and the users that justifies such an obligation. Let us once again quote La Forest J.'s comments in *Hollis*,[363] which intersect with the legal reality of Quebec, now enshrined in articles 1468, 1469 and 1473 C.C.Q., and even reflect the earlier law:

> 21 The rationale for the manufacturer's duty to warn can be traced to the "neighbour principle", which lies at the heart of the law of negligence, and was set down in its classic form by Lord Atkin in *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.). When manufacturers place products into the flow of commerce, they create a relationship of reliance with consumers, who have far less knowledge than the manufacturers concerning the dangers inherent in the use of the products, and are therefore put at risk if the product is not safe. The duty to warn serves to correct the knowledge imbalance between manufacturers and consumers by alerting consumers to any dangers and allowing them to make informed decisions concerning the safe use of the product.
>
> [Emphasis added.]

[300] This is also the reason why articles 1468 and 1469 C.C.Q. should be interpreted and applied in a broad and liberal manner, which favours the implementation of the objective of protection put forward by the legislator, reflected in

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[363] *Hollis v. Dow Corning Corp.*, [1995] 4 SCR 634.

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both the provisions themselves and the comments of the Minister,[364] in the work of the Civil Code Revision Office[365] as well as in the parliamentary debates,[366] and which is consistent with the evolution of the law since *Ross v*. *Dunstall*. Conversely, article 1473 C.C.Q. should be interpreted and applied in a rigorous manner, thus avoiding neutralizing articles 1468 and 1469 *C.C.Q.*

[301] In summary, during the Class Period, under both the C.C.L.C. and the C.C.Q., a manufacturer is deemed to be aware of the characteristics of the product it has produced and, where applicable, the dangers inherent in the product itself and in its normal or foreseeable use. It therefore has a duty to inform users and potential users of that danger and instruct them on how to avoid it. The information so provided must not only be accurate (i.e., true) and comprehensible, but also precise and complete, to the extent of the danger created by the product, particularly when it is meant to enter the user's body through ingestion, inhalation, injection, surgery, etc.

[302] Although it can defend itself through the usual grounds of defence, such as superior force, the causal fault of the victim or a third party, lack of causation, etc., a manufacturer that has breached its duty to inform can also escape liability by showing that the user who is the victim of harm caused by the safety defect knew or should have known of the danger and the inherent risk in the product or could foresee the harm that would result from its use or consumption.

[303] Lastly, and subject to a certain controversy in the law prior to 1994, a

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364 *Commentaires du ministre de la Justice, supra,* note 359 at 896 *et seq*.

365 Office de révision du Code civil, Comité du droit des obligations, *Rapport sur les obligations* (Montreal, 1975) at 162–165; Office de révision du Code civil, *Rapport sur Le Code civil du Québec -*
Projet de Code civil, vol. 1 (Québec: Éditeur officiel du Québec, 1977) at 349, online: http://digital.library.mcgill.ca/ccro/files/Rapport_ORCC_v1_Projet_de_code.pdf (page consulted on
January 17, 2019); Office de révision du Code civil, *Rapport sur Le Code civil du Québec - Projet de Code civil,* v. II - Commentaires tome 2, livres 5 à 9 (Québec: Éditeur officiel du Québec, 1977) at 633–634, online: http://digital.library.mcgill.ca/ccro/files/Rapport_ORCC_v2t2_commentaires_livres_5- 9.pdf (page consulted on January 17, 2019).

366 See e.g., Assemblée nationale, Sous-commission des institutions, *Journal des débats*, 34th Leg, 1st sess. (19 September 1991) at 519–520, online: http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/SCI-34-1/journal-debats/SCI-910919.html#Page00519 (page consulted on January 17, 2019); Assemblée nationale, Sous-commission des institutions, *Journal des débats,* 34th Leg., 1st sess. (9 October 1991) at 573, online: http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/SCI-34-1/journal-debats/SCI-911009.html#Page00573 (page consulted on January 17, 2019); Assemblée nationale, Sous-commission des institutions, *Journal des débats,* 34th Leg., 1st sess. (5 December 1991) at 1223, online: http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/SCI-34-1/journal-debats/SCI-911205.html#Page01223 (page consulted on January 17, 2019); Assemblée nationale, Sous-commission des institutions, *Journal des débats,* 34th Leg., 1st sess. (10 December 1991) at 1339, online: http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/SCI-34-1/journal-debats/SCI-911210.html#Page01339 (page consulted on January 17, 2019).

manufacturer can escape liability if it proves that “the state of knowledge / *l’état des connaissances*” when it manufactured and marketed the product was such that it was impossible for it to be aware of the danger, of which danger it informed users and potential users as soon as it became aware of it.

[304] These are the rules which the trial judge summarized as follows:

> [227] Our review of the case law and doctrine applicable in Quebec leads us to the following conclusions as to the scope of a manufacturer's duty to warn in the context of article 1468 and following:
>
> a. The duty to warn “serves to correct the knowledge imbalance between manufacturers and consumers by alerting consumers to any dangers and allowing them to make informed decisions concerning the safe use of the product”;
>
> b. A manufacturer knows or is presumed to know the risks and dangers created by its product, as well as any manufacturing defects from which it may suffer;
>
> c. The manufacturer is presumed to know more about the risks of using its products than is the consumer;
>
> d. The consumer relies on the manufacturer for information about safety defects;
>
> e. It is not enough for a manufacturer to respect regulations governing information in the case of a dangerous product;
>
> f. The intensity of the duty to inform varies according to the circumstances, the nature of the product and the level of knowledge of the purchaser and the degree of danger in a product's use; the graver the danger the higher the duty to inform;
>
> g. Manufacturers of products to be ingested or consumed in the human body have a higher duty to inform;
>
> h. Where the ordinary use of a product brings a risk of danger, a general warning is not sufficient; the warning must be sufficiently detailed to give the consumer a full indication of each of the specific dangers arising from the use of the product;
>
> i. The manufacturer's knowledge that its product has caused bodily damage in other cases triggers the principle of precaution whereby it should warn of that possibility;
>
> j. The obligation to inform includes the duty not to give false information; in this area, both acts and omissions may amount to fault; and

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> k. The obligation to inform includes the duty to provide instructions as to how to use the product so as to avoid or minimize risk.
>
> [References omitted]

b. Specific issues

[305] A few specific issues must still be addressed, which will take the above reflection further, on certain specific points. Those issues are the following:

> 1. Does the manufacturer's breach of the duty to inform lead to its liability under article 1457 C.C.Q. (or, previously, article 1053 C.C.L.C.), over and above and separate from its liability under article 1468 C.C.Q. (or the previous case law), and, where applicable, can a manufacturer defend itself by proving that the victim of the harm knew or should have known of the danger of the product or the harm related to its use?
>
> 2. At what point is the knowledge the victim may have about the danger of a product or the harm associated with its use sufficient to release the manufacturer from liability?
>
> 3. How should the issue of the apportionment of liability between the manufacturer and the victim be approached?
>
> 4. What is the burden of proof incumbent upon the parties in an action such as the case at bar?

b.1. Articles 1053 C.C.L.C., 1457 C.C.Q., general fault and defence of knowledge

[306] Does the breach of the duty to inform, which could lead to the manufacturer's liability pursuant to articles 1468 and 1469 C.C.Q. or the corresponding regime of the former law, because it also contravenes the general rules of good faith and good conduct, constitute a parallel and separate source of liability within the meaning of articles 1053 C.C.L.C. and 1457 C.C.Q.? Could the defence of knowledge that the manufacturer can set up, in the first case, against a user informed of the danger inherent in the product, be relied on in the second? These issues arise from certain passages of the judgment *a quo*.

[307] In reading the judgment *a quo*, one might have the impression that, according to the trial judge, a breach of the manufacturer's duty to inform, at least when it is intentional and therefore wrongful (which is the case here), can trigger two liability regimes simultaneously, i.e., first, the specific regime of articles 1468, 1469 and 1473 C.C.Q. or the former case law rules and, second, the general regime of articles 1053 C.C.L.C. and 1457 C.C.Q. However, the knowledge defence developed under the C.C.L.C. and codified by the first paragraph of article 1473 C.C.Q. did not allow a manufacturer to escape that parallel general liability (although there could be a sharing

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of liability among the wrongful manufacturer and the user who knew of the danger).[367] The judge stated:

> [139] As explained above, the Court holds that the public knew or should have known of the risks and dangers of becoming tobacco dependent from smoking as of March 1, 1996 and that the Companies' fault with respect to a possible safety defect ceased as of that date in the Létourneau File.
>
> [140] Let us be clear on the effect of the above findings. The cessation of possible fault with respect to the safety defects of cigarettes has no impact on the Companies' possible faults under other provisions, i.e., the general rule of article 1457 of the Civil Code, the Quebec Charter or the Consumer Protection Act. There, a party's knowledge is less relevant, an element we consider in section II.G.1 and .2 of the present judgment.
>
> ...
>
> [218] The Court sees a fault under article 1457 as being separate and apart from that of failing to respect the specific duty of the manufacturer with respect to safety defects, as set out in article 1468 and following. The latter obligation focuses on ensuring that a potential user has sufficient information or warning to be adequately advised of the risks he incurs by using a product, thereby permitting him to make an educated decision as to whether and how he will use it. The relevant articles read as follows:
>
> …
>
> [240] So far in this section, the Court has focused on the manufacturer's obligation to inform under article 1468 and following but, under article 1457, a reasonable person in the Companies' position also has a duty to warn.
>
> [241] In a very technical but nonetheless relevant sense, the limits and bounds of that duty are not identical to those governing the duty of a manufacturer of a dangerous product. This flows from the “knew or could have known” defence created by article 1473.
>
> [242] Under that, a manufacturer's faulty act ceases to be faulty once the consumer knows, even where the manufacturer continues the same behaviour.
> In our view, that is not the case under article 1457. The consumer's

[367] See in particular paras. 828 and 832 of the judgment *a quo*. According to the judge, the knowledge users could have of the danger of smoking as of 1980 (disease) or 1996 (addiction) also cannot release the appellants from the liability incumbent upon them under the *Charter* or the *C.P.A.*

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knowledge would not cause the fault, *per se*, to cease. True, that knowledge could lead to a fault on his part, but that is a different issue, one that we explore further on.

…

[281] The obligation imposed on the manufacturer is not a conditional one. It is not to warn the consumer "provided that it is reasonable to expect that the consumer will believe the warning". That would be nonsensical and impossible to enforce.

[282] If the manufacturer knows of the safety defect, then, in order to avoid liability under that head, it must show that the consumer also knows. On the other hand, under the general rule of article 1457, there is a positive duty to act, as discussed earlier.

...

[483] We have held that the Companies failed under both tests, and this, for much of the Class Period. With respect to the Blais Class, we held that the Companies fault in failing to warn about the safety defects in their products ceased as of January 1, 1980, but that their general fault under article 1457 continued throughout the Class Period. In Létourneau, the fault for safety defects ceased to have effect as of March 1, 1996, while the general fault also continued for the duration of the Class Period.

…

[824] The Companies are correct in contesting this, but only with respect to the fault under article 1468. There, article 1473 creates a full defence where the victim has sufficient knowledge. The case is different for the other faults here.

[825] Pushing full bore in the opposite direction from the Plaintiffs, JTM cites doctrine to argue in favour of a plenary indulgence for the Companies on the basis that "a person who chooses to participate in an activity will be deemed to have accepted the risks that are inherent to it and which are known to him or "are reasonably foreseeable." That article of doctrine, however, does not support this proposition unconditionally.

[826] There, the author's position is more nuanced, as seen in the following extract:

> *Dès qu'une personne est informée de l'existence d'un risque particulier et qu'elle ne prend pas les précautions d'usage pour s'en prémunir, elle devra, en l'absence de toute faute de la personne qui avait le contrôle d'une situation, assumer les conséquences de ses actes. (The Court's emphasis)*

> [827] As we have shown, the Companies fail to meet this test of "absence of all fault" and thus must share in the liability under three headings of fault. This seems only reasonable and just. It is also consistent with the principles set out in article 1478 and with the position supported by Professors Jobin and Cumyn:
>
> …
>
> [References omitted.]

[308] With respect, this way of looking at things (if that is in fact what we are to understand from the judgment) is debatable and, on this point, we have to agree with the appellants.

[309] It is undoubtedly not impossible for one person to commit separate faults, sanctioned by different regimes of liability. The same conduct can also be sanctioned through recourse to various legislative provisions. The same misconduct can thus constitute a fault pursuant to article 1457 C.C.Q., a breach of the *Charter* and a breach of another statute. This is moreover the case of the manufacturer's breach of its duty to inform, which can concomitantly trigger the application of articles 1468 and 1469 C.C.Q., that of section 53 C.P.A. or that of sections 219 and 228 C.P.A. Where several legislative provisions can apply to the same facts, the conditions of liability may vary, as may the means of defence, the burden of proof, etc., not to mention cases where the same misconduct can trigger contractual liability against one person and extracontractual liability against another.

[310] On the other hand, it is difficult to see how the *same* breach of the manufacturer's duty to inform could trigger *both*, at the *same* time and toward the *same* persons the liability prescribed by articles 1468 and 1469 C.C.Q. *and* the general liability of article 1457 C.C.Q. The rules governing the civil liability of a manufacturer, as prescribed by articles 1468, 1469 and 1473 C.C.Q., are the specific incarnation, in the case of the manufacturer, of article 1457 C.C.Q., a variation on the same theme to a certain extent, just as, under the C.C.L.C., the rules governing the liability of a manufacturer were an illustration of article 1053.

[311] In other words, the rules and conditions of the extracontractual liability of a manufacturer are covered by articles 1468, 1469 and 1473 C.C.Q., without the need to turn to article 1457 C.C.Q., of which they are a variation. As a corollary, in seeking a manufacturer's extracontractual liability due to the safety defect of a product, we must turn to articles 1468, 1469 and 1473 C.C.Q. and those articles alone, not article 1457 C.C.Q. The same applies with respect to the former regime stemming from article 1053 C.C.L.C.: the rules developed for the case of the manufacturer are the ones that applied, concurrently, without being a sort of catch-all general category that acted independently.

[312] In short, there are no parallel regimes in this regard. This means that a manufacturer accused of having breached its duty to inform can claim relief under article 1473 C.C.Q. or under the rule previously established in the case law. If it shows that the conditions for its application are met, it is released from the liability it would

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have incurred as a result of its breach, without the opposing party being able to set up separate liability against it based on article 1457 C.C.Q. or 1053 C.C.L.C.

[313] The judgment *a quo*, however, is unclear in this regard. Other passages suggest instead that the judge distinguished two different faults, each triggering a different liability regime:

> - first, the appellants, deliberately and knowingly, failed to adequately inform users and the public about the harmful effects of smoking, which breach would lead to the application of the regime based on articles 1468, 1469 and 1473 C.C.Q. and the related rules established by the former law;
>
> - second, and this would be an additional fault separate from the first, the appellants participated throughout the entire Class Period in a concerted campaign of disinformation, an organized and systematic sham, the consequences of which are governed by articles 1053 C.C.L.C. and 1457 C.C.Q.

[314] If we understand correctly, this distinction would allow the judge to set aside the effects of the knowledge he attributed to users as of the "knowledge dates" that he also set: although the appellants continued thereafter not to adequately inform their customers and potential users of the dangers of smoking, they would no longer be liable due to that breach and the resulting safety defect since the harmful effects of the product would henceforth be widely acknowledged and therefore known to all; on the other hand, they would remain liable for the consequences of their second fault (subject to sharing liability with users who were aware of the danger).

[315] With respect, this way of looking at things is just as debatable as the first. Why exclude disinformation from the scope of the obligation to provide information imposed on a manufacturer to make it a separate fault that would follow different rules and fall under the general obligation of good conduct stemming from articles 1053 C.C.L.C. and 1457 C.C.Q.? And why could the knowledge the user may have about the danger that is the subject of that disinformation not be relied on by the wrongful manufacturer?

[316] We should instead conclude that the second fault that the judge identifies relates to the obligational content of the duty to inform incumbent upon the manufacturer pursuant to articles 1468, 1469 and 1473 C.C.Q. as well as under the previous case law regime, based on article 1053 C.C.L.C. The liability that could result is therefore subject to the same rules, including in terms of the grounds for exoneration, which include the victim's knowledge of the safety defect (and more specifically the danger).

[317] This is apparent, with respect to the law prior to 1994, from *O.B. v. Lapointe*, for example, in which, criticizing the manufacturer for not suitably informing users of the dangers of the device in question, the Court held that [TRANSLATION] "[n]ot only was that duty to inform not met, but, in addition, the information provided by the manufacturer was itself misleading and likely to [TRANSLATION] "lull" the user into a false sense of

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security."[368] The manufacturer may therefore breach its duty because it did not give any information, because the information provided was insufficient, or because it gave misleading information.

[318] This is confirmed in *Bank of Montreal v. Bail*,[369] decided at the time of the C.C.L.C. Gonthier J. (who mentioned in passing articles 1469 and 1473 C.C.Q.) stated that "the obligation to inform and the duty not to give false information may be seen as two sides of the same coin."[370] That statement is undeniable. Did the coming into force of the C.C.Q. change anything? That is very unlikely since article 1469 C.C.Q., which defines the safety defect of a product, is neither restrictive nor exhaustive.[371] For convenience, this provision is reproduced below:

> **1469.** A thing has a safety defect where, having regard to all the circumstances, it does not afford the safety which a person is normally entitled to expect, particularly by reason of a defect in design or manufacture, poor preservation or presentation, or the lack of sufficient indications as to the risks and dangers it involves or as to the means to avoid them.
>
> **1469.** Il y a défaut de sécurité du bien lorsque, compte tenu de toutes les circonstances, le bien n'offre pas la sécurité à laquelle on est normalement en droit de s'attendre, notamment en raison d'un vice de conception ou de fabrication du bien, d'une mauvaise conservation ou présentation du bien ou, encore, de l'absence d'indications suffisantes quant aux risques et dangers qu'il comporte ou quant aux moyens de s'en prémunir.
>
> [Emphasis added.]

[319] The use of the term "particularly," which precedes the list of breaches that could lead to a safety defect, is crucial. The legislator is simply giving examples of what could lead to a safety defect, including the lack of sufficient indications as to the dangers involved or the means to avoid them. There may therefore be other circumstances in which a manufacturer would breach its duty to inform, resulting in a safety defect. Distributing false information about the true nature of a dangerous product certainly leads to such a defect within the meaning of article 1469 *C.C.Q*. Similarly, misleading the public about the dangers of a toxic product by actively attempting to convince it of its safety or by convincing it to ignore information and warnings to the contrary is a breach of the manufacturer's duty to inform and causes a safety defect. In other words, the safety defect, which can result from the manufacturer's failure to provide "sufficient

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368 *O.B. v. Lapointe*, [1987] R.J.Q. 101 at 106 (passage reproduced at para. [279], *supra*).

369 *Bank of Montreal v. Bail Ltée*, [1992] 2 S.C.R. 554.

370 *Bank of Montreal v. Bail Ltée*, [1992] 2 S.C.R. 554 at 587. In 1993, authors Leroux and Giroux, speaking about over-the-counter drugs and pointing out the duty to inform users of their dangers, observed that [TRANSLATION] "the manufacturer must ensure that it does not skew the information provided to consumers through its advertising" and encouraged readers to reflect on that (Leroux and M. Giroux, *supra*, note 313, p. 330). There is no doubt that a manufacturer who [TRANSLATION] "skews the information" it is required to give breaches its duty to inform.

371 See *supra* note 351.

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indications as to the risks and dangers" of the product and as to "the means to avoid them," can also result from the disinformation it is circulating. In both cases, there is deception and a breach of the obligation to provide information.

[320] All this was just as true under article 1053 C.C.Q., although the case law does not provide any examples.

[321] In short, to paraphrase Gonthier J. in *Bail*, not informing and, concurrently, misinforming are two sides of the same misconduct.[372] They cannot be disassociated, and they are both part of a manufacturer's breach of the duty to inform users about the risks and dangers of its product and the means to avoid them.

[322] In terms of principles, there is therefore no reason to move the disinformation strategies used by the appellants during the Class Period outside the scope of article 1469 C.C.Q., and consequently, articles 1468 and 1473,. There is also no reason to extract this type of conduct from the regime applicable to the manufacturer's duty to inform, as developed by the courts, prior to 1994, based on article 1053 C.C.L.C.

[323] Accordingly, a manufacturer who circulates disinformation, like the one who provides inadequate or incomplete information, can escape liability by proving that the user knew (or was deemed to know), at that time, the dangers and risks of the product, a defence recognized under the former regime and entrenched by article 1473 C.C.Q. Contrary to what the trial judge seems to have decided, we can therefore set up against the respondents and the class members the knowledge they allegedly had of the defect of the product, namely the toxic and addictive effects of smoking, or the foreseeability of the harm resulting from it, without distinction according to the faults alleged against the appellants.

[324] Clearly, a manufacturer who has misinformed users would in fact be unable to establish the knowledge referred to in article 1473 C.C.Q. since the purpose and effect of this type of conduct is to alter the knowledge the target individuals had or might otherwise have had of the danger or harm in question. Here, the extracontractual and contractual converge. In terms of the warranty of quality, for example, disinformation can conceal a defect which would otherwise have been apparent (and therefore presumably known) and justify the purchaser who is tricked by not having noticed it.[373] The vendor or manufacturer who provided such misleading information could not then merely establish the knowledge the purchaser *should have had* of the defect, but would have to prove the knowledge he or she actually and in fact had (which knowledge could also have been affected by the vendor or manufacturer's lies). A manufacturer has a similar burden under article 1473 C.C.Q. (or the case law rule in force previously).

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372 *Bank of Montreal v. Bail Ltée*, [1992] 2 S.C.R. 554 at 587.

373 See *Placement Jacpar Inc. v. Benzakour*, [1989] R.J.Q. 2309 (C.A.) at 2318, reiterated in particular in *Verville v. 9146-7308 Québec inc.*, [2008] R.J.Q. 2025 (C.A.) at para. 44. See also Jobin & Cumyn, *supra* note 203 at 227–228, para. 173. See also Thérèse Rousseau-Houle, *Précis du droit sur la vente et du louage*, 2nd ed. (Sainte-Foy, Qc.: Les Presses de l'Université Laval, 1986) at 133–134.

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[325] At any rate, if we were to see, as the judge did, in the disinformation practised by the appellants a separate and, to a certain extent, independent fault subject to a different legal regime based on article 1457 C.C.Q. (or article 1053 C.C.L.C.), it would not change anything about the case. We do not see how or why considering that fault in such a way should shelter the plaintiff from the knowledge defence asserted by the manufacturer, it being understood, as just mentioned, that such disinformation could prevent it from establishing that danger or harm was apparent or known and even affect the subjective knowledge of the plaintiff.

b.2. Knowledge defence: the extent of the victim's knowledge

[326] But it must be determined what one means by the *knowledge* the victim of the harm may have of the danger relating to the product, a subject which deserves to be explored further.

[327] We have seen that, both under the current law and the law prior to 1994, a manufacturer has a duty to provide users or potential users of the product it sells with true, precise, comprehensible and complete information. We have also seen that the practical scope of that obligation is directly proportional to the extent of the danger and risk created by the product in connection with its normal use or, to be more specific, when the product is used for the purposes for which it is intended or for other but foreseeable purposes given its nature. The obligation is particularly compelling in the case of a product that the user ingests and that could cause significant harm.

[328] As a corollary to that obligation, which we have also seen, it cannot be said that a user has *knowledge* of the danger a product creates if he or she has only a general idea about it and cannot assess it adequately because he or she has not received the necessary information (or, we might add, because he or she has suffered the effects a campaign of disinformation). It can be said there was "knowledge" only if the user understands the nature of the danger (i.e., what about the product threatens or jeopardizes his or her safety) and the risk associated with it (i.e., the level of probability that such danger will materialize and the significance of the potential harm). To the extent, however, that the manufacturer can show that the victim had such knowledge of the safety defect or of the harm that could result, it can escape the liability it would otherwise have borne pursuant to articles 1468 and 1469 C.C.Q., or, previously, under article 1053 C.C.L.C.

[329] But beyond these generalities, what exactly is the *extent* of knowledge required for setting up this ground for the manufacturer's exoneration or, to put it another way, this peremptory exception against the user who is the victim of harm caused by the safety defect of the product?

[330] We cannot answer that question without first considering article 1477 C.C.Q.[374] This general provision, which entrenches a rule previously recognized by the case law

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[374] Authors Baudouin, Deslauriers & Moore allude to this relationship between the first paragraph of article 1473 and article 1477 C.C.Q.: *La responsabilité civile*, vol. 2, *supra* note 241 at 395, para. 2-384, p. 395.

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and commentary,[375] is found, like article 1473 C.C.Q., in a division of the *Civil Code* entitled "Certain cases of exemption from liability / *De certains cas d'exonération de responsabilité*." That division also contains article 1470 C.C.Q., which deals with superior force, article 1471 C.C.Q., which [TRANSLATION] "promotes good citizenship and volunteerism by allowing people who act as good samaritans to be free from liability for errors made in good faith or minor mistakes committed in the performance of socially beneficial acts,"[376] article 1472, which exempts from liability a person who discloses a trade secret for considerations of general interest (including public health or safety), as well as articles 1474, 1475 and 1476, which deal with the exclusion or limitation of liability.

[331] The last article in the division, article 1477, states:

> **1477.** The assumption of risk by the victim, although it may be considered imprudent having regard to the circumstances, does not entail renunciation of his remedy against the author of the injury.
>
> **1477.** L'acceptation de risques par la victime, même si elle peut, eu égard aux circonstances, être considérée comme une imprudence, n'emporte pas renonciation à son recours contre l'auteur du préjudice.

[332] This provision, like the previous rule that it reiterates, is twofold: first, it states that the assumption of risk, although it may be considered imprudent, does not entail renunciation in favour of the author of the injury (and therefore is not, as such, exonerating); second, by making this clarification, it also acknowledges the possibility of such a renunciation (and therefore the complete exoneration of the author of the injury). This is a double rule normally applied to all types of sports activities,[377] construction or home renovation work (and in particular volunteer help for such work)[378] and recreational activities (in the broad sense of the term, including children's games).[379] It has been invoked at times with respect to the use of automobiles, etc.[380]

[333] As authors Baudouin, Deslauriers and Moore explain:[381]

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375 *Commentaires du ministre de la Justice*, *supra* note 359 at 905.

376 *Commentaires du ministre de la Justice*, *supra* note 359 at 900.

377 See e.g., *Zhang v. Deng*, 2017 QCCA 69; *2735-3861 Québec inc. (Centre de ski Mont-Rigaud) v. Wood*, 2008 QCCA 723; *Centre d'expédition et de plein air Laurentien v. Légaré*, [1998] R.R.A. 40 (C.A.); *Canuel v. Sauvageau*, J.E. 91-233 (C.A.). See also Renée Joyal-Poupart, *La responsabilité civile en matière de sports au Québec et en France* (Montreal: Les Presses de l'Université de Montréal, 1975).

378 See e.g., *Éthier v. Briand*, 2010 QCCA 666; *Bernard v. Mattera*, [1991] R.R.A. 446 (C.A.); *Girard v. Lavoie*, [1975] C.A. 904.

379 See e.g., *Gaudet v. Lagacé*, [1998] R.J.Q. 1035 (C.A.); *Larivière v. Lagueux*, [1977] C.A. 245.

380 See for example *Commission des accidents du travail du Québec v. Girard*, [1988] R.R.A. 662 (C.A.); *Martineau v. Marier* (1982), J.E. 82-645, AZ-82011139 (C.A.). For another example, in a different context, see *Kruger Inc. v. Robert A. Fournier & associés Ltée,* [1986] R.R.A. 428 (C.A. - vehicles exposed to acid soot).

381 J.-L. Baudouin, P. Deslauriers and B. Moore, *La responsabilité civile*, Vol. 2, *supra*, note

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[TRANSLATION]

I-209 - *Assumption of risk* – The theory of the assumption of risk also allows the author of harm to fully or partially escape the consequences of his or her liability. There must be clear proof, however, first, that the victim voluntarily agreed to participate in an activity involving certain risks and, second, that the nature and extent of those risks were clearly disclosed beforehand. Last, the damage must have been caused by the normal occurrence of the risk, not by its aggravation caused by the wrongful conduct of the agent. In addition, pursuant to article 1477 C.C.Q., although such assumption of risk can be considered imprudent and justify a sharing of liability, it does not automatically entail a renunciation of the recourse.

[References omitted.]

[334] Professor Tancelin, recalling the prior law as described in two cases in particular of the Privy Council relating to Quebec matters, stated the following:[382]

[TRANSLATION]

819. *Application of the notion of intentional fault* – The assumption of risk defence is not used very frequently due to the strict nature of the conditions in which it applies. They were posed in two Privy Council decisions. In the first, Lord Atkinson held:

> "If however a person, with full knowledge and appreciation of risk and danger attending a certain act, voluntarily does that act it must be assumed that he voluntarily incurred the attendant risk and danger and the maxim *volenti non fit injuria* directly applies."[1711]

The assumption of risk is therefore two-fold: knowledge of a risk and the voluntary and knowing submission to that risk. In *Letang*, it was pointed out that the specificity of the defence lay in the second aspect, which had to be specifically proven. It is rare for the defence to be accepted since it is very difficult to prove. Litigators have a tendency to confuse *volenti non fit injuria* and *scienti non fit injuria*, as the Privy Council pointed out in Letang.[1712] If mere knowledge of a risk incurred was enough to set aside the right to compensation for damages, civil liability would not have developed as it has.

1711. *C.P.R. v. Fréchette*, supra No. 813; [195] A.C. 871; *Letang v. Ottawa Electric*, (1926) 41 B.R. 312, aff'd [1926] A.C. 725; A. Mayrand, "L'amour au volant et la règle volenti non fit injuria", (1961) 21 *R. du B.* 366. (To one who is willing, no harm is done).

1712. Supra at 316.

[335] The decision of the Judicial Committee of the Privy Council in *Letang v. Ottawa*

265, p. 205 (see also paragr. 1-711, p. 737-738).

382 Maurice Tancelin, *Des obligations en droit mixte du Québec*, 7th ed., Montreal, Wilson & Lafleur, 2009, p. 579.

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Elec. R. Co. is particularly interesting. In that case, the victim lost her footing on a stairway that had not been cleared of ice. The stairway led to a passageway providing access to the respondent's tramway station. There was nothing to warn users of the danger or prohibiting the use of the stairs. The respondent argued that, given the obvious condition of the steps, the victim had accepted the risk of falling by taking them. Lord Shaw held that:[383]

> The truth is that this case has been, in its later stages, argued, as it was ably argued before the Board, as one in which the maxim *volenti non fit injuria* applied. In the view taken by the Board that maxim and the doctrine underlying it have not been correctly apprehended by some of the Judges in the Court below. This kind of problem is frequently before the Courts. It is quite a mistake to treat *volenti non fit injuria* as if it were the legal equipollent of *scienti non fit injuria*. As Lord Bowen expressed it in *Thomas v. Quartermaine* (1887), 18 Q.B.D. 685, at pp. 696-7:
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> > "The maxim, be it observed, is not *'scienti non fit injuria,'* but *'volenti.'* It is clear that mere knowledge may not be a conclusive defence... The defendant in such circumstances does not discharge his legal obligation by merely affecting the plaintiff with knowledge of a danger. Knowledge is not a conclusive defence in itself. But when it is a knowledge under circumstances that leave no inference open but one, namely that the risk has been voluntarily encountered, the defence seems to me complete."
>
> A case very near the present on its facts is that of *Osborne v. L. & N.W.R.* (1888), 21 Q.B.D. 220, in which *Thomas v. Quartermaine*, *supra*, was carefully founded on. The plaintiff was injured by falling on the steps leading to the defendants' railway station. These steps the defendants had allowed to be slippery and dangerous. There was no contributory negligence on the part of the plaintiff, but there were other steps which he might have used (a direct analogy in fact with the present case), and he admitted that he knew the steps were dangerous and went down carefully holding the rail. The railway company was held responsible. Wills, J., at pp. 224-5, puts the matter thus:
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> > "I should have thought it necessary that the plaintiff should be asked more questions than he has been asked in cross-examination. It is clear from his evidence that he knew there was some danger, but the contention on behalf of the defendants, that this circumstance is sufficient to entitle them to succeed, entirely gives the go-by to the observations of Lord Esher, M.R., in *Yarmouth v. France*, 19 Q.B.D. p. 657. In the present case the plaintiff may well have misapprehended the extent of the difficulty and danger which he would encounter in descending the steps; for instance, he might easily be deceived as to the condition of the snow; I know quite enough about ice and snow to know how easy it is to make such a mistake and it is one that has cost many a man

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383 *Letang v. Ottawa Elec. R. Co*., [1926] A.C. 725, p. 730-732.

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> his life. In order to succeed the defendants should have gone further in cross-examination, for, unless the question of fact had been found in their favour, the application of the maxim on which they relied could not be established. The County Court Judge has not found the fact the defendants need; and upon the present materials I certainly am not prepared to supply the deficiency."

The law of Canada and England seems to be summed up in the leading proposition to the judgment of Wills, J., in *Osborne v. L. & N.W.R. Co.*, 21 Q.B.D., at pp. 223-4:

> "If the defendants desire to succeed on the ground that the maxim *volenti non fit injuria* is applicable, they must obtain a finding of fact 'that the plaintiff freely and voluntarily, with full knowledge of the nature and extent of the risk he ran Impliedly agreed to incur it.'"

To apply these illustrations to the present case, there is no evidence whatsoever that the appellant's wife, holding on as best she could to the handrail, had a full knowledge of the nature and extent of the danger; or that, knowing this, she freely and voluntarily, with full knowledge of the nature and extent of the risk she ran, encountered the danger. As to this it is to be noted that she was merely traversing the same steps and under the very same circumstances as many hundreds of tramway passengers.

[Emphasis added.]

[336] The Supreme Court does not say otherwise in *Beauchamp v. Consolidated Paper Corporation Ltd.* In that case, a father and his three sons undertook to drive over a rather rudimentary bridge belonging to the respondent that was covered with light snow and ice. Aware of the situation but unfamiliar with the structure of the bridge, which he was taking for the first time, the driver drove onto the bridge at low speed, but his car slipped out of control and ended up in the water. The driver and one of his sons drowned. The Court of Appeal held that the respondent had no obligation to warn users of dangers which, according to the majority judges, [TRANSLATION] "were apparent, and, at any rate, a warning would not have done the travellers any good."[384] Quoting *Letang*, Fauteux J., quashing the Court of Appeal decision, wrote:[385]

> [TRANSLATION]
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> In the case of *Letang v. Ottawa Electric Railway Co.*, *supra*, it was held, as we know, that the maxim *Volenti non fit injuria* does not provide a defence to an action in damages for bodily harm due to the dangerous conditions of premises to which the victim has been invited upon

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384 *Beauchamp v. Consolidated Paper Corporation Ltd.*, [1961] S.C.R. 664 at 668.

385 *Beauchamp v. Consolidated Paper Corporation Ltd.*, [1961] S.C.R. 664 at 669. The Supreme Court thus confirmed the decision of the Superior Court, finding the respondent liable while allocating 20% liability to the driver. In the opinion of the trial judge, the driver could have asked his sons to get out of the car to guide it over the bridge. The fact that he did not constituted culpable recklessness.

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> business, unless it is established that the victim freely and voluntarily, with full knowledge of the nature and extent of the risk incurred, expressly or implicitly agreed to incur it. Tassé's vigilance was betrayed by this invitation, as well as by the failure of the respondent's employees to warn them of the seriousness of the risks involved in crossing the bridge. They should have been asked to postpone their departure until the sanding operations were completed. These security measures were necessary; the respondent's employees had a duty toward the Tassés, and moreover, they had the facilities to do so. Under the circumstances, their conduct constitutes a fault of which the accident was the direct, natural and immediate consequence, and that fault makes the respondent liable.
>
> [Emphasis added.]

[337] Regardless whether the assumption of risk can be a ground for complete exoneration or simply the source of shared liability, we clearly see that mere general knowledge of the risk is not sufficient. It is also not sufficient to embark on a dangerous activity for assumption of risk to be inferred. The extent of required knowledge is that which allows for the conclusion of the *voluntary* assumption of risk,[386] and, accordingly, acceptance of the harm that may ensue, which is much more onerous. As authors Nadeau and Nadeau stated:[387]

> [TRANSLATION]
>
> The maxim applies when the victim has freely and knowingly, with full knowledge of the facts, consented to a risk or danger, of which he or she could fully appreciate the nature or scope, and thus tacitly agreed in advance to what followed. The defendant must prove this fact to escape liability.
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> [References omitted.]

[338] An eloquent formulation of the rule is also found in *Doucet v. Canadian General*

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386 This is the case, for example, when the business is obviously dangerous, the potential injury is significant and the risk of it materializing is high (or unavoidable). See *Bernard v. Mattera*, [1991] R.R.A. 446, a case in which Vallerand, J., writing for the Court, described the appellants' plans as [TRANSLATION] "a business ... so crazy from the outset that it was inevitable that it would lead to an accident, for which the three accomplices would also be liable, the victim's fall being a necessary and unavoidable consequence of it" (at 447). Conversely, see for example *Ouellette v. Gagnon*, [1980] C.A. 606, a case in which the Court refused to apply the *volenti non fit injuria* rule and clearly explained that, although hunting is an activity that involves intrinsic risk, that does not mean that one should foresee *"the possibility (or even the likelihood) of being shot"* (at 610). See also *Centre d'expédition et de plein air Laurentien v. Légaré*, [1998] R.R.A. 40 (C.A., where it was held that neither the knowledge nor the manifestation of the assumption of risk was sufficient).

387 Nadeau & Nadeau, *supra* note 223 at 515, para. 551 (see generally at 515 to 518, paras. 551 to 554).

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Electric Co. Ltd.:[388]

> [TRANSLATION]
>
> The maxim *volenti non fit injuria* should not be applied with the same rigour it has under common law. In our law, the victim's mere knowledge of the danger is not sufficient to exonerate a third party unless the knowledge of the risk is such that free and knowing acceptance of the danger by the victim can be inferred. In most case, the victim's fault leads to a sharing of liability.
>
> [Emphasis added.]

[339] This is the standard which is reproduced in article 1477 C.C.Q.

[340] Undoubtedly, the case law has not always been faithful to the severity of the rule, and there are a few judgments that are too flexible in applying the theory of the assumption of risk. That occasional toning down of the rule is not in accordance with the law, however, and as Professor Karim notes, there can be assumption of the risk only on the following conditions:[389]

> [TRANSLATION]
>
> **3370.** There are three prerequisites to the application of the notion of "assumption of risk." First, one must be able to show the existence of a clear risk. ... Second, it must be proven that the victim had knowledge of the risk he or she was taking. That proof must show that the victim had received all information necessary not only to the practice of the activity, but also the risks inherent in it in order to allow him or her to make a free and informed choice. It is important to note that a person cannot be deemed to have agreed to run a risk if he or she was unaware of the extent of it. Last, one must be able to identify the victim's formal or tacit acceptance of the risk.

[341] It is understandable that these conditions are particularly onerous since the assumption of risk, as a means of exoneration, is the equivalent of the plaintiff's renunciation and releases the person sued from liability.

[342] This general framework must be taken into account when interpreting and applying the first paragraph of article 1473 par. 1 *C.C.Q.* (or the prior rule to the same effect). That provision provides for the exoneration of the manufacturer where the victim knew or is deemed to know of the safety defect of the product or the harm likely

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388 *Doucet v. Canadian General Electric Co. Ltd.,* [1975] R.L. 157 (P.C.) at 164. In that case, the purchaser, who bought a fryer with a defective thermostat from a merchant, sued the manufacturer for damage following a fire that broke out when the device overheated. His action was based on article 1053 C.C.L.C., in the absence of a contractual relationship between the parties (the Supreme Court had not yet rendered *Kravitz*).

389 Vincent Karim, *Les obligations*, 4th ed., vol. 1 "Articles 1371 to 1496" (Montreal: Wilson & Lafleur, 2015) at 1444–1445, para. 3370 [*Les obligations*, Vol. 1].

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to result from its use. A person who uses a product of which he knows or should know of the safety defect *accepts the risk* that the danger and harm will materialize. It is because the user has assumed the risk that the manufacturer can escape liability, and that is precisely the rule recognized by article 1477, of which the first paragraph of article 1473 is an illustration.

[343] One might object, however, that article 1477 C.C.Q. states that the assumption of risk, although it may constitute imprudence (and therefore a fault which could lead to a sharing of liability within the meaning of article 1478 C.C.Q.), does not lead to the victim's renunciation whereas, according to the wording of the first paragraph of article 1473, the victim's knowledge – and therefore the assumption of risk – fully exonerates the manufacturer. As authors Jobin and Cumyn noted, [TRANSLATION] "the victim's knowledge of the [security] defect or its apparent nature constitute complete grounds for exoneration."[390] In this sense, article 1473 would be an exception to article 1477 rather than an illustration of it (and similarly according to the former law, making the necessary adjustments).

[344] It should first be recalled that, despite its wording, article 1477 C.C.Q. does not exclude that assumption of a risk exonerates the author of the harm; the assumption of risk can be the equivalent of a renunciation of the right to sue, depending on the circumstances. In reality, the apparent discordance between articles 1473 and 1477 is resolved when one assigns to the "knowledge" to which the first one (or the prior rule) refers, a degree that makes it the functional equivalent of an assumption of risk leading to the renunciation of the right to sue within the meaning of the second. For a manufacturer to escape the liability that would otherwise be incumbent upon it, it must show that the victim had received all necessary information about the danger and risk relating to the product to allow him or her to make a free and informed choice in this regard, and the victim must in fact have expressed his or her wish to fully accept that risk as well as the harm that might ensue, thereby renouncing the right to sue.

[345] On this point, one can apply to article 1473 C.C.Q. the words of McLachlin J. in *Bow Valley Husky (Bermuda) v. Saint John Shipbuilding*:[391]

> 22 I agree with the Court of Appeal that knowledge that there may be a risk in some circumstances does not negate a duty to warn. Liability for failure to warn is based not merely on a knowledge imbalance. If that were so every person with knowledge would be under a duty to warn. It is based primarily on the manufacture or supply of products intended for the use of others and the reliance that consumers reasonably place on the manufacturer and supplier. Unless the consumer's knowledge negates reasonable reliance, the manufacturer or supplier remains liable. This occurs where the consumer has so much knowledge that a

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390 Jobin & Cumyn, *supra* note 203 at 326 *in fine*, para. 225.

391 *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210. In that case, McLachlin, J., with whose reasons La Forest, J. concurred, dissented in part, although the majority of her colleagues agreed with her analysis apart from the issue of the contractual relational economic loss (see the reasons of Iacobucci J. at para. 112).

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> reasonable person would conclude that the consumer fully appreciated and willingly assumed the risk posed by use of the product, making the maxim *volenti non fit injuria* applicable: *Lambert, supra.*
>
> [Emphasis added.]

[346] In that case, McLachlin J. noted that the plaintiff was aware that the product in question was inflammable, but that the manufacturer (as well as the supplier) had "had much more detailed knowledge of the specific inflammability characteristics,"[392], which information was not the subject of a warning to users. McLachlin J. was of the opinion that the plaintiff did not know enough for one to conclude that it had "accepted the risk of using Thermaclad"[393] (the product in question, which was perfectly sound, had been properly installed).

[347] Laskin J. ruled in a similar manner in *Lambert v. Lastoplex Chemicals*, a case referred to by McLachlin J. involving a highly inflammable lacquer sealer with toxic vapours, which was indicated on the container, and of which the user was aware. Nonetheless, Laskin J., on behalf of the Supreme Court, stated that:[394]

> I do not think that the duty resting on the respondent in this case can be excluded as against the male appellant, or anyone else injured in like circumstances, unless it be shown that there was a voluntary assumption of the risk of injury. That can only be in this case if there was proof that the male appellant appreciated the risk involved in leaving the pilot lights on and willingly took it. The record here does not support the defence of *volenti.* On the evidence, there was no conscious choice to leave the pilot lights on; rather, it did not enter the male appellant's mind that there was a probable risk of fire when the pilot lights were in another room. There is thus no basis in the record for attributing an error of judgment to the male appellant. Nor do I think there is any warrant for finding—and this would go only to contributory negligence—that he ought to have known or foreseen that failure to turn off the pilot lights would probably result in harm to himself or his property from his use of the lacquer sealer in the adjoining area.
>
> [Emphasis added.]

[348] Quebec law is no different on this point. In *Mulco*, a decision of this Court, Gendreau J. noted that:[395]

> [TRANSLATION]
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> In short, to be released from the consequences of its fault, Mulco had to

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392 *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210 at para. 23.

393 *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210 at para. 23.

394 *Lambert v. Lastoplex Chemicals*, [1972] S.C.R. 569 at 576.

395 *Mulco inc. c. Garantie (La), Cie d'assurance de l'Amérique du Nord*, [1990] R.R.A. 68 (C.A.) at 72.

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> show that the user assumed the risks and committed a causal fault himself by using the product according to an incorrect procedure which he knew was dangerous since he had received instructions from the manufacturer or otherwise – or that he should have known to be dangerous because the manufacturer had given him the opportunity to know by indicating a warning according to the standards identified by the Supreme Court; the damage here is therefore the result of inadequate instructions for use and the actual inability to know what precautions to take due to the lack of relevant information.
>
> In this case, the appellant therefore cannot avoid its obligation to make good the damage.
>
> [Emphasis added.]

[349] The extent of the user's knowledge must therefore be that which allows one to conclude in the assumption of the risk. Of course, that case is prior to 1994, but it cannot be different under article 1473 C.C.Q., otherwise the manufacturer, even when it is at fault,[396] would be subject to a much more favourable liability regime than under common law, which was assuredly not the legislator's objective in adopting articles 1468, 1469 and 1473 C.C.Q., and which also cannot be the objective sought previously. It is unthinkable that, to use the words of *Letang*, the legislator wanted to provide the manufacturer with exoneration based on the victim's *scienti* ("knowledge") rather than his *volenti* ("willingness").

[350] For the manufacturer to be exonerated − i.e., completely released − from liability for the harm caused by the safety defect of the product, it must therefore first establish a clear danger and risk and, second, prove the victim's real or deemed knowledge to a greater degree than that of general knowledge. Without requiring a level of scientific knowledge or a level of knowledge equal to that of the manufacturer (who is nonetheless the one who best knows the product and all its characteristics), the victim must have freely made an informed choice to assume the risk, which pre-supposes a high degree of knowledge of the danger of harm and of the risk that harm will occur, as well as the willingness to assume them. Knowledge, both here and under article 1477 C.C.Q., is coupled with willingness, the burden of proof of which is on the manufacturer.

[351] In other words, knowing that a product is dangerous, like knowing that an activity may be dangerous, is not sufficient: the manufacturer must prove that the victim had a precise and complete idea of the danger and risk associated with it and, in the same way, that he or she was informed of the means to be taken to deal with or avoid

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[396] Although the regime established by articles 1468, 1469 and 1473 C.C.Q. is a regime of no-fault liability, in certain cases that does not prevent the manufacturer from being at fault, particularly when it deliberately breaches its duty to inform. That could also be the case if the danger stems from a defect in the product resulting from the manufacturer's negligence, or if the manufacturer markets a product knowing full well that it is defective.

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them, if any.[397] If there are no such means, the manufacturer must also establish that the victim was informed of that fact, allowing him or her to realistically assess the risk and accept it.

[352] The rigour of those requirements obviously does not prevent us from noting that certain security defects are evident, manifest and apparent, like the danger that is associated with them or the harm that could result, such that a victim will be deemed to have had sufficient knowledge, along with the willingness to assume the risk. Similarly, it does not prevent us from considering the circumstances of each situation. There is no need to repeat that what is required to arrive at the conclusion that the victim has knowledge constituting an assumption of risk and a renunciation of the right to sue may vary depending on the nature of the product, the danger it presents (including the seriousness of the harm which could result from it) and the probability of it (and therefore the risk) materializing, the type of customer for which the product is intended, the purposes for which it should normally be used, the context in which it is used, whether or not it is a widespread, commonly-used product, etc. One does not handle a kitchen knife, handsaw, antifreeze, laundry detergent, LEGO® bricks, chemistry set, bleach, Tylenol or hair dryer the same way one would handle a circular saw, gas stove, an explosive or combustible product, pesticide, opioid drug, sledgehammer, crane or airplane.

[353] In all these respects, however, the manufacturer has the burden of proving this.[398]

[354] In short, a manufacturer who claims an exemption from liability pursuant to the first paragraph of article 1473 C.C.Q. must establish that the victim had a degree of knowledge (real or deemed) equivalent to an assumption of risk leading to renunciation of the right to sue. It is only on this condition that we can reconcile this provision with the general rule set forth in article 1477 C.C.Q.

b.3. Sharing of liability between the user and the manufacturer (art. 1478 C.C.Q.)

[355] A few words are in order regarding the sharing of liability between the user and

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[397] Other than *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210, there are some common law decisions along these lines. See e.g., *Cominco Ltd. v. Canadian General Electric Co.* (1983), 147 D.L.R. (3d) 279, [1983] B.C.J. No. 2339 (B.C.C.A) at paras. 50 and 51; *Siemens v. Pfizer C&G Inc.* (1988), 49 D.L.R. (4th) 481 (Man. C.A., reasons of Philp, J.A.). In general, see Theall, *supra* note 356 at L3-7, para. L3:10.20 ("the plaintiff's knowledge of some danger will not necessarily relieve the manufacturer of the duty to warn unless the plaintiff fairly can be said to have assumed the risk").

[398] Knowledge is a question of fact in that it involves an assumption of risk. This was recalled by Mayrand, J. in *Lariviere v. Lagueux,* [1977] C.A. 245 at 247.

manufacturer in a situation covered by article 1468 C.C.Q., even though the respondents in this case are not appealing the apportionment ordered by the trial judge in the case of the Blais Class, which apportionment one might consider questionable.

[356] Article 1478 C.C.Q., which is a general provision, states:

1478. Where an injury has been caused by several persons, liability is shared between them in proportion to the seriousness of the fault of each.	**1478.** Lorsque le préjudice est causé par plusieurs personnes, la responsabilité se partage entre elles en proportion de la gravité de leur faute respective.
The victim is included in the apportionment when the injury is partly the effect of his own fault.	La faute de la victime, commune dans ses effets avec celle de l'auteur, entraîne également un tel partage.

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[357] Before examining how this provision, which reiterates a rule admitted by the former law, can lead to a sharing of liability between the manufacturer and the victim[399] for an injury caused by the safety defect of a product, it should first be pointed out that, in theory, the grounds of defence prescribed by article 1473 C.C.Q. entail the complete exoneration of the manufacturer. Thus, a manufacturer who, in accordance with the first paragraph of article 1473 "proves that the victim knew or could have known of the defect, or could have foreseen the injury," in the sense we have just seen, completely escapes the liability that would otherwise be incumbent upon it.

[358] In other words, even if it has breached the duty to inform incumbent upon it pursuant to article 1469 C.C.Q.,[400] leading to the safety defect that caused the injury, the manufacturer can clear itself pursuant to the first paragraph of article 1473 C.C.Q. if it establishes the victim's knowledge equivalent to a renunciation of any recourse resulting from the safety defect, indicating his or her wish to bear the entire risk. The only exoneration that can result from such a demonstration is complete, not a sharing of liability with the victim of the injury.

[359] That said, in the case where the manufacturer does not establish such a level of knowledge and therefore cannot escape liability under article 1473 C.C.Q., the sharing of liability between it and the victim is not excluded. The manufacturer's breach of its duty to inform, which constitutes a fault, may not be the sole cause of the harm, and it may also be found that the victim was at fault (for example: if he or she was imprudent or made mistakes in the use of the product, used it for another purpose, etc.) or that there was aggravation of the harm due to inappropriate conduct (e.g., the victim did not seek appropriate care after an injury). In such a case, according to article 1478 C.C.Q., there can be a sharing of liability (not to mention the victim's breach of the obligation to mitigate damages according to article 1479 C.C.Q.). There are a few examples of such a situation and, accordingly, such sharing of liability, in the case law, including in the case law of this Court.[401]

[360] Nevertheless, an important clarification should be made.

[361] It should be understood that a victim who does not have the required information the manufacturer should have provided him or her with cannot be blamed for failing to take the precautions that would have been necessary if he or she had been duly informed. The victim cannot be blamed for imprudence related to the lack of information. In such a case, there can be no sharing of liability, which is eloquently illustrated in *O.B. Canada Inc. v. Lapointe*.[402] In that case, the Court confirmed the conclusion of the trial judge, according to whom the victim had not

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399 As set out in its last paragraph, article 1478 C.C.Q. could also lead to a sharing of liability between the manufacturer and a third party, a hypothesis that is not at issue in this appeal and will not be discussed.

400 Which is the only hypothesis we will discuss, given the nature of this appeal.

401 See e.g., *Royal Industries Inc. v. Jones*, [1979] C.A. 561; *Provencher v. Addressograph-Multigraph du Canada Ltee,* J.E. 85-510, AZ-85011176 (C.A.); *J.E. Livernois Ltee v. Plamondon,* J.E. 85-619, AZ-85011206 (C.A., aff'g. *Plamondon v. J.E. Livernois Ltee,* [1982] C.S. 594); *Baldor Electric Company v. Delisle*, 2012 QCCA 1004, aff'g. *Camirand v. Baldor Electric Company*, 2010 QCCS 2621; *Bombardier inc. v. Imbeault*, 2009 QCCA 260. The hypothesis of injury caused jointly by the defect in the product (including in the case of a lack of information) and the victim's fault is also contemplated by para. 8(2) of the *European Directive* (para. 8(1) concerns the apportioning between the manufacturer and a third party).

402 *O.B. v. Lapointe*, [1987] R.J.Q. 101.

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committed any contributory fault as his conduct, which might have been imprudent in other circumstances, was fully justified given the incomplete instructions provided by the manufacturer. There is no fault where the user of a product uses it inadequately or does not take the steps that the safety defect would call for, when the manufacturer has breached its obligation to provide information and the victim is unaware of the danger to which he or she is exposed. This remark, however, is a matter of common sense

[362] In short, subject to the first paragraph of article 1473 C.C.Q., the application of which leads to complete exoneration, there may therefore, pursuant to the second paragraph of article 1478 C.C.Q., be a sharing of liability between the manufacturer, who must answer for a safety defect caused by the breach of its duty to inform, and the user who committed a fault in using a product subject to such a defect. The user does not commit a fault, however, if he or she fails to take the precautions that would have been required if the manufacturer had adequately informed him of her or, for the same reason, if he or she uses the product in an imprudent or inappropriate manner.[403] The courts must therefore be especially cautious when the safety defect stems from a breach of the manufacturer's duty to inform and the fault alleged against the user relates to the apparently inadequate use of the product, which use can be justified by the lack of the necessary information.

b.4. Burden of proof: a few clarifications

[363] What is the burden of proof incumbent on a person who sues the manufacturer due to harm he or she claims was caused by the safety defect of the product, which defect allegedly results from the lack of sufficient indications regarding the risks and dangers of the product and the means to avoid them? What is the burden of proof of a manufacturer wishing to defend itself against such an action?

[364] With respect to the regime established by the C.C.Q., the answer to these questions is found first in the first paragraph of article 1468 C.C.Q., which describes the conditions for a manufacturer's liability, and in articles 2803 and 2804, general provisions respecting civil evidence.

[365] In accordance with the first paragraph of article 2803 C.C.Q., the plaintiff must establish his or her right − in this case to obtain compensation pursuant to the first paragraph of article 1468 C.C.Q. − and prove on a balance of probabilities (art. 2804 C.C.Q.) the safety defect of the product, the injury suffered and the fact that the first caused the second.[404] It is therefore not necessary to prove the manufacturer's *fault* (although the plaintiff may do so) and, in this respect, the case law and the commentary are in agreement.[405] Other than its obligation to establish, where applicable, the facts which extinguish, modify or reduce its obligation, and to

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[403] Note that this case does not involve the inadequate use of cigarettes by the class members. Their alleged imprudence stems not from how they handled the product or the purposes for which they used it, but from the knowledge they had about the dangers of the product.

[404] The plaintiff must also establish that the thing in question is movable property (which will generally not be a problem) and that it was manufactured by the defendant.

[405] See Jobin & Cumyn, *supra* note 203 at 324, para. 225; Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 2, *supra* note 241 at 397, para. 2-385; Karim, *Les obligations*, vol. 1, *supra* note 389 at 1367−1368, paras. 3190 to 3193.

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adduce, if it considers it necessary, evidence contradicting or undermining that of the plaintiff, the manufacturer has the burden of establishing, where applicable, the grounds for exoneration prescribed by article 1473 C.C.Q. (not to mention superior force under article 1470 C.C.Q.), the whole in accordance with the second paragraph of article 2803C.C.Q.

[366] There is little to say about the proof of injury. However, a few remarks about the safety defect and causation are in order.

[367] What does proof of the safety defect comprise? In accordance with article 1469 C.C.Q., which sets out the defining elements of such a defect, the plaintiff has to show that the product did not afford "the safety which a person is normally entitled to expect" and, accordingly, establish the danger the product in question involves. This "normalcy," which is the applicable safety standard, is dependent on "having regard to all the circumstances," specified by article 1469, and is therefore assessed according to the criteria we have seen when determining the intensity of the manufacturer's duty to inform or the knowledge the user may have of the danger and risk (which is not a coincidence − it shows the consistency of the various aspects of the liability regime): the more or less common nature of the product, the purposes for which it must or may be used and the context of the use, target or potential customers,[406] seriousness and foreseeability of the injury, etc. Moreover, it is understood that a product cannot be considered to be affected by a safety defect due merely to the fact that another more sophisticated one came onto the market subsequently.[407]

[368] On this point, it is worth adding a detail. The fact that a product is dangerous and generally recognized as such is not in and of itself an obstacle to proving a safety defect within the meaning of article 1469 C.C.Q. However dangerous it may be, such a product no less affords the safety one can normally expect if the necessary precautions are taken. But a dangerous product may also, beyond the inherent risk in that type of object or product, create increased, excessive or abnormal danger for one reason or another. The user is of course allowed to prove that increased, excessive or abnormal danger and, in fact, has that burden: if the user establishes that the danger was greater than that which he or she would normally be entitled to expect in law, he or she will have proven the existence of a safety defect.

[369] That was the case, for example, in *Baldor Electric Company v. Delisle*,[408] discussed above, a case involving a grinding drum. The victim was well aware of the danger inherent in that machine, a danger that had been increased tenfold by a design flaw, of which he was unaware, and an incomplete instruction manual. The flaw caused excessive danger as well as the risk of significant injury, which the manufacturer's failure to provide adequate information had

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406 As Professor Karim writes: [translation] "Thus, if the thing can, *inter alia*,, be used by children or elderly people, we must give precedence to how they will use it and the dangers the thing represents for them, even though the item would not represent the same danger for an adult making the same use of it" (Karim, *Les obligations*, vol. 1, *supra* note 389 at 1368, para. 3193). We should also consider the distinctions to be made depending on whether the thing is intended for a specific type of customer or the general public, experts or neophytes, etc.

407 This was recognized as early as 1944 in *London & Lancashire Guarantee & Accident Co. of Canada v. La Compagnie F. X. Drolet*, [1944] S.C.R. 82 at 85−87, although the law has evolved since then. See also Article 6, para. 2 of the *European Directive*.

408 *Baldor Electric Company v. Delisle*, 2012 QCCA 1004, aff'g. *Camirand v. Baldor Electric Company*, 2010 QCCS 2621.

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exacerbated. Similarly, in *Livernois,*[409] it was proven that the product the victim had used had an abnormally high concentration of ammonia and that it was therefore much more corrosive than an ordinary household product, which the label on the container did not indicate.

[370] In short, the plaintiff has the burden of proving the safety defect of the product on a balance of probabilities, in that it "does not afford the safety which a person is normally entitled to expect / *n'offre pas la sécurité à laquelle on est normalement en droit de s'attendre*." However, does that require that he or she also prove the *source* of that safety defect, by establishing, for example, the defect in design or manufacture, poor preservation or presentation or other flaw affecting the product or the lack or insufficiency of indications about the inherent danger in the product and the means to avoid it?

[371] Let us set aside for the moment the issue of information and focus on the issue of the defect in design or manufacture or poor preservation or presentation (or other defect). Once it is established that the product did not afford the required safety (the pop bottle exploded for no reason when it was safely stored on a shelf, the can was contaminated by salmonella, the breast implant tore, etc.), must proof of the reason for that defect, i.e., the flaw, whatever it may be, that led to the safety defect, be added to the proof of the safety defect?

[372] A superficial reading of article 1469 C.C.Q. might suggest this[410]. The legislator could have ended the wording of that provision with the following sentence: "A thing has a safety defect where, having regard to all the circumstances, it does not afford the safety which a person is normally entitled to expect". Is it not true that he added to that the words "particularly by reason of a defect...", because the user claiming to be a victim of the safety defect has to prove the reason for the defect affecting the product?

[373] The wording of article 1469 C.C.Q. can be compared to that of the first paragraph of Article 6 of the *European Directive*, on which it is based in part:

> *Article 6*
>
> 1. A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:
>
> (a) the presentation of the product;
>
> (b) the use to which it could reasonably be expected that the product would be put;
>
> (c) the time when the product was put into circulation.
>
> 2. A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.

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[409] *Plamondon v. J.E. Livernois Ltée*, [1982] C.S. 594, aff'd. *J.E. Livernois Ltée v. Plamondon*, J.E. 85619 (C.A.).

[410] This issue is also alluded to in Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 2, *supra* note 241 at 394, para. 2-383.

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[374] Article 1245-3 of the French *Civil Code* uses almost the same language:

> [TRANSLATION]
>
> **1245-3** A product is defective within the meaning of this Title where it does not provide the safety which a person is entitled to expect.
>
> In order to appraise the safety which a person is entitled to expect, regard shall be had to all the circumstances and in particular to the presentation of the product, the use to which one could reasonably expect that it would be put, and the time when the product was put into circulation.
>
> A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.

[375] Neither of these provisions indicates the source of the safety defect. In contrast, article 1469 C.C.Q. seems to define the safety defect based not only on the product's lack of security but on the defect affecting it (among other things, the defect in design or manufacture or poor preservation or presentation). What meaning should be given to that addition?

[376] On reflection, the legislator cannot have intended to require that a party alleging the safety defect of a product prove its source or origin, which would give that party the burden the legislator wanted to remove by adopting articles 1468 and 1469 C.C.Q. This clearly appears from the Minister's comments. Speaking about article 1468 C.C.Q., the provision which sets out the bases for the new regime, the Minister stated that:[411]

> [TRANSLATION]
>
> This regime is based mainly on the *European Economic Community directive on liability for defective products*. It seemed necessary to make up for the shortfalls of the C.C.L.C. in this area, particularly with regard to the onerous burden of proof which prior solutions imposed on the victim with respect to establishing the fault of the manufacturer, distributor or supplier, and also with regard to the inherent costs of that proof, which very often requires consultation with and testimony of experts.

[377] The Minister continued further on, commenting on article 1469 C.C.Q. as follows:[412]

> [TRANSLATION]
>
> This article is the necessary complement of the previous one. It sets out the assessment criteria to determine when the defect of a product can be considered a safety defect which could lead to the manufacturer's liability.
>
> It appears from this article and article 1468 that the basis of the liability regime with regard to third parties involving unsafe products is the manufacture and release of a product that does not afford the safety which a person is normally

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411 *Commentaires du ministre de la Justice*, *supra* note 359 at 897.
412 *Commentaires du ministre de la Justice*, *supra* note 359 at 898.

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> entitled to expect. It is therefore not liability based solely on the defendant's fault, but liability based also on the mere observation of an objective fact: the insufficient safety of the product with regard to the public's legitimate expectations. It also appears from these two articles that the third party who is the victim of a safety defect will henceforth have a less onerous burden of proof than before since he or she will not have to prove the defendant's fault. Victims will thus have more effective protection of their rights.
>
> All the victim would have to do for the defendant to be liable would be to establish, in addition to the injury, the existence of a safety defect of the product and the causal connection between the injury and the defect; the defendant could then only escape liability by relying on superior force (art. 1470) or the grounds of exoneration prescribed by article 1473.
>
> This article is based on the European Economic Community directive on the subject.
>
> [Emphasis added.]

[378] The plaintiff is certainly not barred from proving, if possible, the existence of the defect of design or manufacture of the product or its poor preservation or presentation (or other reason), which will only strengthen his or her claims. But the plaintiff is not required to and, in most cases, would be unable to (the manufacturer itself does not always know the source of a safety defect, although its ignorance does not absolve it from liability in this regard, other than the exception in the second paragraph of article 1473 C.C.P.). If this burden were imposed on him, there would be nothing left of the legislator's clearly stated idea of liability based on "the mere observation of an objective fact", namely "the insufficient safety of the product with regard to the public's legitimate expectations." The history of the provision and its mutations since the first recommendations of the *Office de révision du Code civil du Québec* testify to this wish to make it easier for the user and, accordingly, enhance the protection the user enjoys.

[379] In short, a teleological and contextual interpretation of article 1469 C.C.Q. allows us to conclude that the meaning we should give to this provision is very similar to that of Article 6 of the *European Directive* (or article 1245-3 of the French *Civil Code*). The potential origins of the defect, as listed in article 1469 C.C.Q. (which, as mentioned, is not exhaustive in this regard), are only elements which, if proved (without having to be), are part of the circumstances which, where applicable, will allow one to conclude that the product does not afford the safety which a person is normally entitled to expect. However, the plaintiff's burden of proof ends at the demonstration that the product does not afford such safety and does not extend to the identification of the source of the problem.[413]

[380] In this sense, one can speak of the manufacturer's extracontractual liability pursuant to articles 1468 and 1469 C.C.Q. as no-fault liability, strict liability, subject only to the grounds of

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[413] See in this regard Jobin & Cumyn, *supra* note 203 at 324, para. 225; Edwards, *supra* note 239 at 146, para. 315. One French author also suggests that all the plaintiff has to prove in terms of the safety defect is the product's dangerousness (and the relationship between that danger and the injury), the burden of proof otherwise being fully on the manufacturer who put the dangerous product into circulation. See Jean-Claude Montanier with the collaboration of Patrick Canin, *Les produits défectueux* (Paris: Litec, 2000) at 99−100.

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exoneration of article 1473 C.C.Q. (or, potentially, article 1470 C.C.Q.). This was described as follows in *Desjardins Assurances générales inc. c. Venmar Ventilation inc.*:[414]

> [TRANSLATION]
>
> [5] This is a no-fault regime and the manufacturer can only escape liability if it meets the conditions of article 1473 C.C.Q.

[381] In this regard, it is interesting to compare the manufacturer's liability, stemming from articles 1468 and 1469 C.C.Q., with that stemming from articles 1465, 1466 and 1467 C.C.Q., the other provisions which, along with the first two, make up the section "Act of a thing" in the C.C.Q. They read as follows:

1465. The custodian of a thing is bound to make reparation for injury resulting from the autonomous act of the thing, unless he proves that he is not at fault.	**1465.** Le gardien d'un bien est tenu de réparer le préjudice causé par le fait autonome de celui-ci, à moins qu'il prouve n'avoir commis aucune faute.
1466. The owner of an animal is bound to make reparation for injury it has caused, whether the animal was under his custody or that of a third person, or had strayed or escaped. A person making use of the animal is also, during that time, liable therefor together with the owner.	**1466.** Le propriétaire d'un animal est tenu de réparer le préjudice que l'animal a causé, soit qu'il fût sous sa garde ou sous celle d'un tiers, soit qu'il fût égaré ou échappé. La personne qui se sert de l'animal en est aussi, pendant ce temps, responsable avec le propriétaire.
1467. The owner of an immovable, without prejudice to his liability as custodian, is bound to make reparation for injury caused by its ruin, even partial, whether the ruin has resulted from lack of repair or from a defect in construction.	**1467.** Le propriétaire, sans préjudice de sa responsabilité à titre de gardien, est tenu de réparer le préjudice causé par la ruine, même partielle, de son immeuble, qu'elle résulte d'un défaut d'entretien ou d'un vice de construction.

[382] The general regime of the act of a thing established by article 1465 C.C.Q., which entrenches the former law, creates a presumption of fault against the custodian of the thing for injury resulting from the autonomous act of the thing. The custodian can therefore escape liability by rebutting that presumption: he or she can prove that he did not commit any fault[415] by

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414 *Desjardins Assurances générales inc. c. Venmar Ventilation inc.*, 2016 QCCA 1911. See also Jobin & Cumyn, *supra* note 203 at 326, para. 225; Vézina & Maniet, *supra* note 232 at 92.

415 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 893–894, paras. 1-

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establishing that [TRANSLATION] "he or she took all reasonable means to prevent the act that caused the damage."[416] Article 1468 C.C.Q. does not contain this limitation, nor does article 1469 C.C.Q., which does not refer to either fault or lack of fault. In addition, as we can see from a reading of article 1473, the lack of fault does not form part of the grounds of defence open to a manufacturer sued under article 1468 C.C.Q.

[383] Clearly, one could say, like Anglin and Mignault JJ. in *Ross v. Dunstall*,[417] that even putting a defective or dangerous object on the market is a fault, but that is not the perspective from which articles 1468 and 1469 C.C.Q. approach it, unless we consider that these provisions establish an absolute presumption of fault, and thus of liability, where the manufacturer cannot be exonerated in the manner prescribed by article 1473 C.C.Q.

[384] According to scholarly commentary, contrary to article 1465 C.C.Q., articles 1466 (the act of an animal) and 1467 (ruin of a building) establish a presumption of liability, once the conditions for their implementation have been met, which the owner can escape by proving superior force, third party fault or the victim's fault.[418] As authors Baudouin, Deslauriers and Moore write in the case of the owner of a building, [TRANSLATION] "[n]either the owner's lack of knowledge of the defect, nor his or her lack of fault are sufficient to exonerate the owner, making this regime a presumption of liability,"[419] which is also the case for the owner of an animal (making the necessary adjustments).

[385] The wording of article 1468 C.C.Q. is fairly close to that of articles 1466 and 1467 C.C.Q. in that, firstly, it is not an issue of fault (nor is it in article 1469 C.C.Q.) and, secondly, liability is generated by the relationship between the injury and the act of the animal, the ruin of the building or the safety defect, respectively. In all three cases, liability is established "for injury it [the animal] has caused," "for injury caused by its ruin" and for "injury caused ... by reason of a safety defect," language which is consistent with the idea of a presumption of liability.

[386] Logic would suggest that, faced with all that, the same conclusion should be drawn from article 1468 C.C.Q. as that drawn from articles 1466 and 1467 C.C.Q., namely, the introduction of a presumption of liability attached to the existence of a safety defect.

[387] Of course, in addition to what is prescribed by article 1473 C.C.Q., the manufacturer can assert the ordinary grounds through which one can escape civil liability: there is no injury, the injury was caused by the victim's fault or the fault of a third party or by superior force. However, those are defences which can be set up against the plaintiff even within the framework of a strict liability regime. But otherwise, it cannot escape liability by relying on the lack of knowledge of the defect or danger (other than in the case of the second paragraph of article 1473 2 C.C.Q.), or the lack of fault.

[388] It should be acknowledged, however, that, with respect to a safety defect resulting from

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973 and 1-974.

416 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 898, para. 1-982.

417 *Ross v. Dunstall*, (1921) 62 S.C.R. 393.

418 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, at 911 and 921 *et seq.*, paras. 1-996 and 1-1015 *et seq.* (owner of a building), as well as at 926, 936 and 937–938, paras. 1-1020, 1-1040 and 1-1042 to 1-1046 (owner of an animal).

419 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1 at 911, para. 1-996.

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"the lack of sufficient indications as to the risks and dangers it involves or the means to avoid them," the example at the end of article 1469 C.C.Q., the thing otherwise being free of any defect whatsoever, it is more difficult, at least at first, to speak of no-fault liability to the extent that the manufacturer that does not provide sufficient indications as to the risks and dangers a thing involves or the means to avoid them breaches the duty to inform incumbent upon it and thereby commits a fault. Where the thing does not have any defect, deficiency or failing but nonetheless presents a danger that is not manifest, one might think that proof of the safety defect is part and parcel of the breach of the duty to inform and that the plaintiff must therefore demonstrate the second (i.e., the fault) in order to be able to establish the first.

[389] Upon reflection, however, the *burden* of that demonstration, i.e., the *burden of convincing* in the sense of article 2803 C.C.Q., cannot be on the plaintiff.

[390] Article 1473 C.C.Q. must be considered here. Although injury may result from a safety defect of the product, according to that provision, the manufacturer can escape liability by proving that the victim knew or could have known of the danger and risk or could have foreseen the injury. In other words, the manufacturer must show that the danger was apparent or that it was known or should have been known to the plaintiff. It has the entire burden and, on that point, article 1473 C.C.Q. is very clear.

[391] How can the victim have known of the danger or been able to foresee the injury? Firstly, of course, by the information the manufacturer provides in fulfilling its duty to inform. It quite naturally ensues that the burden of proving the presence and sufficiency of such information, which allow the user to be aware of the danger of the product and avoid it, is on the manufacturer, who is therefore responsible for convincing the court of it. This therefore means that the plaintiff does not have to prove that the safety defect of the product comes from a lack of information and does not bear the onus in this regard.

[392] In other words, article 1473 C.C.Q. allows us to conclude that, even with regard to a safety defect resulting from a lack of indications about the dangers or risks of the product and the means to avoid them, the plaintiff does not have to prove this breach, i.e., the fault (although he or she may do so). As mentioned above, the plaintiff's burden ends with the demonstration that the thing does not afford the security a person is entitled to expect and does not extend to the source of the problem, including when it is due to the lack or insufficiency of the required indications. Once that is demonstrated, the burden of proof is reversed and it is then up to the manufacturer to prove the knowledge the plaintiff had or should have had of the danger or injury, which can be done in particular by proving that it provided the user with all necessary information (and it should be recalled that, for the manufacturer to be exonerated, that information must reach the threshold which allows it to be inferred that the victim of the injury assumed the risk and renounced his or her right to recovery).

[393] But what about the burden of proof when the rules respecting the extracontractual liability of a manufacturer were based on article 1053 C.C.L.C.? Unlike the current regime, at the time, in theory one had to prove not only the danger of the product but also the fault of the manufacturer, a prerequisite for liability, i.e., the existence of some defect or a breach of the manufacturer's duty to inform. Due to the presumption of fact mechanism (see for example *Ross v. Dunstall,*[420]

[420] *Ross v. Dunstall*, (1921) 62 S.C.R. 393.

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Cohen v. Coca-Cola Ltd.[421], *Lambert v. Lastoplex Chemicals*[422] or *Mulco inc. c. La Garantie, compagnie d'assurance de l'Amérique du Nord*,[423]) the courts have gradually lessened the burden of proof of the victim of the harm but, as one author notes, this means of proof was not always used,[424] hence the legislative reform which resulted in articles 1468, 1469 and 1473 C.C.Q. But presumption or not, we can immediately say that in this case the respondents met the burden of proving on a balance of probabilities the fault of the respondents, namely the breach of the manufacturer's duty to inform. That is sufficient to end our discussion of this point.

[394] We will now turn to the issue of causation. What is the burden incumbent on the plaintiff who has proven both harm and a safety defect, as well as, before 1994, fault?

[395] Let us start with the current law.

[396] The wording of the first paragraph of article 1468 *C.C.Q.* is important:

1468. The manufacturer of a movable thing is bound to make reparation for injury caused to a third person by reason of a safety defect in the thing, even if it is incorporated with or placed in an immovable for the service or operation of the immovable.	**1468.** Le fabricant d'un bien meuble, même si ce bien est incorporé à un immeuble ou y est placé pour le service ou l'exploitation de celui-ci, est tenu de réparer le préjudice causé à un tiers par le défaut de sécurité du bien.

[Emphasis added.]

[397] The legislator has clarified that what has to be established is that the injury was caused by a safety defect in the thing.

[398] Considering the burden of proof of the existence of a safety defect, which consists in demonstrating that the thing does not afford the expected safety and, therefore, poses an unexpected danger and risk, the plaintiff will have to demonstrate causation by establishing that the danger has materialized and that it is directly connected to the injury. To repeat the examples provided earlier: the explodable bottle exploded, and glass fragments embedded themselves in the user's face and arms; after ingesting the contents of the contaminated can, the consumer contracted severe salmonellosis causing Fiessinger-Leroy-Reiter syndrome; the breast prosthesis tore, causing a discharge that triggered severe inflammation as well as permanent pain and sequelae. The consequence, i.e., the injury, is, in all cases, related to the safety defect, in that there is a direct association between the danger posed by the thing and the type of damage suffered by the plaintiff: in short, it is the materialization of the risk associated with the danger inherent in the thing. Causation is therefore sufficiently established and consequently, the manufacturer is liable.[425]

[399] As noted earlier, the same type of causation is required under articles 1466 and 1467

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421 *Cohen v. Coca-Cola Ltd.*, [1967] S.C.R. 469. See also *Rolland v. Gauthier*, [1944] C.S. 25.

422 *Lambert v. Lastoplex Chemicals*. [1972] S.C.R. 569.

423 *Mulco inc. c. Garantie (La), Cie d'assurance de l'Amérique du Nord*, [1990] R.R.A. 68 (C.A.), aff.'g *Garantie (La), Cie d'assurance de l'Amérique du Nord c. Mulco Inc.*, [1985] C.S. 315.

424 Masse, *La responsabilité civile*, *supra* note 313 at 292, para. 70.

425 See Vézina & Maniet, *supra* note 232 at 92.

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C.C.Q.: the owner is bound to make reparation for “injury [the animal] has caused” or “injury caused by [the] ruin [of an immovable],” that is to say, the injury that is the immediate and direct consequence of the animal or the ruin of the immovable (immediate and direct consequence within the meaning of article 1607 C.C.Q., whereby, according to this provision, the “debtor’s default” in itself gives rise to liability). The same applies to the manufacturer.

[400] This is not to say, however, that proof of injury and proof of fault automatically establish causation. Admittedly, that will often be the case, even if only because of a strong presumption of fact, in situations such as the ones described above, where injury is in the nature of trauma that appears at the same time as the danger or closely thereafter. In contrast, it may be more difficult to establish the connection between fault and injury if the injury appears only after a long latency period or requires prolonged use of the thing or when competing factors may just as easily be the cause. Thus, in an action against the manufacturer, consumers of a food product that contained [TRANSLATION] “trans fats” (now banned in Canada) or a highly processed, high-sugar product will not necessarily be able to establish the causal connection between the (assumed) safety defect of the thing and the development of a cardiovascular disease or type 2 diabetes, the causes of which are known to be multifactorial.

[401] Nevertheless, the principle remains the same: to establish causation as required by article 1468 C.C.Q., the plaintiff must prove that the injury constitutes the materialization of the risk associated with the danger inherent in the thing (regardless of the origin of the danger). Nothing more can be required in terms of proof of causation. As stated earlier, given that proof of a safety defect does not require the plaintiff to establish the source of the safety defect, quite logically, he or she cannot be required to establish a connection between the said source and the injury.

[402] This proposition seems obvious, but has enormous significance when the safety defect is not due to a defect, damage or alteration of the thing, but to a lack of sufficient indications as to the danger, risk and means to avoid them. It is between this danger and the injury that the causal connection must be established, rather than between the manufacturer’s breach of the duty to inform and the injury. In other words, the injury must simply be the expression of the materialization of the danger to which the user ran the risk of being exposed by using the product. To take the example of the case at hand, the respondents therefore had to establish a cause and effect relationship between the safety defect (the pathogenic or addictive nature of cigarettes) and the injury (the diseases and addiction caused by smoking cigarettes). That is what is meant by medical causation, which the respondents had to demonstrate.

[403] This assertion is particularly significant in the case at hand, given that one of the main grounds of defence and appeal is that the respondents failed to establish what the appellants have described as “conduct causation”.

[404] Because the appellants have not merely pleaded insufficient medical causation, that is, the cause and effect relationship between smoking cigarettes and the onset, among class members, of various diseases that are generally related to smoking cigarettes (cancer, emphysema, drug addiction). As noted earlier, they have further argued that the respondents have neither collectively nor individually discharged their burden of proving that the class members started or continued to smoke owing to the alleged breach (i.e., not informing and even misleading). They have argued that, in the absence of such evidence, the actions should have

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failed.

[405] In the Court's view, article 1468 C.C.Q. did not require the respondents to prove such conduct causation. In fact, given the structure of articles 1468, 1469 and 1473 C.C.Q., the issue of conduct causation, as defined by the appellants, is irrelevant to the issue of the manufacturer's extracontractual civil liability. Let us examine why.

[406] As we have just seen, in order to establish the manufacturer's liability under article 1468 C.C.Q., the plaintiff must demonstrate the safety defect, the injury and the causal relationship between the two. The wording used in the provision is crucial here: the manufacturer is bound to make reparation for injury "caused by reason of a safety defect / *causé [...] par le défaut de sécurité*," which differs from the usual rule, enshrined in the second paragraph of article 1457 C.C.Q., according to which every person is "liable for any injury he causes to another by such fault / *responsable du préjudice qu'elle cause par sa faute à autrui*." We also know that the safety defect lies in the fact that the thing does not offer the degree of safety that one would normally expect, and it is to this, as stated above, that the burden of proof of the plaintiff, who does not have to identify the origin of the safety defect (even though he or she is free to do so), is limited.

[407] That being said, in terms of causation, the only thing that can be required is proof of the causal relationship between the safety defect, i.e., the danger of the thing or of the use thereof, and the injury. What needs to be proved is thus not the causal connection between the injury and the fact (a defect or a breach of the duty to inform) giving rise to the safety defect, but the causal connection between the injury and the safety defect.

[408] In the case at bar, the respondents have demonstrated the safety defect inherent in cigarettes: the product is pathogenic and addictive, with addiction aggravating the danger and increasing the risk of disease. The respondents have also established the injury: cancer (lung, throat) and emphysema in the case of the members of the Blais Class, addiction in the case of the members of the Létourneau Class. According to the trial judge, they have also established, on a balance of probabilities, the cause and effect relationship, medically speaking, between smoking cigarettes and the onset of disease or addiction. While other factors could have caused the occurrence of such pathologies (in particular disease), the judge was of the view that the respondents had duly submitted sufficient evidence of this relationship from a medical point of view. In section IV.1.3.D, the Court will thoroughly examine the issue of whether the judge erred in reaching that conclusion, but that is another matter.

[409] According to the appellants, however, the evidence of such medical causation, assuming it was made (which they dispute), would not have been sufficient. The respondents should also have established that the faults alleged against the appellants (insufficient and deliberately misleading information) are the cause or at least a probable and significant factor in the class members' decision to start or continue smoking (conduct causation). They argue that there are many reasons for an individual's decision in that respect: peer pressure, the example set by other family members, friends, acquaintances or, on the contrary, the desire to defy a social or parental ban, etc. There is no evidence that the class members started or continued to smoke as a result of appellants' advertising, their media interventions or, more generally, their actions, or because they believed, for that reason, that smoking is harmless. Moreover, even if an individual is informed of the dangers of smoking (by his or her doctor, for example, or otherwise), that individual may possibly not give up smoking, in which case the decision could no longer be

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attributed to the appellants' failure.

[410] All of this is quite possible, but it was not for the respondents to demonstrate that this was not the case. At the stage of demonstrating causation between the safety defect and the injury, the appellants' fault, in that they breached their duty to inform, is not necessary: in fact, such fault serves to establish not their liability, but, at best, the safety defect. It is the very existence of this safety defect, insofar as it causes the injury, however, that is the source of the appellants' liability. Bear in mind that, in establishing the defect, the person who suffered injury does not have to prove that he was unaware of the danger associated with the product;[426] instead, the onus is on the manufacturer to prove that he or she was aware of it. This resolves the appellants' allegation that several of the class members were informed by their doctors of the harmfulness of their nicotine addiction (or were aware of it because they themselves were doctors): the burden of proof in this respect rested with the appellants, in accordance with the first paragraph of article 1473 C.C.Q.

[411] Similarly, the respondents did not have to prove that, if the class members had known the danger associated with smoking, they would have decided not to smoke or to quit smoking; they also did not have to demonstrate that it was because of the appellants' actions that the members made these decisions.

[412] Let us take the hypothetical example of an individual who, without having seen any of the appellants' advertisements or without having been influenced by their marketing strategies, started smoking as a teenager because his parents, who were themselves smokers, invited him to do so or, on the contrary, because they forbade him to do so or owing to peer pressure. The fact is that this individual consumes a product that is dangerous and does not provide the safety that one would normally expect: no reasonable person would normally expect the consumption of a product available over the counter (or almost) to cause cancer, emphysema or drug addiction. If that person does indeed develop such a condition, he will have to prove that it is related to his smoking cigarettes and that it is caused by it (medical causation). Of course, the appellants could try to challenge the evidence in that respect by demonstrating, for example, that the lung cancer from which he suffers can be attributed to the fact that he worked all his adult life in an asbestos mine or that his emphysema is of genetic origin.[427] However, their demonstration that this person's decision to smoke and to continue smoking is not in any way attributable to their advertising or their campaign of disinformation would not in any way change their liability, unless, of course, they were able to establish, on a balance of probabilities, one of the grounds of exoneration provided for in article 1473 C.C.Q.

[413] In other words, under the strict liability regime established by article 1468 C.C.Q., the appellants are in principle liable for the injury caused by the cigarettes they marketed, on account of the mere fact that the product did not offer the safety that the user had the right to expect. This is what article 1468 C.C.Q. imposes, and this would be true for any other manufacturer for any other product. Without including the usual grounds of general law (the safety defect is not the cause of the injury; the injury is due to superior force or the fault of a third

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[426] Once again, the plaintiff can, of course, establish that he or she was unaware of the dangers of the product he or she consumed, but is not required to do so.

[427] Panlobular emphysema can indeed result from a genetic predisposition associated with α1-antitrypsin (a protein) deficiency.

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party; there is no injury), their only grounds of exoneration are those of article 1473 C.C.Q. and, in particular, that of the first paragraph of this provision, which would have allowed them to be released by demonstrating that the members were aware of the safety defect, i.e., the danger or injury to which they exposed themselves by smoking cigarettes. There is no room for conduct causation in this situation.

[414] But what about the law applicable prior to 1994? At that time, what was the burden of proof of a person suing a manufacturer owing to the danger posed by a thing?

[415] Under article 1053 C.C.L.C., in principle, it was necessary, as we have seen, to demonstrate the existence and source of the danger, which could be either a defect, giving rise to a presumption of fault on the part of the manufacturer, or a breach of the duty to inform, which, in itself, constituted a fault. Furthermore, it was necessary to establish causation between the fault (in this case, breach of the duty to inform) and the injury. However, the case law at the time indicated that the materialization of the risk associated with the dangerous defect (if any) or the undisclosed danger allowed the court to infer, by presumption of fact, causation between the manufacturer's fault (marketing a product affected by a defect or danger of which the user was not informed) and the injury. This was the case, for example, in *Mulco*,[428] *O.B. c. Lapointe*,[429] *Royal Industries Inc. c. Jones*,[430] and *Cohen v. Coca-Cola Ltd.*[431]

[416] By failing to satisfy its duty to inform, the nature and intensity of which we saw earlier, the manufacturer in fact committed a fault that caused it to be liable in the event that the hidden danger materialized and caused injury. The causation between the fault and the injury was presumed based on the very fact that the danger thus hidden by the manufacturer materialized. In other words, within the meaning of article 1053 C.C.L.C., the materialization of the danger inherent in the thing into injury sufficiently established the cause and effect relationship between the two and, by transitivity, the causation between the injury and the fault (causation that is then necessarily inferred).

[417] That is true not only when the danger resulted from a defect in the thing (as in *Cohen*), but also when the danger arose from the manufacturer's failure to provide the necessary information or instructions. This becomes clear in *Ross v. Dunstall*,[432] *Royal Industries inc. c.*

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428 *Mulco inc. c. Garantie (La), Cie d'assurance de l'Amérique du Nord*, [1990] R.R.A. 68 (C.A.), aff'g. *Garantie (La), Cie d'assurance de l'Amérique du Nord c. Mulco Inc.*, [1985] C.S. 315.

429 *O.B. c. Lapointe*, [1987] R.J.Q. 101.

430 *Royal Industries Inc. c. Jones*, [1979] C.A. 561.

431 *Cohen v. Coca-Cola Ltd.*, [1967] S.C.R. 469. This delictual liability case concerned the presumed defect of a thing, but its findings are applicable *mutatis mutandis* to the danger created by a lack of information. Faced with the unexplained explosion of a soft drink bottle, the Supreme Court found that "evidence which was accepted by the learned trial judge created a presumption of fact under art. 1238 of the *Civil Code*, that the explosion of the bottle which caused injury to appellant was due to a defect for which respondent was responsible and that the latter failed to rebut that presumption" (at 473–474). The trial judge had found from this evidence that the victim had handled the bottle properly. There is therefore a double presumption here: that of the existence of a defect and, consequently, of the manufacturer's fault, and that, which results from it, of the causation between the fault and the injury. In the same vein, and perhaps going even further, see *Rolland c. Gauthier*, [1944] C.S. 25.

432 *Ross v. Dunstall*, (1921) 62 S.C.R. 393.

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Jones,[433] *O.B. Canada Inc. c. Lapointe*,[434] *Mulco*[435] and other cases cited above, including the Supreme Court's common law judgment in *Lambert,*[436] which proved to be a seminal case in Quebec. Nowhere in these judgments were the victims required to *positively* prove that the failure to inform explained their behaviour: in fact, that goes without saying. Quite naturally, where the fault consists in a breach of the duty to inform, it will be inferred that 1) if the person had received the information that was to be transmitted to him or her, such person would normally have behaved in such a way as to avoid the danger and protect himself or herself from the injury, and that 2) therefore, the injury, when it is the very manifestation of the hidden danger, is linked to the lack of information, i.e., to the fault.

[418] In the end, whether before or after 1994, the appellants' argument on "conduct causation," borrowed from the field of medical liability, is a red herring. This alleged causation is irrelevant to the extracontractual liability regime established by articles 1468, 1469 and 1473 C.C.Q. and, at the very least, it is not part of the plaintiff's burden of proof. Nor was it under the manufacturer's liability regime as developed on the basis of article 1053 C.C.L.C. in the event of a breach of the manufacturer's duty to inform. There is no need to import into the field of the manufacturer's liability this behavioural dimension specific to the liability of physicians, whose duty to inform is governed by rules that are very different from those imposed on the manufacturer and do not reflect the same dynamic.

[419] In any event, assuming that conduct causation must be taken into account, the onus was on the appellants to show that, even if the members of both classes had known the dangers of smoking, they would nevertheless have decided to start or continue smoking. In a way, this would demonstrate the respondents' fault, or, if one prefers, their acceptance of the risk and injury (articles 1477, 1478 C.C.Q. or previous rule).[437] The respondents therefore did not in any way have the burden of proving that they would not have smoked had they known the dangers of smoking or that it was the appellants' failure that made them decide to smoke or not to stop smoking.

[420] That being said, however, and as will be shown in section IV.1.3.D.vi.b of this judgment, even though they did not have to do so, the respondents have nevertheless established such conduct causation and proven, on a balance of probabilities, that the appellants' actions determined the behaviour of the members of both classes, including at the individual level.

iv. Section 53 C.P.A.

[421] As mentioned above, the respondents did not base their actions on section 53 C.P.A., the provision applicable to this portion of the period in dispute starting April 30, 1980. At the appeal hearing, they explained this by pointing out that they had invoked it during the authorization proceedings, but had not raised it again when they brought their actions, for reasons of

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433 *Royal Industries Inc. c. Jones*, [1979] C.A. 561.

434 *O.B. c. Lapointe*, [1987] R.J.Q. 101.

435 *Mulco inc. c. Garantie (La), Cie d'assurance de l'Amérique du Nord*, [1990] R.R.A. 68 (C.A.), aff'g. *Garantie (La), Cie d'assurance de l'Amérique du Nord c. Mulco Inc.*, [1985] C.S. 315, and *Lambert v. Lastoplex Chemicals*, [1972] S.C.R. 569.

436 *Lambert v. Lastoplex Chemicals*, [1972] S.C.R. 569.

437 Considering that the regime of Article 1473 C.C.Q. is not an exception to Article 1477 C.C.Q., but an illustration of it, and considering the second paragraph of Article 1478 C.C.Q.

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prescription that subsequently disappeared with the T.R.D.A., adopted in 2009, the constitutional validity of which was subsequently recognized. They nevertheless stated that, in their opinion, the outcome of the dispute would be the same, given that the trial judge's conclusions are just as justified under section 53 C.P.A. as they are under the articles of the C.C.Q.[438] On their part, while arguing that a judicial contract cannot be changed on appeal and pointing to the difficulty of applying a law that came into force 30 years after the beginning of the Class Period, the appellants maintained that the respondents' claims, examined under section 53 C.P.A., show the same weaknesses, in particular with respect to causation (which has not been established, either medically or with respect to conduct) and members' knowledge of the toxic and addictive effects of smoking.[439]

[422] It must be understood from these remarks that, according to the parties, applying the analytical framework of section 53 C.P.A. to the case, in fact or in law, would not in any way change the debate.

[423] In the Court's view, it is necessary to examine the case from the perspective of this provision, which is of public order and cannot therefore be dismissed on account of the judicial contract between the parties,[440] and which the trial judge should have raised. Moreover, to the extent that the parties seem to recognize that the issues in dispute remain fundamentally the same, there is no obstacle to such consideration, especially since those concerned were able to present their points of view to the Court.

[424] That being said, it should first be noted that the remedy provided for in section 53 C.P.A., which is a contractual remedy,[441] is outside the scope of the second paragraph of article 1458 C.C.Q., by the sole effect of section 270 C.P.A. In fact, as Profs. Jobin and Cumyn have written, [TRANSLATION] "there is no reason to deny such an option between the contractual remedy of the C.P.A. and the extracontractual remedy of the *Civil Code* – consistency requires it,"[442] concluding that [TRANSLATION] "the consumer therefore has a clear option here."[443] Consumers may also base their claims on *both* articles 1468 and 1469 C.C.Q. and on section 53 C.P.A., just as they could concurrently invoke articles 1726 *et seq*. C.C.Q. and section 53 C.P.A., if the situation lends itself to it (the second paragraph of article 1458 C.C.Q. does not prohibit multiple contractual remedies).[444] The same is true with respect to the former law, which permitted

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438 Stenographic notes of November 24, 2016 (SténoFac) at 155.

439 Stenographic notes of November 21, 2016 (SténoFac) at 151 *et seq*.

440 In the same manner as the parties to a proceeding, if they were subject to the second paragraph of Article 1458 C.C.Q., could not circumvent the prohibition against the option and choose the extracontractual route if they have a contractual remedy.

441 See also section 2 C.P.A., which delimits the scope of application of the Act.

442 Jobin & Cumyn, *supra* note 203 at 359 *in fine*, para. 243.

443 Jobin & Cumyn, *supra* note 203 at 359 *in fine*, para. 243.

444 The case law has noted the similarity between the remedy introduced by the first paragraph of section 53 C.P.A. and the remedy based on Articles 1726 *et seq.* C.C.Q., given that in both cases the actions are based on a latent defect. See e.g., *Fortin c. Mazda Canada inc.*, 2016 QCCA 31 at paras. 57 to 60 (citing *Martin c. Pierre St-Cyr Auto caravanes ltée*, 2010 QCCA 420). In light of section 54 C.P.A., however, it seems that the remedy provided for in the first paragraph of section 53 would go beyond the obligations guaranteed by sections 37 (normal use) and 38 (durability) of the C.P.A. and would include defects that are not covered by either of these provisions. In this regard, see Edwards, *supra* note 239 at 183–184, para. 387; Thibaudeau, *supra* note 250 at 280, para. 577, and at 316, para. 645;

accumulation.

[425] The following was the wording of section 53 when the C.P.A. was adopted (1978) and came into force (1980):

53. A consumer who has entered into a contract with a merchant is entitled to exercise directly against the merchant or the manufacturer a recourse based on a latent defect in the goods forming the object of the contract, unless the consumer could have discovered the defect by an ordinary examination.	**53.** Le consommateur qui a contracté avec un commerçant a le droit d'exercer directement contre le commerçant ou contre le manufacturier un recours fondé sur un vice caché du bien qui a fait l'objet du contrat, sauf si le consommateur pouvait déceler ce vice par un examen ordinaire.
The same rule applies where there is a lack of instructions necessary for the protection of the user against a risk or danger of which he would otherwise be unaware.	Il en est ainsi pour le défaut d'indications nécessaires à la protection de l'utilisateur contre un risque ou un danger dont il ne pouvait lui-même se rendre compte.
The merchant or the manufacturer shall not plead that he was unaware of the defect or lack of instructions.	Ni le commerçant, ni le manufacturier ne peuvent alléguer le fait qu'ils ignoraient ce vice ou ce défaut.
The rights of action against the manufacturer may be exercised by any consumer who is a subsequent purchaser of the goods.	Le recours contre le manufacturier peut être exercé par un consommateur acquéreur subséquent du bien.

Pierre-Claude Lafond, *Droit de la protection du consommateur : théorie et pratique* (Montreal: Yvon Blais, 2015) at 185–186, para. 436. The case law seems to see it as the different facets of the same remedy. There is no need to examine this issue, as the remedy in this case can be based only on the second paragraph of section 53 C.P.A.

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[426] The following is the current wording, which came into force in October 1999 and which differs from the previous version only in that the legislator has replaced "*manufacturier*" with "*fabricant*" in the French version, while the English version has remained unchanged:

53. A consumer who has entered into a contract with a merchant is entitled to exercise directly against the merchant or the manufacturer a recourse based on a latent defect in the goods forming the object of the contract, unless the consumer could have discovered the defect by an ordinary examination.	**53.** Le consommateur qui a contracté avec un commerçant a le droit d'exercer directement contre le commerçant ou contre le fabricant un recours fondé sur un vice caché du bien qui a fait l'objet du contrat, sauf si le consommateur pouvait déceler ce vice par un examen ordinaire.
The same rule applies where there is a lack of instructions necessary for the protection of the user against a risk or danger of which he would otherwise be unaware.	Il en est ainsi pour le défaut d'indications nécessaires à la protection de l'utilisateur contre un risque ou un danger dont il ne pouvait lui-même se rendre compte.
The merchant or the manufacturer shall not plead that he was unaware of the defect or lack of instructions.	Ni le commerçant, ni le fabricant ne peuvent alléguer le fait qu'ils ignoraient ce vice ou ce défaut.
The rights of action against the manufacturer may be exercised by any consumer who is a subsequent purchaser of the goods.	Le recours contre le fabricant peut être exercé par un consommateur acquéreur subséquent du bien.

[427] This provision, like all the provisions of the C.P.A., must be given a broad and generous interpretation to ensure the achievement of the objectives pursued by a legislator concerned with correcting an economic and information imbalance between consumers and merchants or manufacturers, from a perspective of social justice.[445]

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[445] See in general section 41 of the *Interpretation Act*, CQLR, c I-16. On the principle of interpretation applicable to the C.P.A., in light of its objectives, a principle that is not the subject of any controversy, see e.g., *Richard v. Time Inc.*, 2012 SCC 8; *Dion v. Compagnie de services de financement automobile Primus Canada*, 2015 QCCA 333; *Nichols c. Toyota Drummondville (1982) inc.,* [1995] R.J.Q. 746 (C.A.). Lafond, *supra* note 444 in particular at 3, paras. 1 *et seq*.; Nicole L'Heureux and Marc Lacoursière, *Droit de la consommation*, 6th ed (Cowansville, Qc.: Yvon Blais, 2011) in particular at 21 *et seq.*, para. 15; Patricia Galindo da Fonseca, "Principes directeurs du droit de la consommation", in *Droit de la consommation et de la concurrence*, fasc. 1, JurisClasseur Québec

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[428] With respect to the manufacturer, the first and fourth paragraphs of this provision offer the consumer, who is either the purchaser or subsequent purchaser of the goods, a *warranty* against latent defects,[446] which is both comparable and superior to that of articles 1522 *et seq.* C.C.L.C. or 1726 *et seq.* C.C.Q.; they also offer the consumer a direct remedy against the manufacturer. The same rule applies where there is a lack of instructions necessary for the user's protection against a risk or danger of which the user would otherwise be unaware: just as in the first paragraph, a consumer, whether the purchaser or subsequent purchaser, who exercises a right specific to him or her,[447] may sue the manufacturer of the dangerous goods (even if they are not otherwise defective). In this respect, the manufacturer is bound by an obligation of the same kind as that of the first paragraph: it *warrants* that the goods purchased are free from a hidden danger or risk, of which it had the obligation to inform the consumer.[448]

[429] This obligation and this right of action of a consumer who has acquired dangerous goods remind us of articles 1468 and 1469 C.C.Q.*,* which are, in a way, the extracontractual counterpart,[449] and there is not only a semantic coincidence in the similarity between the "lack of instructions necessary for the protection of the user against a risk or danger of which he would otherwise be unaware", which triggers the application of the second paragraph of section 53 C.P.A.*,* and the safety defect resulting from "the lack of sufficient indications as to the risks and dangers it involves or as to the means to avoid them" (article 1469 *in fine* C.C.Q.), which triggers that of article 1468 C.C.Q. Instead, it is a deliberate convergence, intended to strengthen the protection of users against dangerous goods, given that the legislator has introduced into the C.C.Q. extracontractual liability that reflects the regime of the second paragraph of section 53 C.P.A. From this perspective, just like articles 1468 and 1469 C.C.Q., section 53 C.P.A. imposes on the manufacturer the obligation to ensure the safety of the user (a consumer) of the goods it markets, by providing adequate information. It should be stressed here that the intensity of this obligation to inform is not any less than that of the general law: like the latter, its precise content varies depending on the circumstances (type of goods and danger and other factors already mentioned), but it imposes, in all cases, the duty to provide accurate, comprehensible and complete information, which enables the consumer to correctly measure and accept the danger and the risk of injury to which he or she is exposed.[450]

[430] The third paragraph of section 53 C.P.A. adds that the manufacturer cannot plead that it

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(Montreal: LexisNexis Canada, 2014, looseleaf, update no. 7, August 2018) at 1/3 *et seq.*, paras. 1 *et seq.*; Claude Masse, *Loi sur la protection du consommateur : analyse et commentaires* (Cowansville, Qc., Yvon Blais, 1999) at 94.

446 On the qualification of warranty, see in particular Thibaudeau, *supra* note 250 at 309 *et seq.*, paras. 635 *et seq.*.

447 In its first and second paragraphs, section 53 C.P.A. confers on the consumer a direct, personal right of action arising from the law rather than from a transfer of the warranty from the first or last purchaser. In this regard, see in particular Jobin & Cumyn, *supra* note 230 at 349 *in fine* and 350, para. 238; Lafond, *supra* note 444 at para. 432.

448 On the characterization of the warranty attached to the second paragraph of section 53 C.P.A.., see in particular Thibaudeau, *supra* note 250 at 429–431, paras. 852 and 854 and at 434, para. 861.

449 On the extension of this warranty to the safety defect, see also Vezina & Maniet, *supra* note 232 at 77. Along with the *European Directive*, section 53 C.P.A. is in fact one of the sources of Articles 1468, 1469 and 1473 C.C.Q.

450 See *supra*, in particular at paras. [301] and [326] *et seq*.. With respect to section 53 C.P.A., see also Vézina, *Droit de la consommation*, *supra* note 244 at 4/18 to 4/20, para. 27.

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was unaware of the defect or danger to avoid liability for its breach of the duty to ensure the safety of consumers. The manufacturer is irrefutably deemed to have known of the defects or dangers in question,[451] which it therefore has an absolute obligation to disclose. The manufacturer is therefore subject to a very strict rule (which is also part of the characterization of "warranty" under section 53 C.P.A.) and, unlike under the general law, it cannot excuse itself for its ignorance by arguing that scientific or technical knowledge at the time of marketing (or even subsequent thereto) did not allow it to detect the danger in question (or the defect, as the same rule applies in this case): the [TRANSLATION] "development risk" defence contemplated in the second paragraph of article 1473 and, possibly, the prior case law cannot be raised in objection to an action based on section 53 C.P.A.[452] In the Court's view, this has an immediate, albeit implicit, impact on the extent of the manufacturer's duty to inform: the manufacturer has the obligation to inform users of the goods it markets of the dangers discovered after the goods were initially marketed, which dangers the manufacturer is deemed to have always known. The third paragraph of section 53 C.P.A. therefore has a similar effect in this respect to that of the second paragraph *in fine* of article 1473 C.C.Q., which clearly imposes this obligation.

[431] What type of recourse does the consumer have against the manufacturer in the event of a safety defect under the second paragraph of section 53 C.P.A.? Section 272 C.P.A. provides a range of options:[453] specific performance of the opposing party's obligation, the reduction of his or her own obligation, the rescission, setting aside or annulment of the contract, compensatory damages (in the event that the use of the goods has caused him injury) and punitive damages.[454] It is also understood that, when the consumer is a subsequent purchaser who suffers injury and sues the manufacturer (with whom he has not entered into a contract), the appropriate remedy is an action for damages (with or without punitive damages).[455] If there is no injury, only punitive damages may be claimed from the manufacturer.[456]

[432] In short, section 53 C.P.A. establishes a true warranty in favour of the consumer, which applies not only to the latent defects contemplated in the first paragraph, but also to the safety defect contemplated in the second paragraph, which is caused by a breach of the manufacturer's duty to inform.[457]

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451 On this absolute presumption of knowledge, see *Véranda Industries inc. c. Beaver Lumber Co.*, [1992] R.J.Q. 1763 (C.A.) at 1768–1769.

452 In this regard, see Jobin & Cumyn, *supra* note 203 at 159–160, para. 124, at 300–301, para. 212, at 350, para. 238, and at 358, para. 243; Vézina, *Droit de la consommation*, *supra* note 244 at 4/23, para. 31; Vézina, *Mélanges Claude Masse*, *supra* note 359 at 448–449. See also *Fédération, compagnie d'assurances du Canada c. Joseph Élie ltée*, 2008 QCCA 582 at paras. 39 to 42 (on the absolute nature of the third paragraph of section 53 C.P.A.).

453 On the application of section 272 C.P.A. and the various forms that may be taken, as applicable, by the right of action created by section 53 C.P.A., see *Véranda Industries inc. c. Beaver Lumber Co.*, [1992] R.J.Q. 1763 (C.A.) at 1769.

454 Referred to as "exemplary / *exemplaires*" in the original version of section 272 C.P.A. In the wake of Article 1621 C.C.Q., such damages became "punitive / *punitifs*" in 1999.

455 *Véranda Industries inc. c. Beaver Lumber Co.*, [1992] R.J.Q. 1763 (C.A.) at 1769.

456 See Vézina, *Droit de la consommation*, *supra* note 244 at 4/22, para. 30.

457 On the warranty provided by the second paragraph of section 53 C.P.A. in the event of a safety defect resulting from insufficient or non-existent information, see in general Lafond, *supra* note 447, at 195–196, paras. 466 to 468; Jobin & Cumyn, *supra* note 203 at 293, para. 207, and at 358, para. 243; L.

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[433] Let us now take a closer look at the requirements for the consumer's remedy under this warranty and the burden of proof incumbent on both parties. Given the subject matter of the appeals before the Court, this review will focus on the second paragraph of section 53 C.P.A., within the context of an action for damages brought against the manufacturer owing to injury resulting from the use of the goods.

[434] In principle, the plaintiff first has to establish that his claim falls within the scope of the C.P.A. Section 53 protects only a "consumer / *consommateur*" (a natural person, according to para. 1(*e*) C.P.A.) who, for personal use (para. 1(*e*) C.P.A. *a contrario*),[458] purchases the "goods / *bien*" – movable in this case (para. 1(*d*) C.P.A.) – marketed by a manufacturer (para. 1(*g*) C.P.A.)[459] from a merchant[460] (a natural or legal person acting for commercial purposes).[461] The person who claims to be entitled to invoke it must, of course, establish the various parameters,[462] which is usually not problematic. It is this person who has the burden of proof in this respect, which the manufacturer can, of course, try to contradict. It appears from the evidence in this case that the members of both classes are consumers within the meaning of section 53 C.P.A.

[435] A consumer who bases his or her action for damages on the second paragraph of section 53 C.P.A. must also establish the danger relating to the goods, without having to identify the source, as well as the injury resulting from the use of the goods, which injury must be the materialization of the danger in question.

[436] Apart from contradicting the consumer's evidence of the existence of the danger or injury, or the causal connection between the danger and the injury,[463] the manufacturer has only one ground of defence, related to the knowledge the consumer had or could have had of the danger in question: on the one hand, and this emerges *a contrario* from the wording of the second paragraph of section 53 C.P.A., the manufacturer can establish that the danger was apparent

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Thibaudeau, *supra* note 250 at 428 *et seq*., paras. 850 *et seq*..

458 Regarding the "consumer / *consommateur*" for the purposes of the C.P.A., see in general P.-C. Lafond, *supra* note 444 at paras. 118 *et seq*.

459 According to *Véranda Industries inc. c. Beaver Lumber Co.*, [1992] R.J.Q. 1763 (C.A.) at 1769 *in fine*, the third party to a contract of sale (for example, the spouse or child of a consumer who purchased the goods) cannot act on the authority of section 53 C.P.A. to sue the manufacturer for redress for the injury caused by the goods (which seems logical, especially since articles 1468 and 1469 C.C.Q. henceforth provide a remedy for such third parties). However, the controversy seems to persist. See Lafond, *supra* note 444 at 195–196, para. 468

460 Interestingly enough, the French version of section 1 C.P.A. does not define "merchant", while the English version includes an additional paragraph that defines "merchant" as "any person doing business or extending credit in the course of his business" (this is an inconsistency noted by Prof. Lafond in the above-mentioned book, *supra* note 444 at para. 133). With respect to the notion of "merchant / *commerçant*", see L'Heureux & Lacoursière, *supra* note 445 at 47–51, para. 37; L. Thibaudeau, *supra* note 250 at 289 *in fine et seq*., paras. 597 *et seq*.; Lafond, *supra* note 445 at 64 *et seq*., paras 133 *et seq*.

461 Such a contract of purchase/sale is a "consumer contract / *contrat de consommation*" within the meaning of article 1384 C.C.Q.

462 See, for example, *Richard v. Time Inc.*, 2012 SCC 8 at paras. 104 and 105.

463 Therefore (and these are the usual grounds in such a matter, according to the general law), the manufacturer can establish that it is not the materialization of the danger relating to the object that caused the injury, but rather that the injury resulted from superior force, the action of a third party or the fault of the consumer himself or herself.

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and that the consumer should have been aware of it; on the other hand, and even though the provision does not expressly say so, the manufacturer can show that, even though it may not be apparent, the danger was, in fact, known or should have been known to the consumer. The burden of establishing one or the other rests with the manufacturer, as is the case under the general law.

[437] This burden arises from the very nature of section 53 C.P.A., which, as we know, establishes an obligation of warranty: warranty of quality, in the first paragraph and, by extension ("the same rule applies / *il en est ainsi*," as set out in the second paragraph), warranty of safety. In principle, the creditor of an obligation of warranty has to establish only a lack of result (evidence that the debtor can, of course, try to contradict), without having to establish the source or origin. In addition, once the lack of result has been proved (i.e., the conditions that trigger the warranty have been established), the debtor of the obligation has a single ground of defence, which consists in demonstrating that the [TRANSLATION] "breach of obligation is not such a breach, that it [TRANSLATION] 'falls completely outside the scope of the obligation assumed.'"[464] When transposed to the second paragraph of section 53 C.P.A., this principle means that a consumer who sues a manufacturer must prove the existence of the danger posed by the goods, which the manufacturer can obviously contradict.[465] When the safety defect (i.e., the danger or risk) is established, however, the burden of proof is, of course, reversed. The onus is then on the manufacturer to demonstrate that the danger was apparent or that it was known to the consumer or that it should have been known.

[438] One can approach things from a different angle, but doing so leads to the same result. Therefore, according to the first paragraph of section 53 C.P.A. (reproduced again below for convenience):

53. A consumer who has entered into a contract with a merchant is entitled to exercise directly against the merchant or the manufacturer a recourse based on a latent defect in the goods forming the object of the contract, unless the consumer could have discovered the defect by an ordinary examination.	**53.** Le consommateur qui a contracté avec un commerçant a le droit d'exercer directement contre le commerçant ou contre le fabricant un recours fondé sur un vice caché du bien qui a fait l'objet du contrat, sauf si le consommateur pouvait déceler ce vice par un examen ordinaire.

[439] Here, the legislator has expressed a principle, namely the consumer's right to sue the merchant or the manufacturer if the goods are defective, and an exception, namely that this right does not exist if the defect could have been discovered by an ordinary examination (in other words, if the defect was apparent and not latent). According to the usual rules of interpretation and proof, a consumer who wishes to rely on this principle must prove the facts on which the

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[464] Lluelles & Moore, *supra* note 215 at 55, para. 114.

[465] We can draw an analogy here with *Martin c. Pierre St-Cyr Auto caravanes ltee,* 2010 QCCA 420, where, in an action based on the first paragraph of section 53 C.P.A. and articles 1726 and 1730 C.C.Q., the seller and the manufacturer succeeded, with their rebuttal evidence, in refuting the evidence presented by the appellants, who were trying to demonstrate a loss of use of their motorhome to obtain the rescission of the sale. The trial judge concluded that, at the time they brought their action, there was no such defect, as all the defects identified in the past had been repaired and did not reflect the required degree of seriousness. The Court confirmed this finding.

right he alleges is based by establishing the defect in the goods (article 2803, para. 1 C.C.Q.), and it will be up to the manufacturer being sued to prove the non-existence or extinction of such right by proving that the consumer should have discovered the defect, given that it was apparent, or that the consumer was aware of the defect (article 2803, para. 2 C.C.Q.).

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[440] The warranty of section 53 extends to the safety defect, as indicated in the second paragraph:

> The same rule applies where there is a lack of instructions necessary for the protection of the user against a risk or danger of which he would otherwise be unaware.
>
> Il en est ainsi pour le défaut d'indications nécessaires à la protection de l'utilisateur contre un risque ou un danger dont il ne pouvait lui-même se rendre compte.

[441] If "[t]he same rule applies" (if "*[i]l en est ainsi*") to goods that pose a danger, it can therefore be concluded that, once again, once the consumer has proved the danger, it is up to the manufacturer to demonstrate that the consumer could have become aware of it himself or herself, in particular owing to the instructions he or she was given or otherwise, or that the consumer actually knew of the defect. In short, the principle relied upon by the consumer and the exception claimed by the manufacturer are the same as under the first paragraph of section 53: the consumer has the burden of proving the basis of his or her right (the existence of the danger), and the manufacturer that of the exception (the danger was apparent or the consumer knew of it).

[442] In short, whether owing to the nature of the obligation imposed on the manufacturer by section 53 C.P.A. (obligation of warranty) or to the very wording of the provision, the burden of establishing that the defect was apparent or that the consumer knew of it rests on the manufacturer.

[443] If would be surprising if section 53 C.P.A., which creates a more generous regime than the general law,[466] imposed on a consumer who sues a manufacturer a heavier burden than that of articles 1468, 1469 and 1473 or 1726 and 1730 C.C.Q. The case law clearly shows the connections between the three regimes (despite the extracontractual nature of one and the contractual nature of the others) and their consistency in principle, despite their few differences. As a result, the manufacturer has the burden of proving that the safety defect was apparent or that the consumer knew about it or should have known about it.[467]

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[466] See, in particular Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 2, *supra* note 241 at 376, paras. 2-359.

[467] It is true that in *Fortin c. Mazda Canada Inc.*, 2016 QCCA 31 at paras. 70, 73 and 74, where the Court was asked to dispose of a case involving sections 37 and 53, para. 1, C.P.A., the Court suggested that it would be for the consumer to prove that he or she had been unaware of the defect in the goods. However, a careful reading of the judgment puts this impression into perspective, given that para. 73 refers to a passage from scholarly commentary indicating that it is for the seller or manufacturer to prove that the defect was known to the purchaser at the time of purchase (Rousseau-Houle, *supra* note 373 at 134). Moreover, in this case, the lack of knowledge of the defect in the goods (a door lock problem in a certain model of motor vehicle) was evident from all of the evidence, regardless of the burden of proof.

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[444] But let us return to the practical examination of the twofold defence (apparent danger, known danger) available to the manufacturer. If the manufacturer intends to demonstrate that the danger was apparent, how should it proceed?

[445] The first paragraph of section 53 C.P.A. provides that the consumer has no recourse if he or she could have discovered the defect by an "ordinary examination / *examen ordinaire*" of the goods. The same rule applies to the second paragraph: a consumer who purchases dangerous, albeit non-defective, goods has no recourse against the manufacturer (or the merchant more generally) if he or she could have become aware of such danger by an ordinary examination.[468] The manufacturer can therefore defend itself against the consumer's action by establishing that such an examination would have revealed the danger, which was therefore apparent.

[446] And what is an ordinary examination?

[447] According to the case law developed pursuant to the second paragraph of article 1726 C.C.Q., a reasonable purchaser, normally prudent or diligent, will pay attention to the object he or she purchases and will therefore examine it before purchasing it. However, the examination the purchaser will carry out is not a thorough inspection of the goods, but rather a basic, quick and, on the whole, superficial inspection, the exact extent of which varies according to the nature of the goods and their presentation (one does not inspect a house one purchases in the same manner as a pre-packaged meal, and prescription drugs are not inspected in the same manner as a toothbrush or a computer in the same manner as a bicycle), taking into account the claims made by the seller (or manufacturer), which, as we will recall, may cover up what would otherwise have been apparent.[469] The presence of an expert, at least for movable property, is usually unnecessary, which is perfectly in line with the idea that the seller, in particular in the case of a professional seller or the manufacturer, knows the goods much better than the purchaser and has a duty to inform the purchaser of any inherent defect, which he is presumed to know: the purpose or result of the purchaser's obligation to examine the goods cannot be to release the seller or the manufacturer from his own obligation to inform. In short, the issue of whether or not the defect is apparent is resolved by applying an objective standard, *in abstracto*, i.e., that of the average purchaser, a reasonably prudent and diligent person, in the same circumstances.

[448] The same standard applies to the first paragraph of article 1473 C.C.Q. and to the demonstration that the user could have been fully aware of the danger or foreseen the injury by a basic examination of the object.

[449] By analogy, the same kind of objective standard should guide the interpretation of section 53 C.P.A.: an ordinary examination under this provision is the *superficial examination* conducted by the *average consumer* in the same circumstances. The defect (para. 1) or the danger (para.

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[468] Jobin & Cumyn, *supra* note 203 at 159– 60, para. 124: [TRANSLATION] "For the sake of consistency, the test of 'ordinary examination' of the goods by the purchaser, set out in the preceding paragraph of the same section 53, also applies here."

[469] With respect to the normal examination to be carried out by a purchaser and the effect of false information provided by the seller, see *Placements Jacpar inc. c. Benzakour*, *Placement Jacpar Inc. c. Benzakour*, [1989] R.J.Q. 2309 (C.A.) at 2315–2316, the teachings of which apply to article 1726 C.C.Q.

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2) that such an examination (whether or not it took place) would have revealed will therefore be apparent.

[450] However, in contrast with the general law, the standard here refers not to the ordinary and reasonable purchaser or user, but to a *credulous and inexperienced* purchaser: this is the definition of the *average consumer*, who will certainly miss defects or dangers that the buyer of article 1726 C.C.Q. (or article 1522 C.C.L.C.) or the user of article 1473 C.C.Q. (or the previously applicable law) would have detected.

[451] The Supreme Court endorsed the credulous and inexperienced consumer standard in *Richard v. Time Inc.*[470] Granted, in that case, the Court was concern with Title II ("Business Practices") of the C.P.A., rather than section 53 C.P.A., which was not at issue in this case. More specifically, it examined what constitutes a "general impression" within the meaning of section 218 C.P.A., which determines whether or not a representation constitutes a prohibited practice. There is no reason, however, to define the average or ordinary consumer differently depending on whether one is dealing with Title II of the C.P.A. or Title I (which includes section 53 C.P.A.) or another title. Whether the issue is to assess the nature of a representation, conduct or, as in this case, an examination, it must be done with the average consumer in mind, who is a credulous and inexperienced person.[471] In *Time*, LeBel and Cromwell JJ., for the Court, wrote as follows in this regard:

> [65] The *C.P.A.* is one of a number of statutes enacted to protect Canadian consumers. The courts that have applied these statutes have often used the average consumer test. In conformity with the objective of protection that underlies such legislation, the courts have assumed that the average consumer is not very sophisticated.
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> [66] This Court's decisions relating to trade-marks provide a good example of this interpretive approach. In *Mattel, Inc. v. 3894207 Canada Inc.*, 2006 SCC 22, [2006] 1 S.C.R. 772, the Court was asked to clarify the standard to be used by the courts to determine whether a trade-mark causes confusion with a registered trade-mark. Binnie J., writing for the Court, concluded that the average consumers protected by the *Trade-marks Act* are "ordinary hurried purchasers" (para. 56). He explained that "[t]he standard is not that of people 'who never notice anything' but of persons who take no more than 'ordinary care to observe that which is staring them in the face'" (para. 58).
>
> [67] The general impression test provided for in s. 218 *C.P.A.* must be applied from a perspective similar to that of "ordinary hurried purchasers", that is, consumers who take no more than ordinary care to observe that which is staring them in the face upon their first contact with an advertisement. The courts must not conduct their analysis from the perspective of a careful and diligent consumer.

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[470] *Richard v. Time Inc.*, 2012 SCC 8.

[471] According to Thibaudeau, the standard of the credulous and inexperienced person applies to the examination conducted under the first paragraph of section 53 C.P.A.: Thibaudeau, *supra* note 250 at 337–338, para. 682. It cannot be any other way for the purposes of the second paragraph of this provision.

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> [68] Obviously, the adjectives used to describe the average consumer may vary from one statute to another. Such variations reflect the diversity of economic realities to which different statutes apply and of their objectives. The most important thing is not the adjectives used, but the level of sophistication expected of the consumer.
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> [71] Thus, in Quebec consumer law, the expression "average consumer" does not refer to a reasonably prudent and diligent person, let alone a well-informed person. To meet the objectives of the *C.P.A.,* the courts view the average consumer as someone who is not particularly experienced at detecting the falsehoods or subtleties found in commercial representations.
>
> [72] The words "credulous and inexperienced" therefore describe the average consumer for the purposes of the *C.P.A.* This description of the average consumer is consistent with the legislature's intention to protect vulnerable persons from the dangers of certain advertising techniques. The word "credulous" reflects the fact that the average consumer is prepared to trust merchants on the basis of the general impression conveyed to him or her by their advertisements. However, it does not suggest that the average consumer is incapable of understanding the literal meaning of the words used in an advertisement if the general layout of the advertisement does not render those words unintelligible.

[452] The standard is clear: "The words 'credulous and inexperienced' therefore describe the average consumer for the purposes of the *C.P.A.*," a person "who is not very sophisticated," who observes only "that which is staring [him or her] in the face."

[453] After a cursory examination of the goods, the credulous and inexperienced consumer will not necessarily notice what the prudent and diligent buyer or user of the *Civil Code* would have discovered. This further increases the burden on the manufacturer who, in accordance with the second paragraph of section 53 C.P.A., wishes to demonstrate that the danger is apparent: we are dealing here with what is clear and blatant, what is obvious even to a person who is not very sophisticated and allows such person to accurately assess the risk and injury awaiting him or her – and which the person therefore accepts – if he or she fails to take the necessary precautions.

[454] If the manufacturer fails to demonstrate that the danger is apparent, according to this standard, the manufacturer can still demonstrate that the consumer was aware of it at the time of purchase. It is true that section 53 C.P.A. does not expressly provide for this defence; it is, however, self-evident: the legislator cannot have intended to extend the protection of this provision to anyone who is aware of the danger (or defect), even if it is not apparent upon examination of the goods. To be covered by the second paragraph of section 53 C.P.A., the danger must [TRANSLATION] "be both hidden [that is to say, not be apparent] and unknown to the purchaser:"[472] if the danger is known, it is no longer covered by the legislative provision. The wording of the provision can hardly be interpreted otherwise: in fact, a danger known to the consumer or that the consumer should have known cannot be considered a danger, whether or not the goods were examined. In this regard, section 53 C.P.A. is consistent with the rules of the general law regarding safety defects and latent defects.

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[472] L'Heureux & Lacoursière, *supra* note 445 at 109, para. 92.

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[455] Unlike the objective standard of the average consumer, the evidence required here is that of subjective knowledge: the danger was not apparent, but the consumer was nevertheless aware of it (the degree of knowledge required is always that which makes it possible to be fully aware of the danger and to accept the risk of injury to which one is exposed). There are various reasons for such knowledge of the danger, for example (and the following list is by no means exhaustive):

> - the necessary instructions have been affixed to the goods and the consumer has read and understood them;
>
> - even if, hypothetically, the manufacturer has not made the information available to users, the seller has explained the danger and how to protect oneself against it to the consumer before he or she purchased the goods;
>
> - even if the consumer has purchased the goods for personal use, he or she regularly uses goods of the same kind in his or her professional life and has a clear idea of their characteristics.

[456] A final issue arises with respect to the apparent nature of the danger or the consumer's subjective knowledge of the danger at the time of purchase: what about generally known danger, danger that is well known, i.e., [TRANSLATION] "known in a sure and certain manner by a large number of people"?[473] Should such a danger be classified as one of which the consumer could have become aware by himself or herself by ordinary examination? Or is it instead a fact giving rise to a presumption of subjective knowledge by the consumer, meaning that a fact that is common knowledge is presumed to be known to everyone?

[457] In fact, both answers are possible, depending on the nature of the danger and the goods (and the same comment applies *mutatis mutandis* to article 1473 C.C.Q. or the prior case law equivalent). The average consumer, even if credulous and inexperienced, should be aware of the danger associated with certain visible characteristics of goods, and the fact that, after a brief examination, he or she can observe such characteristics logically implies knowledge of the danger associated with them as well as knowledge of how to protect himself or herself from it (the logical implication itself constitutes a form of presumption within the meaning of articles 2846 and 2849 C.C.Q., which is part of the objective test here).[474] Moreover, it is possible that the danger associated with the goods cannot be detected by a cursory examination of the goods, but is nevertheless widely known and generally known to consumers:[475] in accordance with articles 2846 and 2849 C.C.Q., one can draw the inference from such general knowledge that the danger, as well as the means to protect oneself from it, are subjectively known – or more accurately, are presumed to be known – to a consumer who sues a manufacturer, an inference

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[473] *Le Grand Robert de la langue française* (Paris: Dictionnaires Le Robert, 2017), online edition, 4.1, sub verbo "notoire."

[474] One might think of certain kitchen items (meat knife, mandoline) or gardening tools (pruning shears) with a sharp blade: a brief visual examination is generally sufficient to determine the sharpness of the item and, logically, the knowledge of the danger associated with this characteristic, even with normal use of the goods.

[475] That is what the appellants have claimed: the toxicity of smoking is not apparent, but it is common knowledge and is therefore presumed to be known to everyone; everyone should have known it.

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that is in line with what is normal.[476]

[458] Finally, and on another note, let us reiterate that, just as in the context of articles 1468, 1479 and 1473 C.C.Q. (themselves modelled in this respect on articles 1726 C.C.Q. and previously 1522 C.C.L.C.), the manufacturer's or the merchant's representations and warranties may cause a danger (or a defect) that would otherwise have been apparent to be legally hidden or neutralize the knowledge that the consumer could have had of it. Therefore, to take this example, a breach under sections 215 and following C.P.A. (consider sections 218, 219 or 221) may defeat the knowledge defence a manufacturer may have wanted to raise against the consumer.

[459] In short, if it is up to the consumer to demonstrate the danger posed by the goods, it is for the manufacturer (or merchant) to establish that it was apparent after ordinary examination[477] or that it was known to the consumer or should have been known. This is the only ground of exoneration that the manufacturer can raise against the consumer's claim, given that, as we have seen, the manufacturer cannot assert the development risk enshrined, under the extracontractual liability regime, in the second paragraph of article 1473 C.C.Q.

[460] As for the rest, as is the case under article 1468 C.C.Q., a consumer who claims compensatory damages must establish the injury resulting from the danger in question and the causal connection between the two. The manufacturer can defend itself by trying to establish that the injury is due to another cause and, more specifically, that it is due to the fault of the consumer, the intervention of a third party or superior force. It should be noted that, as in the case of extracontractual liability, the manufacturer cannot blame the consumer for not having used the goods properly if such inappropriate use is due to a lack of instructions necessary for safe use. In that case, since the manufacturer has created the conditions for misuse and the resulting injury through its failure to inform, the manufacturer remains liable for the injury.

[461] One final observation: the "conduct causation" argument put forward by the appellants must be addressed here, *a fortiori*, in the same manner it was addressed for the purposes of the extracontractual liability regime discussed above.

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[476] On the presumption of normality, see Jean-Claude Royer, *La preuve civile*, 5th ed. by Catherine Piché (Montreal: Yvon Blais, 2016) at paras. 156 *et seq*.; Léo Ducharme, *Précis de la preuve,* 6th ed. (Montreal, Wilson & Lafleur, 2005) at paras. 120 *et seq*.

[477] On the application of the standard of "ordinary examination" in the second paragraph of section 53 C.P.A., see Jobin & Cumyn, *supra* note 203 at 159 *in fine* and 160, para. 124.

D. Summary of the applicable regimes

[462] A brief summary of the applicable regimes is in order at this stage for a proper understanding of the next chapter.

[463] First, with respect to the period prior to 1994, the appellants' liability could be sought under article 1053 C.C.L.C., on the basis of a fault (the appellants concealed and then minimized the dangers of smoking and misled users and potential users as to the toxic and addictive effects of smoking, thus failing to satisfy their obligation to inform and thereby committing a fault), injury (lung or throat cancer, emphysema, addiction among the class members) and a causal connection between such fault and the injury, which is inferred from the cause and effect relationship between the use of the dangerous product and the injury, thus sanctioning the safety defect resulting from the failure to inform.

[464] Even if it had been possible at that time to sue the appellants on a contractual basis (in particular, on the basis of the warranty against latent defects, articles 1522 and following C.C.L.C.), the respondents could have chosen the extracontractual route, given that the choice between contractual and extracontractual was permitted at the time.

[465] However, as of January 1, 1994, with the coming into force of the C.C.Q. and the second paragraph of article 1458, the contracting parties lost the right to choose between contractual and extra-contractual, when the choice arises, and now have to go the contractual route even if the extracontractual route would be more beneficial for them (assuming that this provision applies to subsequent purchasers). However, the respondents retained the right to resort to the appellants' extracontractual liability and, more specifically, to articles 1468, 1469 and 1473 C.C.Q., on the basis of the safety defect of the goods (i.e., a danger), the injury and the causal connection between the two.

[466] On the one hand, neither articles 1726 and following C.C.Q. (whether by virtue of article 1730 or article 1442 C.C.Q.), nor articles 1522 *et seq*. C.C.L.C. can provide a basis for the respondents' actions, given that the dangers of smoking are not the result of a defect within the meaning of these provisions, i.e., a material or functional defect, but of a danger inherent in the product, which did not form the subject of adequate information. If the respondents had a contractual remedy, it is not included in these provisions.

[467] On the other hand, it is also not part of the remedy potentially based on the obligation to inform that would be incorporated into any contract pursuant to article 1434 C.C.Q. and for which the manufacturer would be liable to the subsequent purchaser under article 1442 C.C.Q., as an accessory to the goods (think of a contract of service or a contract of lease, for example). In the event of a breach of this obligation, the person is contractually liable for the injury he or she causes to the [TRANSLATION] "other

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contracting party," in this case a subsequent purchaser (article 1458 para. 2, first part, C.C.Q.). The appellants' alleged breach in this respect instead relates to their pre-contractual obligations and therefore justifies only an extracontractual remedy.

[468] Moreover, in addition to the C.C.L.C. and the C.C.Q. for the period beginning April 30, 1980, the respondents could have based their actions on section 53 C.P.A., a public order provision, the second paragraph of which imposes a warranty of safety on manufacturers, a warranty for which the appellants were liable to consumers who purchased their products. It should be noted that, for the purposes of section 53 C.P.A., the rights and obligations of each party are based on the standard of the average consumer, who is a credulous and inexperienced person, which reduces the plaintiff's burden and increases the burden of the manufacturer.

[469] It should be added that, in general, whether we are dealing with article 1468 C.C.Q. or section 53 C.P.A., the causation required to establish the manufacturer's liability is derived from the cause and effect relationship between the safety defect or other defect and the injury. In accordance with article 1053 C.C.L.C., even though causation between the manufacturer's fault (breach of the duty to inform) and the injury must be established, a presumption of fact arises in this respect from the evidence of causation between the safety defect and the injury. The onus is then on the manufacturer to rebut this fault-injury presumption.

[470] Similarly, whether one resorts to article 1053 C.C.L.C., articles 1468, 1469 and 1473 C.C.Q. or section 53 C.P.A., it is up to the manufacturer to demonstrate, where applicable, that the danger was apparent or known to the user or the average consumer (depending on the basis of the action), and sufficiently so to infer an acceptance of the risk and injury.

[471] In all these cases, the manufacturer can attempt to refute the plaintiff's evidence by submitting evidence to establish that there is no safety defect, that there is no injury or that the injury is due to the plaintiff's own fault, the act of a third party or superior force.

[472] Since all of these regimes have points in common and are based on the same major principles, we will analyze the judgment in first instance as well as the appellants' and the respondents' allegations mainly from this perspective. The other bases for the remedies, namely articles 219 and 228 C.P.A. and sections 1 and 49 of the *Charter*, are discussed below.[478]

1.3. Application of the law to the facts: civil liability of the manufacturer under common law and s. 53 C.P.A.

[473] The judge faulted the Appellants for a failing to fulfill their duty to inform under the C.C.L.C. (art. 1053), the C.C.Q. (articles 1468, 1469 and 1473) and the C.P.A. (articles 219, 228 and 272). He also faulted the appellants for having misled the public through a sustained policy of disinformation, featuring omission and deception (art. 1053 C.C.L.C. and 1457 C.C.Q.). Although the appellants do not necessarily find these conclusions to their satisfaction and do put forward certain arguments on the subject, these conclusions are not the core of their appeals.

[474] Instead the appellants target 1) the public's knowledge of the dangers of smoking, which they claim should have led to their complete exoneration, and 2) the causation between the

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[478] See below at paras. [841] *et seq.* (C.P.A.) and [957] *et seq.* (*Charter*).

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faults identified by the judge and the harm suffered by the class members, which causation, whether conduct causation or medical causation, they believe was not sufficiently demonstrated, certainly not on the level of individual members. These two main issues are at the heart of the briefs and arguments the appellants submitted to the Court and will be discussed in detail in the following pages in light of the rules discussed above. Conversely, nothing will be said regarding the harm to the class members, as recognized by the trial judge and which is not disputed by the appellants (the only issue at stake in this regard being that of causation).

[475] It is nevertheless necessary to first of all examine the appellants' failure to fulfill the duty to inform incumbent on them under common law throughout the period in question, which failures cannot be dissociated from the above questions, the boundaries of which they define.

A. Appellants' failure to fulfill their duty to inform

[476] As a preamble, it is worth noting the particularly high intensity of the duty to inform incumbent on the appellants here. Throughout the period in question, the appellants in effect marketed cigarettes to the general public, a product of no particular use and one that is intended to be inhaled (and therefore introduced into the bodies of users), that is potentially fatal and presents pernicious danger, because it develops over the duration of use, which duration is precisely encouraged by its addictive nature.

[477] Did the appellants fail to fulfill their duty to inform? This question can only be answered in the affirmative. Not only did they intentionally conceal the pathological and addictive effects of the cigarettes they marketed from the public and users, they collectively developed and implemented at the same time a disinformation program aimed at undermining any information contrary to their interests; they maintained false scientific controversies, they hijacked debates, lied to the public (and even to public authorities), topping it all off with misleading advertising strategies contrary to their own Codes of conduct (and, as of 1980, contrary to the C.P.A.).

[478] Everyone can agree that this situation is out of the ordinary. Because we are not dealing here with a manufacturer who, like in *Lambert*[479] or *Mulco Inc.*, [480] has omitted an important detail from an otherwise generally adequate informational package, and the Courts held that omission against them. Nor is it like a case of a manufacturer who, such as the defendant in *Hollis,*[481] did not disclose a problem of which they were aware without being able to explain it or relate it with certainty to their product, which the Supreme Court also held against the defendant. In contrast, the appellants deliberately concealed the information they had about the toxicity of their product for decades, even though they conspired and maneuvered, in a concerted manner, to confuse or delay knowledge that could be acquired by the public and users. *A fortiori*, we must conclude that the appellants have indeed failed in their duty to inform.

[479] It is not, however, these findings that the appellants are directly attacking, and their arguments on this point can be summarized as follows:

- relying particularly on *Inmont Canada Ltd. c. Canadian National Insurance*

[479] *Lambert v. Lastoplex Chemicals,* [1972] S.C.R. 569.
[480] *Mulco Inc. c. Garantie (La), North American Insurance Co.*,[1990] R.R.A. 68 (C.A.).
[481] *Hollis v. Dow Corning Corp.*,[1995] 4 S.C.R. 634.

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> *Co.*,[482] they criticize the judge for having used a contemporary standard of assessment in evaluating their conduct. This standard, however, and more generally, standards regarding product warnings have evolved over the almost 50-year period in question, and the appellants cannot be blamed for conduct that may no longer be appropriate today, but which met the relevant requirements throughout the period. In short, and to quote one of the lawyers from ITL: "A defendant cannot be held ex post [facto] to a higher standard with the benefit of hindsight."[483]
>
> - the judge erred in failing to take into account the major role played by the federal government in regulating tobacco products and their advertising, as well as in the appearance and development of product warnings for the public.

[480] These grounds, which overlap in part, are ill-founded.

[481] First, it should be recalled that, while the terms and manner of describing the manufacturers' duty to inform have changed over the years, the substance of the obligation has remained essentially the same since *Ross v. Dunstall,*[484] rendered in 1921: the manufacturer must disclose to its customers or potential customers, through understandable and complete information, the dangers of the product it is putting on the market and the means to prevent the danger or protect against it, an obligation the intensity of which is directly proportional to the severity of the risk posed by the product in question (i.e., the probability of its materialization) and the seriousness of the harm it is likely to cause. The intensity of the obligation may be less when the target clientele is specialized or professional (as in *Inmont Canada Ltd. c. Canadian National Insurance Company*,[485] or *Trudel v. Clairol Inc. of Canada*,[486]) but it is particularly high when the product, as in the case at bar, is intended for the general public, for ordinary users.

[482] On this last point, it should also be noted that in *Ross v. Dunstall*, the victims were hunting enthusiasts and therefore firearms enthusiasts, which did not prevent the Supreme Court from holding he manufacturer liable for failing to warn its clients of the particular danger of a certain model of rifle. Similarly, in *Lambert v. Lastoplex Chemicals*,[487] (which dates from 1971 and applies to events that occurred in 1967), the victim was an engineer who had purchased the dangerous product for personal use, and knew of its flammability and had read the labels on the container, while in *Mulco Inc. c. La Garantie, compagnie d'assurance de l'Amérique du Nord,*[488] the victim, "an experienced handyman,"[489] did not read the labels, which indicated the product's very high flammability and the harmful nature of its fumes. In neither case, however, did the manufacturer disclose or draw the attention of users to the specific danger that materialized in both cases. In both cases, the Supreme Court and the Court of Appeal refused to find whether the victim was aware of the danger and instead considered the manufacturer's failure to fulfill the

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482 *Inmont Canada Ltd. c. Canadian National Insurance Company,* J.E. 84-884 (C.A.).
483 Stenographic notes of November 23, 2016 (SténoFac) at 62.
484 *Ross v. Dunstall*, (1921) 62 S.C.R. 393.
485 *Inmont Canada Ltd. c. Canadian National Insurance Company*, J.E. 84-884 (C.A.).
486 *Trudel v. Clairol Inc. of Canada*, [1975] 2 SCC 236.
487 *Lambert v. Lastoplex Chemicals,[1972] SCC 569*.
488 *Mulco Inc. c. Garantie (La), North American Insurance Co.*,[1990] R.R.A. 68 (C.A.). The Court's decision dates back to 1990 and the incident that gave rise to the legal action occurred in 1981.
489 *Mulco Inc. c. Garantie (La), North American Insurance Co.*,[1990] R.R.A. 68 (C.A.) at 71.

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duty to inform, and therefore found the manufacturer liable. This is a good illustration of the intensity of the duty to inform incumbent on the manufacturer under the law throughout the period in question.[490]

[483] With respect to the standards applicable to affixing product warnings or providing instructions, two observations are in order.

[484] On the one hand, industry standards or best practices themselves, while they may be considered, are not the determining factors. They are even less so in a situation such as in the case at bar where the standards in question are those of the appellants, who dominate the Canadian and Quebec markets and adopt the rules of conduct they wish, without necessarily meeting their duty to inform under the law. And that is what we are dealing with here, where the standards and rules adopted by the appellants and to which they voluntarily submitted are far below what the law (extracontractual or contractual, including section 53 C.P.A.) required at all times during the period in question. Whether they were adopted following discussions with the government authorities or at their suggestion or with their collaboration are also not determining factors.

[485] On the other hand, the fact that the appellants had complied with the government standards (legislative, regulatory or administrative) put in place since 1989 did not in any way relieve them of their duty to provide useful information to the public after that date, nor did it relieve them of the liability that might fall to them in the event of failure to comply with that duty. This is a principle[491] enshrined in the *Tobacco Products Control Act*[492] and the *Tobacco Act*,[493] sections 9 and 16 of which respectively state the following:

> *Tobacco Products Control Act* (1988)
>
> N.B. For the purposes of this Act, the "distributor / *négociant*" includes the "manufacturer / *fabricant*" (s. 2, para. 1)
>
> | | |
> |---|---|
> | **9.** (1) No distributor shall sell or offer for sale a tobacco product unless | **9.** (1) Il est interdit aux négociants de vendre ou mettre en vente un produit du tabac qui ne comporte pas, sur ou dans l'emballage respectivement, les éléments suivants : |

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490 See also the judgment of the Court of Appeal in *National Drying Machinery Co. c. Wabasso Ltd.*, [1979] C.A. 279, and in particular the reasons of Judge Mayrand. As we know, that decision was subsequently overturned by the Supreme Court, but not on this point. See also, rendered at the same time and for comparison, *Rivtow Marine Ltd. v. Washington Iron Works and Walkem Machinery & Equipment Ltd.*, [1974] S.C.R. 1189, a 1974 Supreme Court decision relating to an incident in 1966 that refers in particular to *Ross v. Dunstall* and article 1053 C.C.L.C. for the purpose of establishing the law applicable in the common law provinces (British Columbia in that case).

491 On this principle, see e.g., Leroux & Giroux, supra note 313 at 329: [TRANSLATION] "[T]he statutory obligation to inform is not the same as the equivalent obligation in civil law." The authors discuss the requirements of the *Food and Drugs Act* in regard to medication, but their observation is of general value.

492 *Tobacco Act,* S.C. 1997, c. 13.

493 *Tobacco Act,* S.C. 1997, c. 13

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(a) the package containing the product displays, in accordance with the regulations, message pertaining to the health effects of the product and a list of toxic constituents of the product, and, where applicable, of the smoke produced from its combustion indicating the quantities of those constituents present therein; and	*a)* les messages soulignant, conformément aux règlements, les effets du produit sur la santé, ainsi que la liste et la quantité des substances toxiques, que celui-ci contient et, le cas échant, qui sont dégagées par sa combustion;
(b) if and as required by the regulations, a leaflet furnishing information relative to the health effects of the product has been placed inside the package containing the product	*b)* s'il y a lieu, le prospectus réglementaire contenant l'information sur les effets du produit sur la santé.
(2) No distributor shall sell or offer for sale a tobacco product if the package in which it is contained displays any writing other than the name, brand name and any trade marks of the tobacco product, the messages and list referred to in subsection (1), the label required by the *Consumer Packaging and Labelling Act* and the stamp and information required by sections 203 and 204 of the *Excise Act*.	(2) Les seules autres mentions que peut comporter l'emballage d'un produit du tabac sont la désignation, le nom et toute marque de celui-ci, ainsi que les indications exigées par a *Loi sur l'emballage et l'étiquetage des produits de consommation*, et le timbre et les renseignements prévus aux articles 203 et 204 de la *Loi sur l'accise*.
(3) This section does not affect any of the obligation of a distributor at common law or under any act of Parliament or of a provincial legislature, to warn purchasers of tobacco products of the health effects of those products.	(3) Le present article n'a pas pour effet de libérer le négociant de toute obligation qu'il aurait, aux termes d'une loi fédérale ou provincial ou en common law, d'avertir les acheteurs de produits du tabac des effets de ceux-ci sur la santé.

Tobacco Act (1997)

16. This Part does not affect an obligation of a manufacturer or retailer at law or under and Act of Parliament or of a provincial legislature to warn consumers of the health hazards, and health effects arising from the use of	**16.** La présente partie n'a pas pour effet de libérer le fabricant ou le détaillant de toute obligation – qu'il peut avoir au titre de toute règle de droit, notamment aux termes d'une loi fédérale ou provinciale – d'avertir les

tobacco products or from their emissions	consommateurs des dangers pour la santé et des effets sur celle-ci liés à l'usage du produit et à ses émissions.

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[486] We know that in a close decision,[494] the Supreme Court invalidated several of the prohibitions of the 1988 Act, including section 9, in part because it required that the mandatory information not be attributed to the government, thereby infringing on the manufacturer's freedom of expression. As such, paragraph 9(3) above, which sets out a common rule is not unconstitutional, even though its fate is related to the two previous paragraphs.

[487] The 1997 Act, for its part, was deemed constitutional,[495] and section 16 of the Act has always had effect.

[488] In short, with one reservation, compliance with federal labelling and advertising standards in no way relieves the appellants of their duty to inform under the law, and in particular under Quebec law, including the C.C.L.C., the C.C.Q. and the C.P.A., nor does it relieve them of their liability in the event of a failure to fulfill that obligation (leading to harm and causation). This conclusion is particularly relevant given that the labelling requirements made mandatory under laws and regulations since 1989 long remained not very informative, as we will see. The appellants could not simply be satisfied with this and claim that they had thus fulfilled their obligation to inform.

[489] The reservation regarding this principle was discussed above. It may be possible for a manufacturer who complies with government labelling or advertising standards to avoid liability by proving that they reflect the state of scientific or technical knowledge of the time, under which the danger was not known. But in truth, this is not a true exception because the determining factor in such cases is not whether standards were met, but the state of scientific or technical knowledge. However, the appellants never claimed that it was impossible to know the dangers and risks of smoking, and rightly so, since throughout the period in question, 1950 – 1998, they were well informed and even had a significant head start in this regard.

[490] This is not to say that the existence of legislative or regulatory standards for labelling or advertising is irrelevant to a debate on product liability. Certainly, a party, who, for example, markets a product but fails to comply with labelling requirements prescribed by law commits a fault giving rise to liability (subject of course to the existence of harm and causation).[496] This fault may aggravate that party's failure to fulfill the duty to inform. Failure to meet such standards may also facilitate arguments for the victim of harm, seeking to demonstrate the fault of the manufacturer, particularly in terms of causation.[497]

[491] But a person who complies with standards is not thereby released from or considered to have fulfilled their duty to inform, nor is that person released from liability if the information

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494 *RJR-MacDonald Inc. v. Canada (Attorney General),* [1995] 3 SCR 199.
495 *Canada (Attorney General) v. JTI-Macdonald Corp.,* 2007 SCC 30.
496 See by analogy, *Morin v. Blais*, [1977] 1 S.C.R. 570.
497 *Morin v. Blais*, [1977] 1 S.C.R. 570, in particular at 579 *in fine* and 580.

provided, although complying with standards, does not accurately, understandably and completely reveal the inherent danger produced. As Professors Jobin and Cumyn stated:[498]

> [TRANSLATION]
>
> [C]ompliance with administrative or penal requirements does not ensure immunity from liability where the court considers that in the case being tried, the civil standard of prudence exceeds that set by administrative law; this is a sound understanding of civil liability.

[492] This principle is recognized under sections 9 of the *Tobacco Products Control Act*[499] and 16 of the *Tobacco Act*.[500]

[493] This leads us to the Appellant's second ground of appeal. They allege that the trial judge ignored the fundamental role played by the federal government in the marketing of tobacco products, and specifically, cigarettes.

[494] It is true that the federal government has been involved in the commercialization of this product in various ways, both in terms of what it has done and what it has not done. Thus, the government was a privileged and regular partner of the appellants when they decided to adopt a voluntary code of conduct; the government encouraged them to market so called, mild or light cigarettes and use certain strains of tobacco, which in reality were no more beneficial; the government promoted the consumption of this type of cigarette to the public.[501] It maintained a close relationship with their lobbyist, the CTMC, and so forth. Perhaps the government could even be accused of giving the impression, through this accredited collaboration, that tobacco was not really harmful or that it was not as harmful as some claimed, which was an impression that the appellants themselves were busy spreading, maintaining and building. Perhaps the government actually knew as much as the appellants about the dangers of cigarettes and should have banned the product or more severely restricted its distribution and above all should have done so sooner (the government didn't start until 1988, with the *Tobacco Products Control Act*,[502] which came into force in 1989). Perhaps the government failed to inform the public and displayed reprehensible inaction. The appellants also argue that the government officials knew the dangers of tobacco as well as they did,[503] contrary to what the trial judge found.[504]

[495] But whether the government erred or committed a fault through its action or inaction, and may, hypothetically, incur some civil liability in this respect[505] is immaterial and does not relieve

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498 Jobin & Cumyn, supra note 203 at 330–331, para. 227.

499 *Tobacco Act*, S.C. 1997, c. 13.

500 *Tobacco Act*, S.C. 1997, c. 13.

501 On federal involvement in the development and promotion of these tobacco strains, see in particular the Report of Dr. Robert John Perrins, Exhibit 40346 at paras. 2.10 *et seq*. and 7.126 *et seq*. In *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 49, the Supreme Court even referred to "Canada's statements to the general public that low tar cigarettes are less dangerous to the public's health."

502 *Tobacco Act,* S.C. 1997, c. 13.

503 See stenographic notes of November 23, 2018 (SténoFac) at 84 *et seq*.

504 Judgment *a quo* at para. 235.

505 This seems unlikely in view of the *Crown Liability and Proceedings Act*, R.S.C. (1985), v. C-50, and the Supreme Court's teachings in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42. See also

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the appellants of their own liability, nor does it mitigate the faults alleged against them. Nothing in the government's action or inaction would alter, modify or weaken the appellants duty to inform regarding the dangers of the products they marketed during the period in question, or excuse them for having failed in that duty. ITL's and JTM's briefs contain an allusion to the fact that the federal government played the role of the "learned intermediary" here, which, assuming this doctrine is applicable in Quebec law,[506] is obviously not the case.[507]

[496] The evidence on this point is more than compelling: the appellants failed throughout the period in question to fulfill their duty to inform, which was of a high intensity given the danger presented by cigarettes, a toxic and addictive product. Their failure was twofold, on the one hand, they either did not inform the public or users or only provided insufficient information; on the other hand, they actively disinformed the public and users, using various means to attack the credibility of warnings, advice and explanations given and circulated by others (governments, medical professionals, anti-tobacco groups, etc.) about the harmful effects of smoking, and by using various misleading advertising stratagems.

[497] The Court does not intend to review this evidence in fine detail. Moreover, the following lines will focus mainly on the first aspect of the appellants fault while occasionally referring to the counter discourse they maintained during the period in question. This is not to say that the second aspect of the fault is less significant than the first; it is just as significant. The most striking elements of this counter discourse, however, have been recalled in second 1.2 and are obviously part of the relevant factual framework, without the need to repeat them here. The specific issue concerning the appellants' conduct in advertising, which is part of their counter discourse, is examined in section IV.2.2.B.i in relation to sections 219 and 228 C.P.A. Suffice to say here that the appellants' conduct in terms of advertising as described in section 1.2 violated ss. 219 and 228 C.P.A. and also violated the requirements regarding the duty to inform under the general law as well as those arising under s. 53 C.P.A.

[498] But now let us look in broad terms at what the appellants did or did not do from 1950 to

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Canada (Attorney General) v. Imperial Tobacco Ltd., 2012 QCCA 2034.

506 This is not certain, particularly in light of article 1473 C.C.Q. See *Desjardins General Insurance Inc. c. Venmar Ventilation Inc.*, 2016 QCCA 1911 at para. 20; however, Profs. Jobin and Cumyn succinctly express the view that [TRANSLATION] "nothing prevents it [the doctrine of the learned intermediary] from also being implemented in civil law" (Jobin & Cumyn, supra note 203 at 317, para. 220).

507 The rule of the learned intermediary (applied especially to the field of medicine, without being limited thereto) is well described by the Supreme Court of Canada in *Hollis v. Dow Corning Corp.*, [1995] 4 S.C.R. 634 at paras. 27 *et seq*. Paragraphs 28 ("Generally, the rule is applicable either where a product is highly technical in nature and is intended to be used only under the supervision of experts, or where the nature of the product is such that the consumer will not realistically receive a direct warning from the manufacturer before using the product"") and 29 ("However, it is important to keep in mind that the " learned intermediary" rule is merely an exception to the general manufacturer's duty to warn the consumer") are particularly enlightening and clearly show the inapplicability of this theory to this case: cigarettes are not a product that is highly technical in nature and, in any case, it is perfectly realistic to expect the appellants to have informed users of their product directly. In the same vein, see *Bow Valley Husky (Bermuda) Ltd. v. Saint John Shipbuilding Ltd.*, [1997] 3 S.C.R. 1210, in particular at paras. 36 and 37; *Desjardins General Insurance Inc. c. Venmar Ventilation Inc.*, 2016 QCCA 1911 at para. 20. See also *Pfizer Inc. v. Sifneos*, 2017 QCCA 1050 (single judge); *Thibault c. St. Jude Medical Inc.*, J.E. 2004-1924 (Sup. Ct.).

1988, the year the *Tobacco Products Control Act*[508] was passed.

[499] It can be said that between 1950 and 1972, there was near silence apart from a momentary bout of honesty at Rothmans International and Rothmans of Pall Mall Canada Limited (predecessors of the appellant RBH), whose president, Patrick O'Neill-Dunne, publicly acknowledged the link between smoking and lung cancer before quickly backtracking backwards.[509] As the Trial Judge wrote:

> [611] Although it is not clear what happened to Mr. O'Neill-Dunne as a result of his campaign of candour, the proof indicates that for the rest of the Class Period Rothmans, and later RBH, never reiterated the position Rothmans so famously took in 1958. Thereafter, it toed the industry line, crouching behind the Carcassonnesque double wall of the Warnings, backed up by the "scientific controversy" of no proven biological link and the need for more research.

[500] This moment of candour is all the more striking because it did not last. Statements made by Rothmans in 1958, while having some impact, did not enter into public knowledge and quickly sank into oblivion from which they were retrieved by the trial court ruling.[510]

[501] In any event the appellants (or the companies they replaced) subsequently remained silent, but in 1964 adopted a *Cigarette Advertising Code*. This was not the first time these competitors acted in a coordinated manner to defend their common interests and avoid government interference. As we have seen, their "friendly agreement" began in 1953, when they agreed on a strategy to which they would remain loyal for decades and certainly during the period covered by the Respondents' actions. This strategy would guide all sorts of actions that they would or would not take, as well as generally guiding their public actions and advertising efforts and the focus of their relations with the government.

[502] In short, a first self-regulatory Code was created in 1964. It set out in twelve points the main principles that the appellants agreed to respect. For example, their cigarette advertising

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508 *Tobacco Act*, S.C. 1997, c. 13.

509 See the judgment *a quo* at paras. 606 to 611; see also *supra*, para. [26].

510 It is interesting to note that, during his cross-examination, Mr. Steve George Chapman, representative of the appellant RBH, put forward the thesis that the 1958 statement reflected reality, a reality that the appellant did not need to repeat since it was known to all:

> 257Q. - And what you're saying is that this advertisement or this publication was sufficient to inform smokers of the risks associated with smoking?
> A. - I think it was... it was a statement of what he [Mr. O'Neill-Dunne] understood to be the circumstances at that time. And for smokers who had questions… any question in their mind about whether there were any risks associated with smoking, I think he indicated in that document that there are risks associated with smoking, it's been proven.
> 258Q - Why didn't you repeat such exercise over time to inform smokes of the risks?
> A - Because it was our belief that smokers understood that there were risks and that the Government, public health, doctors, parents, were telling everybody all the time about the fact that if you smoke, you could get certain diseases, diseases that could kill you. As far back… and I was born in sixty-four (64), as far back as I could remember, I always knew that cigarette smoking was dangerous. I had a grandfather who died when I was in Grade 4, of lung cancer, and the first thing my parents said was, "Because grandpa was a smoker, he died." And I think everybody knew.
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> (Testimony of Steve George Chapman, October 22, 2013, p. 97)

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would be directed at adults and not people under age 18,[511] the advertising would not claim that "the use of the advertised brand promotes physical health or that one particular brand of cigarettes is better for health than another,"[512] the advertising would also not "suggest that smoking is essential to romance, prominence, success or personal advancement"[513] (a commitment that would be repeated in subsequent Codes and from which, however, the appellants would systematically deviate in their "lifestyle advertising."[514])

[503] The Code in question is not very restrictive and while it states that the appellants would not claim that cigarettes have beneficial health affects (a rule that they also repeatedly violated), it does not in any way provide that they must inform the public or users of their brands of the dangers and risks associated with tobacco consumption, which dangers and risks they themselves already knew, at least in large part and certainly enough to warn smokers.

[504] In 1972, still concerned about avoiding government intervention, (in 1971, the Minister of Health and Welfare introduced a bill to, among other things, limit tobacco advertising and require a warning on the packaging,[515]) the appellants decided to place a warning on their cigarette packages. Their advertising Code of January 1, 1972 states:[516]

> Rule 2 - All cigarettes manufactured after April 1, 1972 will bear, clearly and prominently displayed on one side thereof, the following words: "WARNING: EXCESSIVE SMOKING MAY BE HAZARDOUS TO YOUR HEALTH" - "AVIS: FUMER À L'EXCÈS PEUT NUIRE À VOTRE SANTÉ."

[505] The warning is as vague as it is ambiguous: what is excessive smoking, which may – the verb "may" being used here as a semi-auxiliary[517] – be hazardous to your health? This is certainly not true, understandable and complete information in accordance with the requirements that were imposed at that time[518] on the appellants who knew much more about the toxic nature of their product and were careful not to reveal it.[519] In addition, the message underlying this warning is also that smoking, other than excessive smoking, is not harmful, which is not true, as the appellants knew.

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511 Exhibit 40005B-1964FR.

512 Exhibit 40005B-1964FR.

513 Exhibit 40005B-1964FR.

514 The Supreme Court found this to be the case in *Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30, in particular at paras. 99 *et seq*. (including at paras. 114–116). The 1997 *Tobacco Act*, moreover, prohibited it.

515 Bill C-248, June 10, 1971.

516 Exhibit 40005C-1972; Exhibit 40005D-1972.

517 That is, it is used "to express the modality of the possible", *Le Grand Robert de la langue française*, supra note 473, sub verbo "pouvoir".

518 It should be remembered that it was in 1971 that the Supreme Court of Canada rendered its decision in *Lambert v. Lastoplex Chemicals*,[1972] S.C.R. 569, and that it affirmed in unequivocal terms the heavy duty of the manufacturer of a dangerous product intended for the public to provide accurate information, a general warning not being sufficient.

519 It is not certain that this reference was ever affixed to cigarette packages in practice, since a new code was adopted in May 1972. Experts Young, Flaherty and Viscusi (retained by the appellants) do not mention this in their reports or testimony but instead refer to the following code warning (see Exhibit 21316 at 21; Exhibit 20063 at para. 49; Exhibit 40494 at para. 41).

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[506] In this first version of their 1972 code, the appellants also reiterated some of their previous commitments, including the one limiting advertising to adults 18 years of age and over (rule 10). Rule 11 of the 1972 Code requires that:[520]

> Rule 11 - No advertisement shall state or imply that the use of the advertised brand promotes physical health or that a particular brand of cigarettes is better than another from a health perspective or is essential for romance, prominence, success or personal advancement.

[507] A similar rule was included in subsequent versions of the Appellant's Code of conduct.

[508] As of May 1972, however, the appellants changed the wording of the warning appearing on their cigarette packaging:[521]

> Rule 2 – All cigarette packages manufactured after April 1, 1972, will bear, clearly and prominently displayed on one side thereof, the following words: "WARNING: THE DEPARTMENT OF NATIONAL HEALTH AND WELFARE ADVISES THAT DANGER TO HEALTH INCREASES WITH AMOUNT SMOKED" – "AVIS: LE MINISTÈRE DE LA SANTÉ NATIONALE ET DU BIEN-ÊTRE SOCIAL CONSIDÈRE QUE LE DANGER POUR LA SANTÉ CROÎT AVEC L'USAGE".

[509] This apparently minor change is nevertheless significant in that the warning is no longer attributed to the appellants themselves, as their previous version suggested, but to the Department of Health and Welfare Canada, as it was then known. The appellants thus established a distance between themselves and the message: it is not they who consider the product they are marketing to be dangerous, but the government, which does not prevent them from selling it. The implication is clear and the message weakened accordingly. This warning, which remained unchanged until 1975, is in fact just as evasive as the previous one and hardly likely to inform the public, in particular the smoking public, of the real dangers associated with cigarette smoking. Danger increases with use: what danger is that? And what use, quantitatively speaking, are we being warned about?

[510] While the user – often an adult, but frequently a teenager – who becomes aware of the government's warning may be inclined to give it some weight,[522] the information does not allow the user to make an informed decision as to whether to smoke or continue smoking.

[511] It should also be noted that neither of the two Codes provides for indicating the level of nicotine or tar in the cigarettes or the composition of the smoke produced. As early as 1962, the appellants (or their predecessors) agreed that they would refrain from using the terms nicotine and tar or disclosing this information,[523] although their 1972 Codes provide for the maximum amount of these substances in cigarette smoke (Rule 4).

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520 Exhibit 40005C-1972FR.
521 Exhibit 40005D-1972.
522 This was stated by expert W.K. Viscusi in his report, Exhibit 40494 at para. 42.
523 See above at para. [28].

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[512] In 1975, a new version of the Code was adopted. This time, while continuing to regulate the advertising practices of the appellants, the Code included the following warning:[524]

> Rule 12. All cigarette packages will bear, clearly and prominently displayed on one side thereof, the following words:
>
> WARNING: Health and Welfare Canada advises that danger to health increases with amount smoked – avoid inhaling.
>
> AVIS: Santé et Bien-être social Canada considère que le danger pour la santé croît avec l'usage – éviter d'inhaler.
>
> Rule 13. The foregoing words will also be used in cigarette print advertising but only in the language of the advertising message.

[513] The warning, once again, does not stand out, despite the advice to avoid inhaling. However, they did add a new rule:

> Rule 15. The average tar and nicotine content of smoke per cigarette will be shown on all packages and in print media advertising.

[514] This information, in itself, is not particularly informative: while a prudent smoker may be concerned, *a priori,* when learning that a cigarette contains tar, which is a substance that no one would normally think of ingesting or inhaling, it is unlikely that that smoker will understand the scope of the information or be able to draw useful inferences from it. And even if the smoker were inclined to get informed, at a time when nearly 52–55% of fellow citizens were smokers,[525] he or she would mostly discover the dissonant information that was circulating at the time.

[515] Various presentation standards were in place to govern the display of the warning provided for under rule 12 (which in principle were only to be used "in connection with brand advertising and not in connection with the advertising of sponsorship events"[526]). It was further provided that rule 15 would apply "as soon as possible after January 1, 1975 in print media advertising and on packages, but in any event not later than April 1, 1975 in print media advertising and July 1, 1975 on packages."[527]

[516] In October 1975, the Code was amended or, more specifically, items were added to clarify the Appellant's advertising practices and establish a "Board of Arbitration" to deal with any breaches of the rules.[528] Rules 12 and 13 were somewhat changed, but the text of the

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524 Exhibit 40005G-1975.

525 According to a study conducted by the Department of Health and Welfare, this is the rate of smokers in the Quebec population between 1965 and 1974. During the same period, the proportion of smokers in the Canadian population ranged from 45% to 50%, including 38% to 42% of regular smokers (see Exhibit 20005).

526 Exhibit 40005G-1975, "Warning notice – Instructions for Use in Print Media."

527 Exhibit 40005G-1975 at 4, para. 8.

528 Exhibit 4005K.1-1975.

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warning was not:[529]

> Rule 12. All cigarette packages, cigarette tobacco packages and containers will bear, clearly and prominently displayed on one side thereof, the following words:
>
> "WARNING: Health and Welfare Canada advises that danger to health increases with amount smoked – avoid inhaling.
>
> AVIS: Santé et Bien-être social Canada considère que le danger pour la santé croît avec l'usage – éviter d'inhaler."
>
> Rule 13. The foregoing words will also be used in cigarette and cigarette tobacco print advertising (see appendix I for size and location.) Furthermore, it will be prominently displayed on all transit advertising (interior and exterior), airport signs. Subway advertising and market place advertising (interior and exterior) and point of sale material over 144 square inches in size but only in the language of the advertising message.

[517] Rule 15 remained.

[518] The January 1, 1976, Code repeated Rule 12, with some additions:[530]

> Rule 12. All cigarette packages and cartons, cigarette tobacco packages and containers imported or manufactured for use in Canada will bear, clearly and prominently displayed on one side thereof, the following words:
>
> "WARNING: Health and Welfare Canada advises that danger to health increases with amount smoked – avoid inhaling.
>
> AVIS: Santé et Bien-être social Canada considère que le danger pour la santé croît avec l'usage – éviter d'inhaler."

[519] The new Code included a minor change to Rule 13 (addition of "billboards" and changing the 144 square inches of the previous version to "930 square centimeters.") Rule 15 remained the same, except for a slight change (the word "cigarette" was added in front of the word "packages"):

> Rule 15. The average tar and nicotine content of smoke per cigarette will be shown on all cigarette packages and in print media advertising.

[520] Rule 8, a descendant of Rule 11 of the first Code in 1972, and which is reproduced in more or less the same terms in all the Codes adopted since that date, states the following:

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529 Exhibit 4005K-1975 at 4.
530 Exhibit 40005L-1976, Section II.

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> Rule 8. No advertising will state or imply that smoking the brand advertised promotes physical health or that smoking a particular brand is better for health than smoking any other brand of cigarette, or is essential to romance, prominence, success or personal advancement.

[521] Detailed regulations round out the code, one of which concerns Rule 8:[531]

> REGULATION E. With reference to Rule 8.
>
> No reference will be made to yields of smoke constituents or to their pseudonyms (e.g. "tar", nicotine, gaseous phases, etc.) in the body copy of advertising materials nor on packages, in brochures, or other information prepared for mass or limited distribution, nor will comparison of such yield with any other brand or brands, specifically be used. The sole exception to the foregoing is the information required on packages and in advertising in accordance with Rules 12, 13, and 15 of the Code.
>
> [Emphasis in original]

[522] On January 1, 1984, the *Cigarette & Cigarette Tobacco Advertising and Promotion Code of the Canadian Tobacco Manufacturers Council* (or *Code de publicité et de promotion du Conseil canadien des fabricants des produits du tabac relativement à la cigarette et au tabac à cigarette*)[532] came into force, reaffirming the same Rules 8, 12, 13 and 15. A new update followed on January 1, 1985.[533] The text of the rules contained some minor adjustments, but the general meaning did not change, and the warning remained identical (Rule 12):

> "WARNING: Health and Welfare Canada advises that danger to health increases with amount smoked – avoid inhaling.
>
> AVIS: Santé et Bien-être social Canada considère que le danger pour la santé croît avec l'usage – éviter d'inhaler."

[523] This is the warning that appeared on the appellants' cigarette packages and written advertising until the coming into force of the *Tobacco Products Control Act*[534] and the first regulations specifically governing the warnings now imposed on the appellants.[535]

[524] In short, it must therefore be noted that after having ignored, from 1950 to 1972, the dangers of cigarettes, presented at that time as an entirely desirable product, without reservation,[536] the appellants, during the period from 1972 to 1988, voluntarily placed a warning on cigarette packages; however, they dissociated themselves from that warning, which was

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531 Exhibit 40005L-1976 at III.5.
532 Exhibit 40005M-1984.
533 Exhibit 40005N-1985.
534 *Tobacco Products Control Act,* S.C. 1988, c. 20.
535 *Tobacco Products Control Regulations,* SOR/89-21.
536 Except for the fleeting 1958 statement by the president of the company from which the appellant RBH originated.

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characterized by general insignificance: “The Department of National Health and Welfare advises that danger to health increases with amount smoked” (from 1972 to 1975),[537] then “Health and Welfare Canada advises that danger to health increases with amount smoke – avoid inhaling” (from 1975 to 1988). At the risk of repeating what has already been said, this is far from accurate, understandable and complete information that would allow the users to know what danger they are in and how to protect themselves from it.

[525] The current or future user is indeed warned of a danger that is not defined and that may (therefore hypothetically[538]) increase (To what extent? How much?) with equally ill-defined use. However, from 1975 on, the user was advised to avoid inhaling, advice intended – and this is what we must understand – to minimize the risk of this unexplained danger becoming a reality. However, this is a suggestion that contradicts the very function of cigarettes: the reason they are smoked is to inhale what they produce. This advice for its use is diametrically opposed to the function of the object. Therefore, the advice is of little use and does nothing to contribute to the clarity of the message or to informing the user.

[526] All of this is to say that, at least until 1988, the following conclusion clearly arises from the evidence: the appellants provided no real information about the dangers of smoking (dangers that they do not claim not to have known and that, they did in fact know,[539]) thus failing to fulfill their duty to inform as required by law under art. 1053 C.C.L.C. and, as of 1980, under s. 53 C.P.A., and it would be difficult to justify any other finding given the minimalist and imprecise warning that they placed on their products. As explained above, when dealing with a dangerous product, intended to be ingested into the human body, “it will rarely be sufficient for manufacturers to give general warnings” and “the warnings must be sufficiently detailed to give the customer a full indication of each of the specific dangers arising from the use of the product.” These excerpts from Justice La Forest’s reasons in *Hollis v. Dow Corning Corp.,*[540] cited above, coincided with Quebec law on the subject during the period in question. The appellants’ voluntary warnings clearly did not meet this requirement.

[527] Moreover, their fault is exacerbated by the fact that, at the same time, they continued, through their advertising and various concerted manoeuvres, to promote cigarette consumption, to actively try to counter the negative information circulating about their products and to minimize the dangers and risks, thus undermining the warnings they placed on their packaging, which they refused to make their own by assigning them to the Department of Health and Welfare. The paradox is untenable.

[528] What about the period beginning in 1988 with the arrival of the *Tobacco Products Control Act*?[541] Although, several of the provisions of the Act were subsequently declared unconstitutional, including those relating to mandatory warnings, they were still in effect until 1995,[542] when the Supreme Court rendered its decision in *RJR-MacDonald Inc. v. Canada*

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[537] Not to mention the warning from the first 1972 code, which was to be affixed as of April 1, 1972, but was changed at the beginning of the following May ("Notice: Excessive smoking can harm your health").

[538] See supra note 517.

[539] As noted in the judgment *a quo* at para. 70.

[540] *Hollis v. Dow Corning Corp.,* [1995] 4 S.C.R. 634 at para. 22.

[541] *Tobacco Act,* S.C. 1997, c. 13.

[542] The Supreme Court refused to suspend the *Tobacco Products Control Regulations*, which prescribed

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(Attorney General).[543] It therefore warrants our attention.

[529] Without banning cigarettes or tobacco products, the Act, which came into force on January 1, 1989, largely prohibited advertising them, and section 9 prohibited selling them unless their packaging contained a message, determined by Regulation, outlining the "health effects of the product," and the list and quantity of toxic substances it contained and that are released in its smoke.

[530] Section 11 of the *Tobacco Products Control Regulations*,[544] in its initial version, provided for the following warnings to be placed on all cigarette packages:

> (i) Smoking reduces life expectancy. L'usage du tabac réduit l'espérance de vie.
>
> (ii) Smoking is the major cause of lung cancer. L'usage du tabac est la principale cause du cancer du poumon.
>
> (iii) Smoking is a major cause of heart disease. L'usage du tabac est une cause importante de la cardiopathie.
>
> (iv) Smoking during pregnancy can harm the baby. L'usage du tabac durant la grossesse peut être dommageable pour le bébé.

[531] Any sign used to advertise cigarettes or cigarette tobacco also had to carry the following warning (s. 4):

> Smoking causes lung cancer, emphysema and heart disease. L'usage du tabac cause le cancer du poumon, l'emphysème et la cardiopathie.

[532] Some warnings were also provided for cigars and pipe tobacco (ss. 4 and 12) and smokeless tobacco (ss. 4 and 13). The Regulation also prescribed all the details regarding the placement of the warning (location, size, appearance, font, font size, etc.).

[533] We can easily agree that these warnings, which, although they do not allude to the addictive nature of cigarettes, are more informative that the previous warnings (although not as informative as later warnings that appeared in 1993 or those adopted under the *Tobacco Act*[545] of 1997, which replaced the 1988 Act following the Supreme Court's decision in *RJR-MacDonald Inc. v. Canada (Attorney General).*[546] However, they remain fairly general, and the appellants did not add anything to them from 1988 to 1995. During that period, the advertising they were authorized to do by law was also significantly reduced by section 4 of the 1988 Act, while promotional activities were still permitted, although well defined (s. 6).

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the text and format of the warnings provided for in section 9 of the Act: *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311.

543 *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199.

544 *Tobacco Products Control Regulations,* SOR/89-21.

545 *Tobacco Act,* S.C. 1997, c. 13.

546 *RJR-MacDonald Inc. v. Canada (Attorney General),* [1995] 3 S.C.R. 199.

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[534] It should also be noted that, during the ministerial consultation process prior to the adoption of the *Tobacco Products Control Regulations*, the appellants, through the CTMC, indicated that they objected to the above warnings being attributed to them:[547]

> - We cannot accept your proposal that health warnings should be attributable to the tobacco manufacturers. As stated in our letter to you of June 30, 1986, the current health warning is adequate, but, in view of the concerns you have expressed, the tobacco manufacturers are prepared to adopt additional health warnings provided they are attributable to the Minister of National Health and Welfare. More specifically, we do not agree that your proposed health warnings are "scientifically correct" as stated in Appendix I to your letter of October 9, 1986. Such a proposal not only amounts to asking us to condemn our own product, but also would require us to accept responsibility for statements the accuracy of which we simply do not accept. Any admission, express or implied, that the tobacco manufacturers condone the health warnings would be inconsistent with our position. In this regard, Canadian manufacturers cannot accept a position different from present international usage, particularly in the U.S. and U.K., where health warnings are attributed respectively to the Surgeon General and the Health Department's Chief Medical Officers.

[535] These remarks are noteworthy in more than one respect. First, they reveal that despite what they knew for a fact, the appellants were not prepared to recognize the dangers and risks of the product they were marketing: they were undoubtedly resigned to the fact that the Department had mandatory warnings on cigarette packaging, but they disputed the accuracy of the warnings, which they claimed were not "scientifically correct." In this respect, the appellants continued their strategy of disinformation and counter discourse that they agreed on and practised for a long time.

[536] For example, they always denied the direct association of tobacco with lung cancer or tobacco with other lung diseases, repeatedly asserting that the statistical or epidemiological link that could be established in this regard did not mean that each person individually would contract any of these diseases (which may also, they argued, result from other conditions) and that science had not yet discovered the mechanism, if any, leading to the development of cancer or lung disease. Even if that were true, however, it would not alter their duty to inform on this point. Commenting on *Hollis v. Dow Corning Corp*.,[548] authors Baudouin, Deslauriers and Moore stated:[549]

> [TRANSLATION]
>
> The Court also rejected the manufacturer's arguments that the duty to warn only arises when the manufacturer draws definitive conclusions on the cause and effect of unexplained ruptures. On the contrary, the very existence of these

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[547] Exhibit 841-2m, Letter dated November 28, 1988, from Norman J. McDonald, President of the Canadian Tobacco Manufacturers' Council, to the Minister of Health and Welfare at 5.

[548] *Hollis v. Dow Corning Corp.,* [1995] 4 S.C.R. 634.

[549] Baudouin, Deslauriers & Moore, La responsabilité civile, vol. 2, supra note 241 at 372–373, para. 2,355.

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> unexplained ruptures should have alerted the manufacturer and made it easy for it to include information on them and their effects on the human organism. This is a matter of applying the precautionary principle.

[537] These comments are (*a fortiori)* applicable to the case at bar: the very existence of the statistical relationship, which was long known to the appellants, could not be withheld and fell within the scope of their obligation to inform users.

[538] At the same time, their representative's comments in 1988, set out in the excerpt of the letter that appears above, also reveals the appellants' astonishing conception of the manufacturer's duty to inform, since they claim that acknowledging the accuracy of those statements, and therefore the existence of the danger and potential harm, would force them to condemn their own product. Seeing the manufacturer's obligation to disclose the danger inherent in the product it is marketing as a form of self-denigration or self-sabotage, however, shows a poor understanding of the law and the manufacturer's duty to inform. And even if disclosing the danger could in fact adversely affect the marketing of the product, the law long since solved that dilemma in favor of the user, who must be informed by the manufacturer, as the appellants did − and only in part − only under the constraint of a particular law.

[539] Despite the appellants'' reluctance, s. 11 of the *Tobacco Products Control Regulations* came into force in 1989.

[540] In 1993, the Regulations were substantially amended, in particular with respect to cigarette warnings, for which a new version was proposed:[550]

> (i) Cigarettes are addictive. La cigarette crée une dépendance.
>
> (ii) Tobacco smoke can harm your children. La fumée du tabac peut nuire à vos enfants.
>
> (iii) Cigarettes cause fatal lung disease. La cigarette cause des maladies pulmonaires mortelles.
>
> (iv) Cigarettes cause cancer. La cigarette cause le cancer.
>
> (v) Cigarettes cause strokes and heart disease. La cigarette cause des maladies du cœur.
>
> (vi) Smoking during pregnancy can harm your baby. Fumer durant la grossesse peut nuire à votre bébé.
>
> (vii) Smoking can kill you. Fumer peut vous tuer.
>
> (viii) Tobacco smoke causes fatal disease in non-smokers. La fumée du tabac cause chez les non-fumeurs des maladies pulmonaires mortelles.

[541] These warnings, which were placed on packages as of September 1994, differ from the

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[550] *Tobacco Products Control Regulations − Amendment,* SOR/93-389.

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previous ones in two ways. First, they are more precise, more informative, and more affirmative: tobacco use is no longer just the main cause of lung cancer or a major cause of heart disease, it *causes* fatal lung disease and heart disease, it "can kill you". Second, for the first time, they include a reference to the addictive nature of cigarettes. Let us consider this for a few moments.

[542] Recall that the appellants long refused to recognize this characteristic and that they strongly opposed − successfully for many years − the cigarette/addiction association, and that they vigorously fought against the use of the term "addiction" and the mention of any form of dependence whatsoever. For example, in April 1990, when the federal government announced its plan to tighten the *Tobacco Products Control Regulations*, the President of the CTMC sent a letter to the Department of Health and Welfare explaining its members' opposition to the proposed changes, particularly with regard to the addictive nature of cigarettes:[551]

> 2. While we do not endorse any of the existing or proposed messages, we take particular exception to the proposal to add new messages stating "Smoking is addictive" and "Tobacco smoke can harm non-smokers".
>
> Our views on the issue of tobacco and addiction and the recent report by a panel of the Royal Society of Canada were conveyed in some detail to the Minister in our letter and enclosures of December 20, 1989. Suffice it to say here that we regard the Royal Society report as a political document, not a credible scientific review, and we look upon any attempt to brand six millions Canadians who choose to smoke as "addicts" as insulting and irresponsible.
>
> While we do not and would not support any health message on this subject, we would note that the proposed message on addiction misstates and exaggerates even the Royal Society panel conclusion which was:
>
> > "Cigarette smoking is and frequently does meet the criteria for the definition of drug addiction. When it does so, it should be described as nicotine addiction."

[543] However, it should also be recalled that, as of the early 1960s, if not earlier, the appellants knew about this property of cigarettes, which they discussed among themselves, and which they did their best to sweep under the rug while challenging this reality in public.

[544] Take for example the *Spokesperson's Guide − June 1990* by the Philip Morris Company,[552] which is a manual on, among other things, how to discredit the assertion of the addictive nature of cigarettes:[553]

SECTION II.0: "ADDICTION"

FRAMEWORK - "ADDICTION"

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[551] Exhibit 845 at 5-6.

[552] Who controls RBH since 2008 and to which it was previously affiliated, with Philip Morris holding 40%. of its shares.

[553] Exhibit 846-AUTH at 35-39.

THEIR AIM: 1. To label smoking as an addiction and nicotine as the addictive agent in tobacco.

a. By redefining addiction so that it excludes objective physiological criteria such as intoxication, physical dependence, withdrawal and tolerance.

b. By suggesting that the vast majority of smokers wish to quit but are unable to do so.

c. By focusing on and quoting pharmacological research on nicotine, as well as the positions of authorities such as the U.S. Surgeon General.

YOUR GOAL: 1. To discredit the use of the word addiction in relation to tobacco use.

a. Point out that any scientific definition of the word addiction must include objective physiological criteria.

b. Emphasize the distinction between addiction and habituation.

c. Dramatize the misuse of the word addiction.

d. Emphasize that smoking addiction claims from government and even "scientific" sources are often politically motivated attempts to ostracize smokers and malign cigarettes.

e. Point out the number of people who have quit smoking.

f. Emphasize that the reported research findings on the role of nicotine in smoking behavior are unclear.

g. Emphasize that research on nicotine ignores the complexity of smoking behavior and its possible motivations.

h. Underline that smoking is a practice, a custom — at most, it can be termed a habit as with many everyday acquired behaviors — but it is not scientifically

established to be an "addiction." Many people, obviously, can and do give up smoking.

...

CLAIM: SMOKERS CAN'T QUIT BECAUSE THEY'RE ADDICTED TO NICOTINE.

RESPONSES:

— "Addiction" is a frequently misused term that has become a catch phrase for many habits. The term has been used in so many different ways and so broadly that it has become almost meaningless. After all, people say they are addicted to all sorts of things — to foods like

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sweets, to work, even to video games.

— The political underpinning of calling smoking an addiction is sometimes quite explicit. For example, Dr. Morris A. Lipton was one of several scientists who reviewed the evidence of "cigarette addiction" for the United States government. He admitted that the word addiction was chosen because "it's sort of a dirty word."

— Despite the emotional claims about smoking addiction, objective analyses continue to challenge this view. For example, a staff member of the United Kingdom's Office on Population Censuses and Surveys described decisions to quit or continue smoking as reflecting a rational and reasoned choice "that smokers make and periodically renew." Similarly, an analysis by the West German federal government concluded that "no major dependence, in the sense of addiction, has been proven to be caused by the consumption of tobacco products."

— Just because some people say it is difficult to stop doing something does not make that behavior an "addiction." Many people have quit smoking, most without any formal treatment. Even the most recent U.S. Surgeon General's Report observed that nearly half of all living adults in the United States who ever smoked have quit. In view of such comments, it is difficult to consider smoking addiction claims as anything other than emotional attacks on tobacco products and the people who enjoy them.

CAUTIONS:

— Counter any suggestions that smokers are not in control of their own behavior by pointing out:

— This is an insult to smokers — a judgment that antismokers make simply because they disagree with a smoker's decision to smoke.

— Smokers who say this about themselves may not really want to give up smoking.

— References to a tobacco "habit" should be put in perspective with other everyday activities also called habits - these are not addictions.

...

"ADDICTION" - NICOTINE - DRUG COMPARISON

CLAIM: TOBACCO ADDICTION IS SIMILAR TO ADDICTION TO ILLEGAL DRUGS LIKE HEROIN AND COCAINE.

RESPONSE:

— The 1988 United States Surgeon General's Report gained press

> attention with its pronouncement that cigarette smoking was an addiction, and nicotine an addictive substance akin to heroin or cocaine. However, this conclusion has been strongly criticized. In the United Kingdom, for example, Dr. David M. Warburton, of Reading University, argued that there were major differences between cigarette smoking and addictive illegal drug use. He contends that the Surgeon General "ignored the discrepancies in his enthusiasm to find criteria to compare nicotine use with heroin and cocaine use." After a detailed review of the Surgeon General's criteria, he stated that he was forced to conclude that the Surgeon General's addiction claim was "political."
>
> [Emphasis in original; references omitted]

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[545] These instructions − like all those contained elsewhere in that guide[554] − are a good illustration of the way the appellants generally addressed the claims relating to the toxicity of cigarettes: denial, minimization, recourse to fragmented science making it possible to affirm the existence of scientific controversy or varying points of view, insistence on the weaknesses of the statistical links between cigarette smoking and disease or dependence, transformation of facts into opinions, etc.

[546] Nevertheless, despite the appellants' opposition, the new warnings promoted by Health Canada and by the 1993 version of the *Tobacco Products Control Regulations*, including the one related to addiction, were placed on cigarette packages starting on September 12, 1994.

[547] In 1995, sections 4, 5, 6, 8 and 9 of the 1988 Act were declared inoperative because they infringed the *Canadian Charter*, and the appellants, once again through the CTMC, indicated that:[555]

> Since the judgment of the Supreme Court of Canada struck down the provision which mandated health messages on packages, on the ground that it was a violation of freedom of expression to insist that those messages not be attributed

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[554] For example, on the association between smoking and lung cancer, the guide, which, it should be recalled, is from 1990, stated the following on pages 20 and 21:

> **CLAIM: SMOKING CAUSES LUNG CANCER**
> **RESPONSES:**
> - This is a misstatement. How can people claim that it has been proven that smoking causes lung cancer when science has not determined the mechanism by which a normal lung cell becomes cancerous? Without this scientific understanding, this claim must be viewed as just that, a claim or conjecture − not an established fact.
> - There is a statistical association between smoking and lung cancer, but statistical associations, alone, can never prove cause-and effect. Yet, the majority of existing evidence cited in support of a causal link between smoking and lung cancer is, in fact, based on statistical studies.
> - Even the statistical evidence on smoking and lung cancer has been questioned because of its many inconsistencies and its failure to answer such basic questions as:
>   - Why do the vast majority of "heavy" smokers in any study never get lung cancer? On the other hand, why do a significant percentage of nonsmokers develop lung cancer? For example, although only about 4 percent of Chinese women in Hong Kong smoke, they have one of the highest rates of lung cancer in the world?

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to their true source, this Code reimposes the messages most recently mandated by Health Canada, in a prominent and clearly legible form, with an attribution to Health Canada as the author of the message.

The Code also imposes a clearly legible health message on advertisement for tobacco.

[548] The messages in question were the following:[556]

6.1 Every package containing cigarettes or cigarette tobacco manufactured for sale in Canada shall display, in accordance with the Regulations, a clearly legible health message, in one of the following forms:

(i) "Health Canada advises that cigarettes are addictive."
"Santé Canada considère que la cigarette crée une dépendance."

(ii) "Health Canada advises that tobacco smoke can harm your children."
"Santé Canada considère que la fumée du tabac peut nuire à vos enfants."

(iii) "Health Canada advises that cigarettes cause fatal lung disease."
"Santé Canada considère que la cigarette cause des maladies pulmonaires mortelles."

(iv) "Health Canada advises that cigarettes cause cancer."
"Santé Canada considère que la cigarette cause le cancer."

(v) "Health Canada advises that cigarettes cause strokes and heart disease."
"Santé Canada considère que la cigarette cause des maladies du cœur."

(vi) "Health Canada advises that smoking during pregnancy can harm your baby." "Santé Canada considère que fumer durant la grossesse peut nuire à votre bébé."

(vii) "Health Canada advises that smoking can kill you."
"Santé Canada considère que fumer peut vous tuer."

(viii) "Health Canada advises that tobacco smoke causes fatal lung disease in non-smokers." "Santé Canada considère que la fumée du tabac cause chez les non-fumeurs des maladies pulmonaires mortelles."

7.1 Tobacco product advertising shall contain, on each advertisement, a clearly legible health message, in English or in French, as follows:

In the case of all tobacco products save smokeless tobacco products:

> "Health Canada advises that smoking is addictive and causes lung cancer, emphysema and heart disease."

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555 Exhibit 40005O-1995, Cigarette Advertising Code of the Tobacco Manufacturers at 1 and 2.

556 Exhibit 40005O-1995 at 4-7. Additional warnings were provided for cigars and pipe tobacco or tobacco that is not intended for smoking (sections 6.2 and 6.3 of the Code).

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or

> "Santé Canada considère que l'usage du tabac crée une dépendance et cause le cancer du poumon, l'emphysème et la cardiopathie."

In the case of smokeless tobacco products:

> "Health Canada advises that this product can cause cancer."

or

> "Santé Canada considère que ce produit peut causer le cancer."

8.1 Every carton sold in Canada shall display, in accordance with the Regulations, a clearly legible health message, in the following form:

> "Health Canada advises that cigarettes are addictive and cause lung cancer, emphysema and heart disease."

or

> "Santé Canada considère que l'usage de la cigarette crée une dépendance et cause le cancer du poumon, l'emphysème et la cardiopathie."

9.1 Under the heading "Toxic Constituents (Average) / Substances toxiques (Moyenne)", every package containing cigarettes or cigarette tobacco products manufactured for sale in Canada shall display, in English and in French, on one side panel, in 10-point type, and in the same colours as those used for the health message, a list of the toxic constituents in accordance with the Regulations.

[549] These provisions, which were repeated in the 1996 code, with the exception of a few minor details,[557] were accompanied by various rules relating to the positioning, format, size, etc. of the messages in question.

[550] Advertising, which was largely prohibited from 1988 to 1995, was resumed in a slightly attenuated form in 1995 after the Supreme Court decision, as the appellants did not abandon their disinformation strategy.[558]

[551] A new *Tobacco Act*[559] was passed in 1997, followed, in 2000, after extensive consultation, by the *Tobacco Products Information Regulations*,[560] which required even more explicit warnings, with graphic elements and informative messages. Since then, these warnings have become particularly clear and descriptive and can hardly leave anyone in doubt about the toxicity of tobacco and all its effects, as well as ways for consumers to protect themselves against the dangers of smoking: these messages encourage users to quit smoking, and indicate

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557 Exhibit 40005S-1996 at 7 and 8, ss. 7.1 and 8.1.

558 See also paras. [845], [893] and [903] *et seq*. below

559 *Tobacco Act*, S.C. 1997, c. 13.

560 *Tobacco Products Information Regulations,* SOR/2000-272.

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the symptoms to consider, while giving certain advice, etc.

[552] What can be said about the conduct of the appellants during the years 1988 to 1994 or even 1988 to 1998? The Court's observation will be brief: the trial judge was not mistaken in concluding that the appellants never fulfilled the duty to inform that was incumbent on them (whether under articles 1053 C.C.L.C., 1468 and 1469 C.C.Q. or section 53 paragraph 2 C.P.A.). Although they did display the information prescribed by the 1988 Act and the 1989 *Tobacco Products Control Regulations*[561] on cigarette packaging, until 1994, however, that information, although more specific than the previous voluntary information, remained too general to be considered sufficient information under the applicable standard, which called for accurate, understandable, and complete information on the dangers inherent to the normal use of the product they were placing on the market. As the Trial Judge noted:

> [287] Throughout essentially all of the Class Period, the Warnings were incomplete and insufficient to the knowledge of the Companies and, worse still, they actively lobbied to keep them that way. This is a most serious fault where the product in question is a toxic one, like cigarettes. It also has a direct effect on the assessment of punitive damages.

[553] To fulfill the duty to inform under the general law (and, as of 1980, the C.P.A.), it was not sufficient for the appellants − and this is recognized in subsection 9(3) of the 1988 Act, discussed earlier − to comply with the legislative and regulatory requirements.

[554] From 1988 to 1994, the appellants, who continued to stick with the disinformation strategies and tactics in place since the 1950s, also failed in their duty to provide information by continuing to suppress information on the addictive nature of cigarettes and fight information on the tobacco addiction association by all means at their disposal. This is no small omission, given the toxicity of cigarettes, which is expressed over a long period of time, and is largely a function of the dependence it creates: the smoker who, because of this dependence, cannot quit smoking, runs a higher risk. However, it was not until September 1994 that this characteristic of cigarettes was officially recognized, or at least displayed, due to the 1993 regulation.[562] And, it should be repeated, it was not the appellants who disclosed this on their own, although they did not remove the reference to it from their packaging while under the Voluntary Codes of 1995 and 1996.

[555] Moreover, in order to fully understand the way in which the appellants, at that time, understood their duty to inform, it is useful to refer to the following exchange between the Court and one of the appellants' lawyers at the appeal hearing:[563]

> THE COURT (YVES-MARIE MORISSETTE):
>
> If everybody knew that smoking caused serious diseases and cigarettes were addictive, why were the tobacco companies publicly denying it?
>
> Mtre THOMAS CRAIG LOCKWOOD:

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561 *Tobacco Products Control Regulations,* SOR/89-21.

562 *Tobacco Products Control Regulations - Amendment,* SOR/93-389.

563 Stenographic notes of November 25, 2016 (SténoFac) at 186–187.

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> Well ... and that's ... first of all, it's a complex question, but the first question is we have to remember there's been this suggestion of public denial. There's a difference between public denial and not actively stating things. There was the suggestion that because we didn't publish it on our website until two thousand and two (2002), it couldn't have been known. The fact of the matter is the evidence in the record shows that the companies effectively left the issue of warnings to the purview of Health Canada and they left it to them to communicate.
>
> [Emphasis added.]

[556] And a little further on:[564]

> THE COURT (MARIE-FRANCE BICH):
>
> You're saying that the companies actually left the issues of ... health issues to the government.
>
> Mtre THOMAS CRAIG LOCKWOOD:
>
> Yes.
>
> THE COURT (MARIE-FRANCE BICH):
>
> But the manufacturers didn't have a duty?
>
> Mtre THOMAS CRAIG LOCKWOOD:
>
> Well, that's ...
>
> THE COURT (MARIE-FRANCE BICH):
>
> Whatever the government might do or not do?
>
> Mtre THOMAS CRAIG LOCKWOOD:
>
> I'm not suggesting that that absolved us of any duty, but the question... the evidence in the record from the witnesses who came and testified, from both the government and the companies, was that there was a dialogue between the two (2) and that Health Canada, which was regulating this product, was responsible for communication ... risk communication to the public. And I'm not at all suggesting that absolves the companies of any harm and civil responsibility, but the factual question of why didn't they more actively communicate, the evidence in the record shows that that was something that they had agreed with the government or... and I don't want to put agreement too strongly because I don't want to suggest there was some binding agreement, but there was ... there was a dialogue at the end of which the companies took the view that it was the mandate of Health Canada to warn of the risk.

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564 Stenographic notes of November 25, 2016 (SténoFac) at 187–189.

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> And the fact of the matter is, they did warn of the risk. That's ... the evidence is very clear that all throughout this Class period, Health Canada was out there and that is why we see the results we see here.
>
> [Emphasis added.]

[557] These remarks indeed reflect the evidence, and we can refer to the following excerpt from the testimony of Mr. Steve George Chapman, representative of the appellant RBH and a witness at the trial, as an example:[565]

> Mtre SIMON V. POTTER:
>
> So that's in terms of internal statements, the company telling you or other employees what to think. What about statements made outside the company, has RBH, to your knowledge, made statements outside the company, to the general public, about these issues, as far as you know?
>
> MR. STEVE GEORGE CHAPMAN:
>
> But for an advertisement run by the president of the ... of Rothmans Pall Mall in nineteen fifty eight (1958), which talked about and categorically linked smoking with increased risk of disease, the company, to my knowledge, has not made public statements about the risks associated with smoking. We deferred to Health Canada to communicate the information; it was apparent very early on, in the sixties (60s), that this was the mean that they felt was theirs in terms of what they need to communicate about the risks. We accepted that, we didn't want to communicate anything that would muddy the waters. It was an area of communication that we relied on Health Canada to do, and we never interfered with what was being said about the risks associated with smoking.
>
> [Emphasis added.]

[558] All this can only be seen as an admission that the appellants did not fulfil their duty to inform, not only with respect to the addictive effect of cigarettes, but more generally with respect to all the dangers and risks associated with smoking. However, the appellants could not simply defer to the federal government to fulfil this obligation and keep to themselves everything they did not disclose. “To rely on Health Canada” did not allow it, in the circumstances, to meet the requirements of Quebec law in this regard and, to close this chapter as we started it, this is what section 9 of the *Tobacco Products Control Act*[566] and section 16 of the *Tobacco Act*[567] clearly indicate.

[559] As for the period from 1994 to 1998, even if we considered the information on cigarette packages to be sufficiently explicit, we must take into account the continued efforts by the appellants in other regards to undermine its effects. As we have seen on a number of occasions,

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565 The judgment *a quo* at para. 605, so describes this witness: « Steve Chapman, who started with RBH in 1988 and remains there today, was the designated spokesperson for the company in these files. »

566 *Tobacco Act,* S.C. 1997, c. 13.

567 *Tobacco Act,* S.C. 1997, c. 13.

the misleading information provided by a manufacturer can defeat and will most often defeat any finding that the user would have or should have known about the dangers of the product. This is the situation here, and this subject will be examined in detail below.

[560] In summary, manufacturers are required to openly disclose the dangers inherent in the use of their product, even if that can make it difficult to market or can even put off users or future users, which is an irrelevant consideration. The obligation of the manufacturer of a product that is inherently toxic and dangerous to human health is of particularly high intensity and requires complete transparency.

[561] However, from 1950 to 1972, the appellants, despite their knowledge of the dangers and risks of smoking, including its addictive nature, essentially withheld this information. From 1972 to 1988, they slightly lifted the veil through voluntary disclosures of information that was not accurate, understandable, and complete as required by law. From 1989 to 1994 (and more precisely to September 1994 when the new statements prescribed by the 1993 regulatory amendments came into force), they unduly deferred to government statements that were in fact insufficient, to which they added nothing and with which they applied only because they were forced and constrained to do so. From 1995 to 2000, they continued to defer to regulatory requirements, including on a voluntary basis, until new government standards were adopted, which now fill the space that would have been left up to their duty to inform.

[562] But although the appellants complied with all these standards because they could not avoid it, using information that remained incomplete and unsatisfactory until at least September 1994, they nevertheless undid with their right hand what they were doing with their left. Throughout the period in question (i.e., 1950 to 1998), they set up and implemented a concerted policy and strategies (including advertising) that varied over time and depending on the legislative or regulatory framework, but which were intended to undermine any information contrary to their interests, including information resulting from regulatory statements to maintain a controversy and confusion about the effects of smoking, and generally to disinform the public.

[563] Therefore, between 1950 and 1998, the appellants deliberately violated their duty to inform as cigarette manufacturers, both by what they concealed until 1994, and by what they falsely conveyed and propagated, regardless of the angle from which it is viewed: a general duty not to harm others, arts. 1053 C.C.L.C. and 1457 C.C.Q.; a duty to inform users of the dangers of a product that is not otherwise affected by any defect in design, manufacture, preservation, or presentation, arts. 1468 and 1469 C.C.Q. and the prior case law; the guarantee against safety defects, s. 53 C.P.A. (from 1980 onwards). This failure, in all its forms, constitutes a fault within the meaning of art. 1053 C.C.L.C. and, even if it is not necessary to qualify the appellant's conduct as faults under arts. 1468 and 1469 C.C.Q. or s. 53 C.P.A., we can, however, without hesitation, find that it is within the meaning art. 1457 C.C.Q.

[564] What is more, we can speak of behaviour in bad faith resulting from a deliberate concealment of the effects of cigarettes on the health of users followed by the systematic negation, minimization, and trivialization of those effects based, in particular, on the cleverly but artificially maintained idea of a scientific controversy and on the alleged weakness of the relationship between cigarettes and diseases or dependence, all wrapped up in a strategy of misleading advertising.

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[565] The Trial Judge found as follows:

> [485] On the second question, we found that the Companies not only knowingly withheld critical information from their customers, but also lulled them into a sense of non-urgency about the dangers. That unacceptable behaviour does not necessarily mean that they malevolently desired that their customers fall victim to the Diseases or to tobacco dependence. They were undoubtedly just trying to maximize profits. In fact, the Companies, especially ITL, were spending significant sums trying to develop a cigarette that was less harmful to their customers
>
> [486] Pending that Eureka moment, however, they remained silent about the dangers to which they knew they were exposing the public yet voluble about the scientific uncertainty of any such dangers. In doing so, each of them acted "with full knowledge of the immediate and natural or at least extremely probable consequences that (its) conduct will cause" [Reference omitted]. That constitutes intentionality for the purposes of section 49 of the Quebec Charter.

[566] That is the least one could say.

[567] The question now arises as to whether the appellants, who failed in their duty to inform during the period in question, can, nevertheless, be exonerated from liability because the users knew or were in a position to know the dangers of smoking or could foresee the harm resulting from its use.

B. Victims' knowledge of the dangers

i. General

[568] The appellants' position could be summarized by this shocking phrase from the appellant JTM's brief: "the manufacturer ... does not have to warn the warned."[568] The knowledge of the user is, in fact, at the heart of the regimes established by art. 1473 C.C.Q. and by s. 53 C.P.A.: a person who is aware of the danger or could have foreseen the damage, cannot complain that the manufacturer has failed to fulfill its duty to inform. As we have seen, it is up to the manufacturer to establish this knowledge.

[569] Have the appellants discharged their burden of establishing the knowledge that the class members had concerning the dangers of smoking or the predictability of harm associated with its use?

[570] As we have also seen, the judge answered this question as follows:

> - The links between cigarette smoking and diseases such as lung or throat cancer and emphysema could be considered to have become known on January 1, 1980, such that they were known to the members of the Blais Class or, failing that,

[568] Argument of the appellant JTM at para. 96.

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should have been and are presumed to have been known;

- The addictive effect of cigarettes can be considered to have been known as of March 1, 1996, and therefore known or presumed to have been known to all [and therefore to the members of both Classes] some 18 months after the introduction of the first regulatory warning on the subject on September 1, 1994;

- In accordance with art. 1468 and the first paragraph of 1473 C.C.Q., as well as the corresponding prior law, the appellants cannot be held liable for damages caused by the smoking of class members as of January 1, 1980, with respect to diseases, and as of March 1, 1996, with respect to dependence. They, nevertheless, remain liable for such damages under articles 1053 C.C.L.C. and 1457 C.C.Q.;

- The members of the Blais Class who began smoking on or after January 1, 1980, however, bear 20% of the responsibility for the damage they suffered as a result.

[571] We have examined above the errors of law committed by the trial judge – (1) by superimposing to the appellants' liability as manufacturers, a separate and additional liability arising from articles 1053 C.C.L.C. and 1457 C.C.Q. (liability that is not relevant in the circumstances), and (2) by holding that the knowledge that the members of the Class had or were presumed to have, of the danger or prejudice exonerated the appellants from their liability as manufacturers, but not from their general liability. Indeed, if the appellants establish this knowledge according to the required degree throughout the entire period in question, they will be entirely exonerated from their liability pursuant to the first paragraph of art. 1473 C.C.Q. or the previous rule established by the case law under art. 1053 C.C.L.C. or (for the period following its coming into force) pursuant to s. 53 C.P.A.

[572] We can summarize the essence of this means of exoneration in the following terms, according to the clause in question:

- In the case of the first paragraph of art. 1473 C.C.Q., the manufacturer must demonstrate that the victim is a reasonable person and knew the danger associated with the product (i.e., actually knew it) or was able to know it (in which event he or she is presumed to have known it) or that he or she could foresee the harm, which is another way of saying the same thing since knowing that using a product can cause harm of this or that nature, is equivalent to knowing the danger; the equivalent of this rule is also found in the law prior to 1994;

- In the case of s. 53 C.P.A., the manufacturer must prove that the consumer, as a credulous and inexperienced person, was aware of the danger or could have become aware of it.

[573] If we were to summarize the elements underlying these two proposals, it could be said that, in all cases, the manufacturer would escape liability resulting from the lack of safety of the product:

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- when the danger was apparent, i.e., visible or easily identifiable by a reasonable person or, as the case may be, by a credulous and inexperienced person after a summary examination of the product (objective knowledge);

or

- the danger was not apparent but was nevertheless known to the user, which knowledge can be established by direct evidence or by presumption (subjective knowledge).

[574] The standard of assessment applicable to this objective or subjective knowledge is, we repeat, that of risk acceptance. To be apparent, the danger must be one that "appears immediately and clearly to the eyes, to the mind"[569] and allows the user to fully comprehend its nature. Similarly, it would be found that the user is *de facto* aware of a hidden danger when it is established that the user knows enough about it to grasp its true measure. Without requiring a level of scientific knowledge or a level of knowledge equal to that of the manufacturer, the user, in fact, still has to have made a free and informed choice to accept the danger, which presupposes a high level of knowledge of the danger in question and the risk of its occurrence as well as the willingness to assume them.

[575] What is the situation in this case?

ii. Apparent danger

[576] Let us first deal with the argument of apparent danger. The trial judgment does not expressly mention this but is implicitly based on finding a hidden danger. One thing is for sure, and that is that even a careful examination of a cigarette, whether it be by a reasonable (or prudent and diligent) person under the *Civil Code* or by a credulous and inexperienced person under the C.P.A., is not likely to reveal its dangers, all the less so since these dangers only become apparent after prolonged use. Perhaps a scientist who took apart a cigarette and analyzed its components could come to another conclusion, but this is not the nature of examination required by a purchaser, consumer or user of a mass product and is obviously not this type of in-depth examination that defines apparent danger, regardless of the liability regime we are referring to.

iii. Actual knowledge of the danger by each Class Member

[577] Let us also deal with the argument of actual knowledge of the dangers or potential harm: the appellants did not, in fact, prove that the members of the Blais and Létourneau Classes had *de facto* knowledge of the harmful nature of cigarettes or the risk of harm likely to result from using this product. They did not even attempt to prove it. Obviously, given their number, there

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[569] Antidote 9 (Software), Montreal, Druide informatique, sub verbo "apparent". *Le Grand Robert de la langue française*, *supra* note 473, defines the French word "apparent" as follows: [TRANSLATION] "That which appears, is clear to the eyes" or that is "obvious." *Le Trésor de la langue française informatisé* defines it as follows: "That which appears clearly. 1. Visible, perceptible to the eye or understanding."

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was no question of examining each of the members. But a representative sample could have been examined, and their answers might have made it possible to infer the knowledge of all the members through serious, precise and concordant presumptive elements (art. 2849 C.C.Q.). However, the appellants did not question any of the members at trial.

[578] In 2014, however, the Court, referring on this point to an earlier interlocutory decision of the trial judge, upheld the appellants ITL's right to examine the successors of Mr. Blais (then deceased), Ms. Létourneau herself, and various class members at trial, on a variety of subjects, including the knowledge that the members had of the pathogenic or addictive effects of smoking.[570]

[579] The Court recalled in its decision that:

> [TRANSLATION]
>
> [49] The Appellant, as we know, now wishes to summon certain members in addition to the Respondent Létourneau herself and the successors of the Respondent Blais (the latter having in fact passed away). As we have seen, the appellant plans to examine them on the following subjects in particular, in order to establish on the one hand, the absence of a causal link between the fault (if any) and damage, and on the other hand, to demonstrate that the situations of each class member are so different that collective recovery is not appropriate:
>
> (i) The class members knowledge of the risks and dangers of smoking (Blais' proceedings) or the addictive nature of smoking (Létourneau's proceedings) before they started smoking and chose to smoke nonetheless (causation);
>
> (ii) Whether the class members in fact suffer from one of the qualifying illnesses states or from addiction (causation);
>
> (iii) Whether some class members have any number of confounding factors in their medical history (causation);
>
> (iv) The negative impacts resulting from the disease or addiction (damages).
>
> [50] It is up to the appellant to establish the factual basis for the following: the faults it is accused of have not caused any harm, the members of the Class contributed to this harm, their conduct constitutes a kind of *novus actus interveniens,* there is no reason to award moral damages, and collective recovery is not a suitable mode of redress here.
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> ...
>
> [73] It may come as a surprise, of course, that the judge prohibited the production or use of the medical records of individuals who he is allowing the appellant to question. Is that not a contradiction? At first sight, when one considers the

[570] *Imperial Tobacco Canada Ltée c. Létourneau,* 2014 QCCA 944.

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> reasons for the judgment *a quo*, one might wonder why the judge authorized, in defence, the examination of members whose personal situation is not particularly significant and whose testimony could have the effect of a mere drop of water in the ocean. If the judge had refused these examinations, there would of course be no question of producing the medical records the appellant wished to obtain. But the fact is he authorized the appellant to call certain member in support of its defence. We know that the appellant intends to examine them on subjects such as their state of health, their alleged dependence on cigarettes, the reasons for it, the efforts they made or did not make to free themselves from it, the information they may have received or required in that regard, their knowledge about the harmfulness of smoking, the presence of carcinogens other than tobacco in their environment, [reference omitted], the moral or other damages they suffered, etc. Given that the appellant has been authorized to conduct the examinations of these persons, is access to their medical records not a kind of natural accessory to this type of questioning?
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> [Emphasis added; references omitted.]

[580] However, in the context of the administration of evidence at trial, the appellant ITL did not avail itself of this opportunity and did not examine Mr. Blais's successors, or Ms. Létourneau, or any of the 150 members that had been chosen for this purpose. The appellants JTM and RBH did not conduct any examinations either. The file therefore contains no proof of the personal and actual knowledge that these individuals may have had of the dangers of tobacco or of the harm that the consumption of this product is likely to cause. The appeal file, as constituted, contains sparse information on the particular situation of the two designated members, Mr. Blais and Ms. Létourneau.[571]

[581] In the case of Mr. Blais, we know he started smoking in 1954 at age 10. In 1987, following an episode of heart palpitations, a doctor, although he concluded that [TRANSLATION] "his heart was good,"[572] first suggested that he quit smoking, which he tried to do several times without success. Was he told more? We do not know. In 1997, he was diagnosed with lung cancer, which according to his doctor, was due to cigarette smoking.[573]

[582] In the case of Ms. Létourneau, we know a little more. She began smoking in 1964 at age 19, apparently unaware that smoking was addictive. In about 1977, having learned that cigarettes are a health hazard (no further details are provided as to the extent of this information), she opted for a lighter tar and nicotine brand. At the same time, her doctor told her that smoking and taking birth control pills increased the risk of heart problems (if the doctor told her more, the record does not show it). She tried unsuccessfully to reduce her smoking and even stop completely. In 1980, her doctor again warned her about the dangers of combining cigarettes and birth control pills resulting in another failed attempt to stop smoking. Fifteen years later, in

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571 See also paras. [724] *et seq*. below.

572 Re-amended motion for authorization to institute a class action and to act as representative, November 8, 2004, at para. 2.9.

573 These facts, referred to more or less in the same terms in the motion to institute proceedings, were also alleged in the successive versions of the motions for authorization to institute a class action and supported in this case by affidavits from the relevant party.

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1995, a doctor explained to her the mechanism of nicotine addiction, which she did not know before then (although she had seen its effects), and informed her of the possibility of replacement therapy (nicotine patches). A new attempt to stop smoking subsequently ended in another failure and Ms. Létourneau could not overcome her addiction.[574]

[583] We have no other information, so it is impossible to rule on Mr. Blais's and Ms. Létourneau's actual knowledge of the harmfulness of cigarettes and verify whether this knowledge meets the threshold required to exonerate the appellants. And since we know nothing about the other members of either Class, it is impossible to conclude that there is actual knowledge on their part.

[584] We can assume that there are likely to be members within these Classes who were well aware of the harm of smoking, at the required level, and who were sufficiently informed such that they could be deemed to have accepted the risk and the harm and to have waived any recourse. But assumption is not proof, and proof has not been established.

iv. Presumed knowledge of class members

[585] There remains, therefore, only the following hypothesis, which is that of the appellants: that the toxic and addictive effects of cigarettes were, for most if not all of the period in question, well-known facts, that is, generally known in a reliable and certain manner. These were facts that the class members could not ignore, unless they failed in their own obligation to inform themselves − notoriety leading to the presumption of knowledge under articles 2846 and 2849 C.C.Q.

[586] It is therefore necessary in this case to establish a fact, the notoriety of the danger and the risk related to smoking, and to infer by presumption another fact, which is that the members of the Class knew or were in a position to know the harmful effects of this product. Thus, even if the appellants did not fulfill their duty to inform, they would be exonerated from their liability by the fact that the dangers and risks of smoking were notorious, and consequently presumed to be known to all. The debate at trial focused on this issue, and we saw earlier how the judge decided it.

[587] Before the Court, the appellants reiterated the argument and pointed to the general knowledge of the harmful effects of cigarettes and the dangers or risks associated with smoking,

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[574] These facts, as set out in the proceedings, also correspond to the framework adopted by the Small Claims Division of the Court of Quebec, in a judgment rendered in 1998. Ms. Létourneau sued the appellant ITL for damages, claiming the cost of the transdermal nicotine patches she used to quit smoking. Her action was dismissed: *Létourneau v. Imperial Tobacco ltée*, [1998] R.J.Q. 1660 (C.Q.); the judge found that, on the basis of the scientific knowledge at the time Ms. Létourneau began smoking, ITL had not breached its duty to inform by not informing its clients about the dependence created by nicotine. The judge also found that the plaintiff knew that cigarettes were harmful to her health and that she should have sought information before starting to smoke. That judgment does not have the authority of *res judicata* and cannot be used as evidence (arts. 563 C.C.P. and 985 C.C.P.), but is referred to here to confirm the alleged facts, although without further detail. On the merits, however, the evidence adduced in that case is not that of this one, such that most of the judge's factual findings (particularly those concerning the state of science, in 1964, on nicotine dependence) are of no use.

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which they claim had been widespread since the late 1950s, as shown by expert evidence that the appellants claim the judge erroneously ruled out. In its brief, appellant ITL writes, for example, that:

> Note infrap. 9: As discussed herein, the Appellant tendered extensive expert evidence confirming that there was widespread public awareness of the risks of smoking throughout the Class Period, which crystallized by no later than the early 1960s.
>
> 299. In summary, the Trial Judge's findings in respect of the "knowledge dates" are quite simply in contradiction to the clear evidentiary record showing (*inter alia*): (i) surveys conducted in the 1950s and 1960s confirmed that between 80% and 90% of the Québec populace was aware of the harmful effects of smoking, including lung cancer; (ii) the government's own survey results from 1964 showed that 90% of Canadians were aware of the risks of smoking; and (iii) the media coverage of the risks of smoking − including "dependence" − was ubiquitous by the late 1950s and early 1960s.
>
> 302. Not only is this approach contrary to reason, it is also at odds with the extensive expert evidence from Professor Flaherty, Professor Lacoursière, Professor Duch and Dr. Perrins, each of whom confirmed the widespread public awareness of risks throughout the Class Period. In other words, the Appellants tendered detailed and specific proof - not contested by the Respondents by means of any qualified expert or Class Member evidence − confirming "that the victim knew ... of the defect" prior to this deemed "knowledge date".
>
> [References omitted.]

[588] In the same vein, JTM argues that:

> [132] This analysis contains significant errors of law coupled with palpable and overriding errors of fact. When the correct analysis is applied to the uncontradicted evidence, it is clear that, throughout the Class Period, class members were or should have been aware of the risks as they were reported on by the scientific community and relayed by the Federal Government, the media and the public health authorities.
>
> [133] More particularly, the evidence demonstrates that the class was, or should have been, aware in the 1950s that smoking may carry risks, including the risk of contracting lung cancer. As a consensus on medical causation was reached in the mid-1960s, the evidence demonstrates that the class was, or should have been, aware that smoking causes lung cancer and other fatal diseases.[575]
>
> …

[575] The last sentence of this paragraph is not without irony in that it refers to a "consensus on medical causation" that was allegedly well established in the 1960s, whereas, however, the appellants still dispute today the existence of such medical causation, at least at the individual level, an argument which is one of the main grounds of their appeals.

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> [134] As Côté explains, the manufacturer "est en droit de s'attendre que le consommateur fasse preuve également de prudence raisonnable." Accordingly, a manufacturer does not have a duty to warn of dangers that a reasonably diligent person should know of. What is pertinent, therefore, is at what point in time a reasonably diligent consumer should have been aware of the risks given the available information. This date, although necessary to determine on a class-wide basis when people knew or should have known of the risk, does not affect the fact that awareness, before such a collective determination, is and remains an individual issue.
>
> [References omitted.]

[589] The appellant RBH defers to the other two on this point.[576]

[590] At the appeal hearing, here is how the appellants formulated their arguments in this regard − and what follows is taken from the Outline for appellants' Oral Argument filed at the beginning of the appeal hearing:[577]

> **9. THE TRIAL JUDGE ERRED IN HIS ANALYSIS OF THE DEFENDANTS' OBLIGATIONS TO INFORM CLASS MEMBERS OF THE HEALTH RISKS OF SMOKING AND IN SETTING THE KNOWLEDGE DATES (C. Lockwood)**
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> ...
>
> b. The trial judge's Knowledge Dates are not substantiated by the evidence and conflict with the trial judge's own findings. The trial judge:
>
> i. disregarded the legal significance of the mandatory 1994 addiction warning and imposed a period of "public internalization" that is not recognized at law and on which he received no evidence or submissions.
>
> ii. applied inconsistent definitions of "dependence" that contradicted the evidence and undermined his conclusions as to the public awareness of the risk.
>
> iii. improperly drew factual inferences from the government's policy decisions as to when and how to regulate, in the face of unchallenged expert evidence that contradicted such inferences.
>
> iv. improperly disregarded reliable and probative expert evidence from Professors Flaherty, Lacoursière, and Duch, and elevated a passing comment of Dr. Proctor − who was not even qualified to speak about issues of awareness and did not purport to do so − to the status of dispositive evidence of public awareness in Canada.

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[576] Appellant RBH's Arguments at para. 9.

[577] Quebec Class Actions Appeal − Outline for appellants' Oral Argument at 10−11.

[Emphasis in original.]

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[591] In short, they claim that the judge, particularly with respect to addiction, was wrong in setting the date on which the members of the Blais and Létourneau Classes, respectively, could be considered to have known the harmful effects of smoking, as these effects were known since the early 1960s, if not even the early 1950s.

> a. Was the notoriety of the toxic and addictive effects of cigarettes acquired during the 1950s, 1960s or 1970s?

[592] The judge concluded that the harmful effects of smoking were not known in the 1950s, 1960s or 1970s. The appellants have not demonstrated how this factual determination would be vitiated by a palpable and overriding error. There is obviously no question here of reviewing all the expert evidence on the subject (which evidence is highly contradictory) or repeating the lengthy assessment that the judge undertook to come to this conclusion, but some elements can be highlighted.

[593] First, it is very surprising to note that the appellants assert the notoriety of information, which until 1972, they carefully concealed,[578] and which they later (in 1988) disclosed only in insignificant fragments by means of the sibylline statement we examined earlier.

[594] Second, while it is true that some information was already circulating during the 1950s, 1960s and 1970s on the harmful nature of cigarettes, that is, the cause and effect relationship between cigarette smoking and the development of debilitating or fatal diseases, it did not reach the threshold required to speak of a level of knowledge likely to exempt appellants under the extracontractual or contractual rules we have already seen, a threshold largely ignored by the appellants' (and in fact even the respondents' experts).

[595] It is not only a matter of the user or consumer being aware of the possibility of danger or harm, he or she must be informed − as has often been repeated − in an accurate, complete and understandable manner, and also be informed about how to protect himself or herself from it, especially when the danger is high and the risk significant. Only such information makes it possible to infer knowledge that itself signifies the acceptance of the risk and harm and renunciation of the right to sue. The obligation to provide this information, however, rests with the manufacturer.

[596] Admittedly, the user has a duty to inform himself or herself, although the case law, in the case of consumer products, makes this a relatively light requirement, often related to good judgement or common sense, which of course depends on the nature of the property in question, but does not require in depth research. Indeed, a person who intends to acquire or use a product, especially a "mass consumption product," does not have to retain an expert, conduct extensive research, examine the scientific literature, or try to distinguish what is false from what is true or what is possible from what it probable: this is not his or her burden under any of the applicable legislation (arts. 1053 C.C.L.C. or 1473 C.C.Q. or s. 53 C.P.A.). In the context of an

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[578] Except for the surprising and isolated admission of RBH's predecessor company in 1958, which was quickly withdrawn.

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information imbalance such as that in which the manufacturer and user are found (where the latter can legitimately trust the former), the duty of the latter to obtain information, although real, is limited in scope.

[597] An individual who decided to start smoking in the 1950s, 1960s or 1970s, when half of his or her fellow citizens were already smoking,[579] does not have to undertake a major investigation into the mass product that are cigarettes, consult his or her doctor beforehand or read the reports of all kinds of government offices. Prior to 1972, there was no mention on the cigarette itself or its packaging or inside the packaging indicating or suggesting that it might be a dangerous product. Between 1972 and 1988, the statement referred to above was indicated.

[598] But let us suppose, however, that at that time (1950s, 1960s or 1970s), the user, as a prudent and diligent person decided to seek information. The information the user would find would not be of a nature to enlighten him or her and certainly not to the point where it could be found that the user knew enough to accept not only the risk of smoking cigarettes, but also the harm they could cause (except in the case of a user who was a health professional or researcher employed by a cigarette manufacturer[580] and other examples of that kind).

[599] Of course, if the user were to flip through newspapers or magazines, he or she would see that there were some warnings against smoking. In the 1950s, cigarette smoking (despite the number of smokers) was not always well regarded, especially for women. It was related to various diseases, it did not seem clean, and it left an odour on curtains and clothing.[581] A person looking for information would no doubt see that, which, in the public arena, was still superficial. On the other hand, the appellants themselves, up until 1972, did not disclose anything about the dangers and risks of tobacco smoking and, we repeat, there was nothing on their cigarette packages or advertisements to this effect. That, in itself, is already a powerful contradiction to the information that the user may have gleaned here and there.

[600] In addition, to diffuse the negative information that was gradually emerging, especially from the late 1960s and in the 1970s,[582] the appellants had, for a long time already, undertaken a disinformation campaign, using every means possible on every front, as already mentioned above, aiming to pull the rug out from under tobacco critics by denying the facts, minimizing

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[579] In 1956, according to a survey by the Canadian Institute of Public Opinion reported by La Presse, 62% of Canadians smoked and 30% of Canadian women smoked, for an average of 46% (Exhibit 20065.826 − under Exhibit 20065 entitled “Flaherty Documents” at 134346 (J.S.) at 30).

[580] Why the example of a researcher working for a cigarette manufacturer? This is because it is quite possible that even the ordinary employees of this manufacturer were not aware of the toxic effects of smoking, as shown by a leaflet distributed to the employees of the appellant ITL: *The Leaflet*, which devoted its June 1969 issue to a “Special Report on Smoking and Health” (see Exhibit 2 at 1 *et seq*.). Given the length of the relevant extracts, they are reproduced at the end of the judgment, ANNEX IV. The statements thus reproduced, which follow the testimony of the President of ITL before the House of Commons Committee on Health, Welfare and Social Affairs on June 5, 1969, are those that the appellants conveyed, in one way or another, from the 1960s to the late 1990s.

[581] See Exhibit 758-11, *Sales Lecture no. 11 − Motivation Research: Cigarettes − Their Role and Function − Oct. 1957* at 1−5.

[582] An ITL representative, in a 1976 note to his supervisor, refers to the “<u>many, sometimes vociferous attackers</u>” who attack cigarette manufacturers (see Exhibit 11 at 1) [Emphasis added].

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them, challenging the science on the subject[583] and
presenting the debate on the harmful nature of tobacco as a matter of *opinion*. At the same time, the appellants were engaged in advertising campaigns, which, contrary to the Codes of conduct they adopted in 1964 and in the 1970s, aimed to present cigarettes to consumers as a product that would promote their success (romantically, socially, personally), prestige, zest for life and so on.

[601] Consequently, when a person was concerned about what he or she may have read in the 1950s or 1960s, or was curious about the warning appearing on cigarette packages in 1972 and sought more information, he or she obtained contradictory information, a significant portion of which maintained that cigarette smoking was not harmful or was not as harmful as some would have us believe, information to which was superimposed advertising that was effective at playing the seduction card on many levels. The person may even have discovered that Prof. Hans Selye, a leading medical expert famous for his work on stress, concluded that tobacco reduces stress, thus compensating for the harmful effects it can have in other regards,[584] an idea that quickly spread.[585]

[602] What this person would not know, however, at least not at the time, is that Prof. Selye, in 1968 or in 1969, first rejected the idea of working with tobacco companies[586] after they refused to fund his research.[587] However, he said he was ready to "consider undertaking a program of experiment to demonstrate the possible beneficial effect of nicotine."[588] On March 26 1969, Imperial Tobacco's Vice-President, Research and Development informed Prof. Selye that the Ad Hoc Committee accepted his research project on the subject of "Stress and Relief from Stress." Over three years, he received $150,000 from Canadian tobacco companies and $150,000 from American tobacco companies, for work to be carried out independently, "no conditions

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583 They did this by, among other things, maintaining an artificial scientific controversy about the harms of tobacco and by publicly and systematically denying the links between smoking and disease. This was the watchword, certainly until 1988: "[T]he causal relationship between smoking and various diseases has not been proven" (Exhibit 580C at 31070); "There is disagreement among medical experts as to whether the reported association between smoking and various diseases are causal or not, The C.T.M.C.'s position is to the effect that no causal relationship has been established" (Exhibit 957 at 52328). The record is full of evidence to that effect.

584 See Exhibit 964C, Tobacco Institute document, December 1978, entitled "The Smoking Controversy: A perspective," which reports various statements by Professor Selye about the effect of cigarette smoking on stress, which was purported to be one of the advantages of this product, in addition to its virtues in maintaining a normal weight (at 11−12).

585 See e.g., Exhibit 20065.2980 − under Exhibit 20065 entitled "Flaherty Documents," at 134450 (J.S.). This article appeared in the family supplement to the *Journal de Montréal*, dated February 23, 1975, titles: "STRESS: more harmful than two packs of cigarettes a day." It should be noted that, at the same time, this newspaper also published articles against cigarette use (titled, for example, [TRANSLATION] "Cigarettes kill more Quebecers than cars," Exhibit 20064.127, October 16, 1977). See also Exhibit 2 at 2, which supports the proposition that cigarettes are an anti-stress product.

586 In particular, by testifying before the House of Commons of Canada Standing Committee on Health, Welfare and Social Affairs, which was then investigating tobacco. Dr. Gaston Isabelle chaired this committee, hence the "Isabelle Committee" to which the trial judgment refers (see paras. 105, 248 to 250, 456, 460).

587 See Exhibit 1399.

588 Exhibit 1399.

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attached."[589] While it is no doubt impossible to conclude that Prof. Selye did not have a sincere scientific conviction about the benefits of tobacco, it remains that his view, in opposition to the others, could convince the ordinary smoker, who would have learned of the relativity of the risks of smoking or even the absence of real risks.

[603] The trial judgment gives plenty of examples of the appellants' work to undermine information. Among other things, paragraphs 245 to 253, 257, 258 and 453 to 457 (which refer to the 1960s and 1970s), which would take too long to reproduce here, give a good idea of the appellants' counter discourse.

[604] However, the rule, which stems from the law regarding hidden defects and extends to the area of safety defects is clear: the manufacturer's failure to fulfill its duty to inform may result not only from the absence or lack of sufficient information on the danger inherent in the product, but also from its misleading or deceptive representations. One cannot blame anyone who has relied on such representations for not having obtained more information, let alone for not having sought to prove them false or questioned them.

[605] In this sense, the appellants' counter discourse is an impediment − or at least, one of the impediments − to the notoriety of the facts that they are trying to deny or trivialize. They may well argue that the evidence does not formally show that the public was aware of this counter discourse or influenced by it, but the opposite is inferred from their actions during this period. Moreover, while they argue that the public could not have failed to see or hear what the media of the time were broadcasting about the harmful effects of smoking, there is no reason to think that they saw or heard only that and none of the competing information they were disseminating at the same time. On this point, we can only agree with the trial judgment.

[606] Consequently, to return to the person who was trying to learn more about cigarettes in 1950s, 1960s or 1970s, he or she would have first found limited, and then contradictory and controversial information. That person would also have noticed that the federal government at that time was encouraging smokers to smoke lower tar and nicotine cigarettes (in fact, it continued to do so until about 2000).[590] The ordinary person could have legitimately inferred that this type of cigarette was not harmful or was much less so (which, as we now know, is not true). That person would also have noticed that 40 to 42% of the Canadian population smoked regularly (i.e., every day).[591]

[607] But let us go back for a moment to the warnings that the appellants had been placing on cigarette packages since 1972. Would the ignorance of the user (as well as that of the general public) not dissipate with the appearance of these warnings? Earlier, however, we showed what those warnings consisted of until 1988: the danger indicated is so general that it could not contribute significantly to the awareness of the true effects of smoking. In any event, a person alerted by those tepid warnings who sought more information would have discovered the controversial information described above.

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589 See Exhibit 1400 at 119038−119039.

590 On the encouragement provided by the federal government in this regard, see in particular the testimony of Denis Choinière, June 11, 2013, at 216 and 219.

591 See Exhibit 20005 at 14.

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[608] The trial judge further noted that:

> [254] In fairness, ITL did permit certain research papers produced by it or on its behalf to be published in scientific journals, some of which were peer reviewed. In particular, some of Dr. Bilimoria's work in collaboration with McGill University was published. This, however, does not impress the Court with respect to the obligation to warn the consumer.
> [255] Such papers were inaccessible to the average public, both because of their limited circulation and of the technical nature of their content. Moreover, the fact that the general scientific community might have been informed of certain research results does not satisfy ITL's obligation to inform. Except in limited circumstances, as under the learned intermediary doctrine, the duty to warn cannot be delegated. As the Ontario Court of Appeal states in *Buchan*: ...
>
> [Reference omitted.]

[609] The judge is correct: these articles published in scientific journals were not accessible to the public and cannot have been expected to make the toxic and addictive effects of cigarettes known to the public.

[610] In short, whether in the 1950s, 1960s or 1970s, it is impossible to conclude that the effects of smoking were well known; whether cigarettes caused lung and throat cancer or emphysema was, on the contrary, a controversial fact at the time. Let us recall here the definition of the term well known, as set out above:[592] “what is known in a sure and certain manner by a large number of people.” We can in no way conclude that the dangers and risks of smoking were known, at that time, in a sure and certain manner by a large number of people, and not only a sophisticated group of well-informed people (including the appellants who kept the information to themselves).

[611] We must also consider the product we are dealing with: the toxic effects of cigarettes, except perhaps for addiction, only become apparent in the long term and possibly the very long term. Beyond anecdotes,[593] the knowledge of these effects from the moment when the information began to circulate more widely, (while remaining controversial, contradicted and undermined) and despite the appearance of generic and uninformative warnings in 1972, cannot be said to have been instantaneously well known. Given the state of the information battle taking place before 1980, to speak of the toxic effects of smoking and the cause and effect relationship between smoking and certain cancers or respiratory diseases as well-known facts in the 1950s, 1960s or 1970s, from which a presumption of knowledge could be inferred with respect to the public in general and the members of the Blais and Létourneau Classes in particular, does not stand up to analysis.

[612] At best, and this is what ultimately emerges from all the expert reports, while some of the

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592 See para. [456], referring to *Le Grand Robert de la langue française*, supra note 473.

593 Like that of the witness Steve George Chapman’s grandfather, who died of lung cancer − for that reason, from an early age, the witness, born in 1964, knew about the links between tobacco and cancer (see *supra* note 510). But, of course, for every grandfather who died in this way, there is a grandfather who, although an avid smoker, lived to an advanced age. It is not this kind of anecdotal evidence that makes a fact well known.

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public or some users knew that smoking was not good for their health, they generally had no accurate knowledge of that fact, as the information on this subject was insufficient and contradictory. Above all, it was hardly possible to measure the risks that this otherwise ill-defined damage would materialize. In this respect, that puts us in the realm of possibilities, as opposed to the realm of predictability − knowing that smoking *can* cause lung or throat cancer or emphysema is not the equivalent of knowing that smoking actually *causes* lung and throat cancer and emphysema, and that the vast majority of people with such pathologies are smokers or former smokers.

[613] In these circumstances, it is impossible to find that the pathological and addictive effects of cigarettes were well known, let alone infer that the knowledge on the subject reached the high level required by law in order to exonerate the manufacturer.

[614] Moreover, and to add to a remark made at the beginning of this section, it should be noted that the appellants, who affirm that the links between cigarettes and diseases such as lung and throat cancer and emphysema were well known and claim that this was known to everyone since the 1950s, 1960s or 1970s, also endeavored to deny those same links, at least until the early 1990s (and even later). Earlier reference was made to a guide for spokespersons for a manufacturer related to the appellant RBH: not only does this guide, which uses a now well-known sales pitch, minimize the cigarette/lung cancer relationship by reducing it to a questionable statistical correlation ("because of its many inconsistencies") and render it insignificant for individuals,[594] but it does the same for emphysema. Thus:[595]

> **CLAIM: SMOKING IS THE MAJOR CAUSE OF EMPHYSEMA AND OTHER CHRONIC OBSTRUCTIVE LUNG DISEASES.**
>
> **RESPONSES:**
>
> — The origin and development of these diseases are poorly understood.[1]
>
> — Researchers have studied the possible role of many suspected factors associated with these diseases in addition to smoking, including air pollution, alcohol consumption, history of previous infections, occupational exposures, childhood diseases, adult infections, and genetic disorders.[2]
>
> — How can one explain the fact that animal experiments have failed to reproduce emphysema with cigarette smoke[3] while those with primary air pollutants have?[4]
>
> **CAUTIONS:**
>
> — Don't allow distinctions to be made between "main" and "contributory" cause.
>
> — If your credibility is challenged, stress the Industry's deep concern and record of funding research.

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[594] See *supra* note 554.

[595] Exhibit 846-AUTH at 27–28.

HEALTH- RESPIRATORY DISEASES

REFERENCES

> [the scientific references contained in notes 1, 2, 3 and 4 of the above text are not reproduced here; emphasis in original]

[615] This was the position taken by the appellants with the public and the media and the point of view they defended as of the 1970s, after years of outright denial. It is paradoxical, however, to say the least, to claim on the one hand that this causation was well known to the ordinary public, and then vigorously deny it on the other.

[616] But, a little more needs to be said about one of the effects of smoking, namely addiction.

[617] The appellants are particularly critical of the date chosen by the judge, March 1, 1996, to define when people became well aware of this point (this is 18 months after the first such references appeared on cigarette packages in September 1994). In their opinion, this characteristic of the product should have been known for a very long time. It is hard to quit smoking, few individuals succeed on the first attempt, and some never succeed: this is, according to the appellants, a fact that was known since the 1950s. Of course, at that time no one spoke about dependence, nor did we use the word "addiction," but people knew nonetheless that cigarettes were "habit forming and difficult to quit" – the reality was thus known, even if the vocabulary was not yet there.

[618] There is no doubt that the appellants themselves were well aware of this characteristic of smoking as early as the 1950s.[596] However, the fact that smoking was truly addictive and not just a bad habit was not a well-known fact. First, there is a significant difference between a bad habit, which is psychological, and addiction, which is an effect of physical or physiological dependence. However, the appellants argued at length, and falsely, that while smoking could be a habit, it was not a form of addiction.

[619] Was the addictive nature of cigarettes a well-known fact in the 1950s, 1960s or 1970s? Let us refer here again to the above-mentioned passage from a rather candid confidential note, addressed by Michel Descoteaux (ITL employee, who later became ITL's Director of Public Affairs) to Anthony Kalhok (Vice-President, Marketing, of the same company), in 1976:

> A word about addiction. For some reason, tobacco adversaries have not, as yet, paid too much attention to the addictiveness of smoking. This could become a very serious issue if someone attacked us on this front. We all know how difficult it is to quit and I think we could be very vulnerable to such criticism.

[620] In light of this note (not to mention the rest of the evidence), it is difficult to affirm that the "addictive" nature of cigarettes was well known before 1980, and all the more so since, as we saw earlier, the appellants denied that fact until 1994, and successfully opposed putting a mandatory statement to that effect on their cigarette packages.

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[596] Let us consult, somewhat at random, Exhibit 758-11, Sales Lecture no. 11 - Motivation Research: Cigarettes - Their Role and Function, *supra* note 581 at 1-3, document dated October 1957.

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[621] It is true that at that time, the Surgeon General of the United States had already, for six years (1988), recognized the addictive nature of tobacco, which we will recall, was compared to heroin or cocaine addiction.[597] The Royal Society of Canada did the same in 1989.[598] But if this establishes anything, it is that in the 1950s, 1960s or 1970s, this characteristic was not well known in the sense that we understand that term, at least in that we did not measure its real effects or extent until then.

[622] In conclusion, the Court considers that the trial judge did not err in finding that the pathogenic or addictive effects of smoking were not well known during the 1950s, 1960s and 1970s.

b. Were the toxic and addictive effects of smoking well known in 1980 (diseases) and 1996 (addiction)

[623] While he was not mistaken in finding that the harmful effects of smoking were not well known in the 1905s, 1960s or 1970s, did the trial judge err in setting the dates for those effects to be well known in 1980 (diseases) and 1996 (addiction)?

[624] The respondents argue that the actual extent of the risks and dangers of smoking [TRANSLATION] "was unknown to the public throughout the period covered by the actions"[599] (1950–1998) and, indeed, that [TRANSLATION] "members of the public still did not know the extent of these risks in 2012."[600] On the basis of the evidence, one may indeed wonder whether the judge was right to conclude that the pathogenic effects of smoking were well known on January 1, 1980, and that the addictive effects of smoking were well known on March 1, 1996.

[625] It should be recalled that the notoriety of the knowledge referred to here must be defined according to the threshold of knowledge for the user that would allow the manufacturer to be exonerated, namely, knowledge equivalent to acceptance of the risk and harm and renunciation of all recourse. The judge does not appear to have taken this threshold into account, however, when determining the dates when the knowledge became well known.

[626] First, let us consider the diseases caused by cigarette smoking. As the Court has observed on several occasions, the voluntary and then mandatory warnings on cigarette packages from 1972 to 1993 were very general and certainly insufficient to make the dangers of smoking well known to the point that would give rise to a presumption of knowledge reaching the required threshold (i.e., that of acceptance of risk and harm). Of course, during that time, several organizations (and also the federal and provincial governments themselves) were circulating information denouncing the harmful effects of smoking, but it is still doubtful that the required threshold of knowledge was reached in 1980 while the appellants were still actively campaigning and advertising to the contrary and the federal government was still suggesting that people smoke so-called light cigarettes.

[627] The findings set out in the previous section[601] can be transposed here: until at least 1988,

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597 Exhibit 601-1988 at 1 *et seq*.
598 Exhibit 212 at 1 *et seq*.
599 Respondents' Arguments at para. 254.
600 Respondents' Argumenta at para. 258.
601 In particular at paras. [605] *et seq*.

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before the *Tobacco Products Control Regulations* came into force, a smoker or potential smoker who, as a reasonable person, decided to seek information (without, however, conducting an exhaustive study of the matter, which was not required) would have been confronted with contradictory information about a product whose sale is legal (albeit with a half-hearted warning[602]) but that would nevertheless have harmful effects that the manufacturers themselves, however, denied or disputed their scientific nature. The situation changed little between 1989 and 1993, with more explicit, but still insufficient, warnings from September 1994 onwards, as mentioned earlier. One might think that the public should have given more weight to the statements made by cigarette detractors than to the denials of the appellants, but in the context of a user-manufacturer relationship characterized by a significant information imbalance and by the establishment of an implicit relationship of trust between the user and the manufacturer, one cannot conclude that the pathogenic effects of cigarettes were well known: perhaps a reasonable user would have understood from the information being circulated that cigarettes are not particularly good for health, but this does not mean they correctly understood the danger, i.e., the real risk that serious harm would occur. This danger was not yet known. Moreover, we can repeat that, while potential users have the responsibility to inform themselves, they do not have the responsibility to solve controversies regarding that information.

[628] And if that reasonable person or, if one prefers, that reasonably prudent and diligent person, could not, in this context, fully realize the dangers and risks of smoking in terms of the potential diseases, what can we say about the credulous and inexperienced person?

[629] This question cannot be avoided since s. 53 C.P.A., which came into force in April 1980, covers part of the period in dispute and applies to the case at bar, since the members of both Classes are consumers and the appellants are manufacturers within the meaning of that Act. However, given the uncertainty in the public arena that continued after January 1, 1980, and, similarly, after April 30, 1980, due to the appellants ' disinformation campaign, which continued well after that date, it is quite plausible to conclude that such a person may have spent the 1980s without acquiring or being able to acquire this knowledge, at least until the coming into force of the regulatory warnings in September 1994, which were more explicit than the warnings in 1989.

[630] As we know, up until 1994, the voluntary then statutory warnings on cigarette packages and elsewhere were still too general to be considered sufficient information with respect to the applicable standard of knowledge and the notoriety of that knowledge. However, while this remark applies to the reasonably prudent and diligent user (who could perhaps have obtained information elsewhere), it applies *a fortiori* to the credulous and inexperienced person. And all this without taking into account that the federal government, until 1987, advised Canadians to smoke cigarettes with lower tar and nicotine content,[603] which could leave the credulous and inexperienced person (and perhaps even the reasonable person) with the impression that they were safer (even if the packaging was labelled with the same regulatory warnings).

[631] Moreover, even as of 1994, when the regulatory warnings became more explicit

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602 For convenience, let us recall the content of this warning, from 1975 to 1988: “WARNING: Health and Welfare Canada advises that danger to health increases with amount smoked - avoid inhaling / AVIS: Santé et Bien-être social Canada considère que le danger pour la santé croît avec l’usage – éviter d’inhaler.”

603 See the testimony of Denis Choinière, June 11, 2013, at 219.

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(although still unsatisfactory in many respects), once again, we cannot ignore the counter-discourse maintained by the appellants, which continued unabated and which, following the Supreme Court judgment in 1995, was once again associated with misleading advertising strategies, contrary to ss. 219 and 228 C.P.A.[604]

[632] We will refer to only one example, in addition to those given in the previous sections (it is impossible to use more without making this demonstration more cumbersome). In seven issues of the newsletter *The Leaflet*, published by ITL in 1994 and 1995, there is a seven-part article following a vibrant argument in favour of individual freedom and responsibility,[605] containing the following remarks, which correspond to ITL's public discourse (and coincide in substance with that of the other appellants, which is not surprising given that they were following a coordinated strategy:[606]

> Mark Twain once said: "There are lies, damn lies, and statistics". Studies published by health and anti-smoking organizations have led people to believe that smoking causes lung cancer, heart disease, emphysema, and bronchitis. Furthermore, these studies have let people assume that smokers will inevitably suffer from one of these diseases at some time, and that by not smoking or quitting smoking, people avoid developing these diseases.

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[604] For example, Exhibit 1215 should be read. This is a note describing the advertising branding that the appellant RBH was considering for some of its products. See also exhibits 1217-2m and 1218-2m, which concern the branding of some of the appellant ITL's brands. This is referred to as "lifestyle" advertising, which will be analyzed further in the section that these reasons devote to sections 219 and 228 C.P.A.

[605] Exhibit 105-1994-PP-2m, Leaflet, vol. 30, no. 5, September / October 1994, article titled "Clearing the air – Part one: "Who is responsible,"" at 1 and 4, from which the following two sentences are extracted, and quite representative of the argument: "Realizing life's risks, people should maintain the right to decide for themselves, whether this decision is about eating greasy food, drinking alcohol or smoking cigarettes"; "Maybe what is required is not regulations on the part of the government, but virtue on the part of the individual: "tolerance, in the name of freedom, to do things one disagrees with or does not like, provided they do no outright harm to others.""

[606] Exhibit 105-1994-PP-2m, article titled "Clearing the air – Part two: "Smoking and Health, The scientific Controversy" at 2 and 6; Exhibit 20065.11790 – under Exhibit 20065 titled "Flaherty Documents" at 134945 (J.S.), article titled "Clearing the air – Part five: "Smoking and risk"" at 7. In 1994, in a brochure apparently intended for the public, BAT repeated the same discourse on the absence of scientifically established causation (Exhibit 242B-2m; similarly, see Exhibit 409-2m). That same year, Michel Descôteaux, representing the appellant ITL, made the same argument about the absence of a scientifically established causal relationship between tobacco and disease (Exhibit 26 at 4):

> [TRANSLATION]
>
> But I'm not telling you that tobacco is not the cause of disease, nor am I telling you that tobacco is the cause of disease. To sum up, what I'm trying to tell you is that on the basis of the cause-and-effect relationship, it's still pending, and the current state of knowledge doesn't allow us to decide.

In 1998, Mr. Rob Parker, then President of the Canadian Tobacco Manufacturers'' Council, speaking about the causal relationship between cigarettes and certain diseases, further argued that: "You can't say something exists if science hasn't demonstrated it. All of the smoking related diseases I know about are multifactorial. There is no single identifies cause. If all smokers got lung cancer and no non-smokers got those kind of cancers, then you would understand it is definitely there" (Exhibit 20063.11, taken from the *Vancouver Sun*, November 5, 1998, at 133976 (J.S.)).

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The facts are that researchers have been studying the effects of tobacco on health for 40 years now, but are still unable to provide undisputed scientific proof that smoking can cause lung cancer, lung disease and heart disease. The studies that have claimed that smokers have a higher risk than non-smokers of developing some diseases are statistical studies. Statistical studies look at people who develop certain diseases and compare their behaviour and lifestyles with people who do not develop those diseases. Although reports claim a statistical association between smoking and certain diseases such as lung cancer, heart disease and lung diseases, they have also found that many other things that people do, or are exposed to, are statistically associated with the same diseases.

"The fact is nobody knows yet how diseases such as cancer and heart disease start, or what factors affect the way they develop. We do not know whether smoking could cause these diseases because we do not understand the disease process."

...

Smokers and non smokers alike develop lung cancer and heart disease. So, although smoking has been statistically associates with lung cancer and heart disease, it is only one of many risk factors.

…

A certain activity is defined as a risk factor through epidemiological studies. "Epidemiology is the study of incidence, distribution and control of a disease in a population".

Epidemiological studies have found a statistical association between smoking and the development of cancer. Therefore, according to epidemiological studies, smoking is said to be a risk factor for developing cancer. This is misleading to the public because these studies can only show a statistical association, they cannot scientifically prove that smoking causes cancer. It would be like saying that having a driver's license is the cause of having a car accident.

"Having a driver's license is a risk marker for car accidents, because possession of a driving license is statistically associated with having an accident while driving a car; however, possessing a driving license does not of itself cause the accident..."

B.A.T brings up a theory presented by Skrabanek and McCormick (1989) referred to as the "fallacy of cheating death":

"All living species have a biological life span: plants, fish, animals and humans. While the upper limit of the human life span may be as much as 116 years, the median, or most usual biological life span, is probably about 85. Some of us may be programmed to die before our seventieth birthday and a few of us are programmed to become centenarians. This programme is coded in our genes and is unalterable, at least for the time being. The old may die with, rather than of,

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disease."

> This is a very important point, because it suggests that all life forms including humans have predetermined life spans encoded in our genes. Short of being in an accident, the age at which we die cannot be significantly altered by the activities in which we engage. Appliances have warranties, which are determined by the manufacturer. Tests performed on the appliances can tell the manufacturer approximately how long each part of the appliance will last. This is somewhat the idea behind the "fallacy of cheating death" theory.
>
> There are thousands of studies going on all the time, trying to determine what causes cancer, and what can prevent the cause of cancer, "...the public is continually receiving huge amounts of information, largely through the media, on an enormous variety of risk factors that they are supposed to take into account and avoid if they want to live a healthy life style and prevent disease".
>
> Coffee had been statistically associated with several types of cancer. The public was encouraged to switch to decaffeinated coffee to avoid the risk, until a chemical used in the decaffeination process was discovered to be a risk factor for cancer.
>
> "Food itself, for example, is essential for life and yet, is a major source of chemicals, many of which are considered by some health authorities to be potentially capable of causing cancer or to be toxic in other ways".
>
> Studies have shown that 99.9% of ail pesticides in our diet are unavoidable and natural products of the plants we eat (the plant produces its own pesticides to protect it from bacteria and insects).
>
> "However, because most of us survive in a healthy condition for a long time, it is clear that any injuries to the body caused by low dose exposure to such chemicals are fully repaired or neutralised by efficient natural defences. Such defences, of course, are believed to wane with age, rendering older persons more prone to develop diseases such as cancer."
>
> Everyone takes risks every moment of their lives. Breathing the air in the city, being exposed to direct sunlight, virtually everything we do could be statistically associated with a disease and therefore would be considered a risk factor. If we stopped doing everything that carries a risk, we would not be able to get out of bed in the morning. Everyone should be allowed to live their lives, doing everything — with moderation.

[633] This rhetoric is not trivial; it is, in fact, persuasive. The user (whether we're talking about a credulous and inexperienced person or an ordinary and reasonable person) exposed to this type of argument, particularly if he or she already smokes,[607] may be convinced of it despite being

[607] About 30% of the Canadian population still smoked in 1994–95, or almost one in three people (see Exhibit 40497.65, Statistics Canada, Health Statistics Division, *Report on Smoking in Canada, 1985 to*

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exposed to the contrary information circulating at the same time, in particular, through the warnings on cigarette packages. “Realizing life's risks, people should maintain the right to decide for themselves” – that is true, but it is still necessary to be able to “realize” the risk associated with such a decision by understanding its true measure. The “disinformation” counter-discourse assiduously put forth by the appellants at the time, however, did not promote realizing these risks, which was precisely the objective.

[634] Once again, the issue here is to determine whether the morbid effects of smoking (lung or throat cancer, emphysema) were well known – a high standard – and to determine the date on which the notoriety of that information can be established in order to draw the inference that at that point, all members of the Class knew or were able to know the risks, which presumed knowledge is equivalent to accepting risk and harm. Such knowledge could be used against smokers and exonerate the appellants from the liability that could arise from the fact that throughout the period in question (1950 – 1998) they systematically and deliberately failed to fulfill their duty to inform. Let us also repeat that users or future users of any product, while under the obligation to inform themselves, are not obliged to do extensive research on the subject and even less, to unravel the contradictory information received from each side.

[635] That being the case, the Court considers that it is not legally possible to conclude that the pathogenic effects of smoking (cancers, emphysema) were well known until 1988[608] (in the hypothesis most favourable to the appellants) or 1994,[609] or perhaps even in the case of the credulous, inexperienced person, until the end of the litigation period (1998). The social acceptability of cigarettes was certainly much lower at the time than in the 1960s or 1970s. But the information available to the public was still discordant and contradictory (although leaning more to one side than the other). And the risk associated with smoking beyond the general risk cannot be considered a fact that was “known in a sure and certain manner by a large number of people,” taking into account the standard applicable to this knowledge. Perhaps the pathogenic effects of smoking, at least with respect to lung or throat cancers and emphysema, were scientifically indisputable as early as the 1980s, but this was not yet known within the meaning of art. 1473 C.C.Q. or the prior case law and was not so widespread as to allow us to infer that there was general knowledge.

[636] On another note, we must also ask the following question: was the knowledge that users, future users or the general public could have of these effects not insufficient so long as the addictive nature of tobacco was not known? This effect weighs heavily in the balance of pathology: a person who only smoked a few cigarettes in their life is probably protected from the diseases caused by the prolonged use of this product.[610] A person who has smoked for a long time is at a higher risk, which increases with use. However, dependence – a true addiction – is the factor that guarantees smoker loyalty and at the same time, increases the risk of developing one of the diseases associated with cigarette smoking.

2001 (Ottawa, Minister of Industry: 2002); Exhibit 40497.64B, *Canadian Tobacco Use Monitoring Survey (CTUMS)* (Ottawa, 2008) at 202278 (J.S.)).

608 When the first regulatory information appeared on cigarette packages.

609 With the coming into force of statutory statements that describe in more detail the harmful effects of cigarettes on health.

610 Unless he or she is a victim of second-hand smoke, which is not the subject of the actions brought by the Respondents against the appellants.

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[637] Can the victims of harm be blamed, in fact and in law, for knowledge they may have had of the pathogenic effect of smoking when a crucial piece of the puzzle was missing? Because knowing, or not knowing, the powerful addictive effect of cigarettes directly affects users' or future users' assessment of the risk incurred. Assuming they know the danger, can we, nevertheless, say that they accept it when, because of their ignorance of a fundamental fact, they cannot correctly evaluate the risk that the damage will occur.

[638] Obviously, it will be countered that regardless of the subject of addiction, the last third of the 1980s was a time when people knew the pathogenic effect of smoking: on January 1, 1987, the *Act respecting the protection of non-smokers in certain public places*[611] came into effect, prohibiting, as its title indicates, smoking in certain public places.[612] These prohibitions, which were not yet very severe,[613] suggest, however, that if the smoker may assume the risks of his or her own smoking, he or she should not subject others to those risks. The smoker must, therefore, understand that there are risks in the first case as in the second. But again, can the smoker not deduce from the fact that the smoking ban does not cover all public places that the danger is not so great?

[639] In 1988, however, Parliament also passed *The Tobacco Products Control Act,*[614] which came into effect on January 1, 1989. We reproduce section 3 of the Act[615] here for the sake of convenience:

3. The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular,	**3.** La présente loi a pour objet de s'attaquer, sur le plan législatif, à un problème qui, dans le domaine de la santé publique, est grave, urgent et d'envergure nationale et, plus particulièrement :
(a) to protect the health of Canadians in the light of conclusive evidence implicating tobacco use in the	*a)* de protéger la santé des Canadiennes et des Canadiens compte tenu des preuves établissant

[611] *Act respecting the protection of non-smokers in certain public places,* S.Q. 1986, c. 13.

[612] The *Non-Smokers' Health Act*, S.C. 1988, c. 21, prohibits smoking in (federal) workplaces, trains, aircraft and other means of public transportation, subject to the installation of smoking rooms or the designation of smoking areas.

[613] This modest ban has nothing in common with the current prohibitions. The 1986 Quebec law prohibits smoking in a few places owned or leased by public bodies or, more precisely, in certain areas: a room or counter intended for the provision of services, a library, a laboratory, a conference room, a classroom or seminar room, an elevator, any other place designated by the person with the highest authority within the organism. Smoking is also prohibited in health care facilities, except in areas designated for staff use, in a smoking room or in an area designated by the person with the highest authority within the facility. Smoking is prohibited in ambulances, subway cars, school buses, buses for schoolchildren, disabled people, urban transport or airport transport, as well as in certain other places.

[614] *Tobacco Act,* S.C. 1997, c. 13.

[615] See above at para. [119].

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incidence of numerous debilitating and fatal diseases;	de façon indiscutable un lien entre l'usage du tabac et de nombreuses maladies débilitantes ou mortelles;
(b) to protect young persons and others, to the extent that is reasonable in a free and democratic society, from inducements to use tobacco products and consequent dependence on them; and	*b)* de préserver notamment les jeunes, autant que faire se peut dans une société libre et démocratique, des incitations à la consommation du tabac et du tabagisme qui peut en résulter;
(c) to enhance public awareness of the hazards of tobacco use by ensuring the effective communication of pertinent information to consumers of tobacco products.	*c)* de mieux sensibiliser les Canadiennes et les Canadiens aux méfaits du tabac par la diffusion efficace de l'information utile aux consommateurs de celui-ci.

[640] The legislator here refers to a "national public health problem of substantial and pressing concern," and conclusive evidence of the link between tobacco use and many debilitating and fatal diseases. The law even refers to "*tabagisme*" in French (a French term for the addiction of tobacco users) and to "dependence" in English caused by tobacco. Surely, one might imagine that a national public health problem of substantial and pressing concern would be known to all, at least with respect to the debilitating or fatal diseases referred to in paragraph 3(*a*).

[641] However, even if ignorance of the law is no excuse, it is unlikely that the public in general or smokers in particular would have been aware of this provision and that this could have been the basis for their knowledge of the morbid effects of tobacco, of its addictive effect, of the actual intensity of its addictive effect, and consequently, of the actual risks of those effects. Rather, the harmful effects of smoking were discussed in the media. Moreover, we must also note that despite the alarming wording of section 3 of the 1988 Act, it was not until 1994 that the federal government required manufacturers to put more explicit statements on cigarette packages, including the warning that "Cigarettes are addictive / *La cigarette crée une dépendence*". As the main provisions of the 1988 Act were declared contrary to the Canadian *Charter* in September 1995, this reference disappeared and was replaced by the following warning, voluntarily put on their packaging by the appellants: "Health Canada advises that cigarettes are addictive / Santé Canada considère que la cigarette crée une dépendence" (the other warnings were retained, also on a voluntary basis).

[642] In short, for all these reasons, the date on which the judge recognized that the information concerning pathologies related to smoking was well known cannot be that of January 1, 1980. As previously indicated, in the hypothesis most favourable to the appellants, that date cannot be before June 28, 1988, the date of assent to the *Tobacco Products Control Act*,[616] which recognized the morbidity of cigarettes, or January 1, 1989, the date of its coming into effect and the date of the first statutory notices. In the Court's view, however, knowledge of the addictive effect of tobacco is essential for being able to assess the pathogenic risk, and the two elements cannot be separated. Consequently, the morbid effects of cigarettes could not be well

[616] *Tobacco Act,* S.C. 1997, c. 13.

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known before the date on which the addictive effect of cigarettes also became known, keeping in mind that this knowledge must reach a threshold that allows the members of the Class to have a level of knowledge equivalent to the acceptance of the danger, risk, and harm.[617]

[643] This naturally leads us to more closely examine the date on which, according to the trial judge, the addictive effect of cigarette became well known and consequently presumed to be known by the class members.

[644] The appellants argue that, in the best case scenario for the respondents and the class members, this date must be September 12, 1994, when the reference to addiction first appeared on cigarette packages, a reference prescribed by the *Tobacco Products Control Regulations* in its 1993 version, which would substantially be repeated on a voluntary basis by the appellants in 1995 and 1996 (and thereafter, until the new warnings prescribed by the *Tobacco Act*[618] in 1997 were imposed). At that point, in the absence of being personally informed, everyone was able to know about this effect of smoking and must therefore be presumed to have known it. They argue that the judge therefore erred in setting that date at March 1, 1996.

[645] The judge gave the following reasons for choosing March 1, 1996, over September 12, 1994:[619]

> [127] That the Companies recognize the new Warning's importance is telling, but the Court puts more importance on the fact that Health Canada did not choose to issue a Warning on dependence before it did. If the government, with all its resources, was not sufficiently concerned about the risk of tobacco dependence to require a warning about it, then we must assume that the average person was even less concerned.
>
> [128] That said, even something as visible as a pack warning does not have its full effect overnight.
>
> [129] The addiction Warning was one of eight new Warnings and they only started to appear on September 12, 1994. It would have taken some time for that
>
> one message to circulate widely enough to have sufficient force. The impact of

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[617] It should be noted that, in September 1995, in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, Justice La Forest stated:

> [31] ... Abundant evidence has been filed at trial that tobacco use is a leading cause of cancer, as well as heart and lung disease causing death. Nowadays, this conclusion has become almost a truism. ... [Emphasis added.]

The evidence referred to in this passage is medical evidence (several reports date from 1988 or 1989), evidence used to justify the constitutionality of the *Tobacco Products Control Act* (1988 Act), particularly with respect to criminal law. It does not refer to the public's knowledge of this issue in the context of a civil liability action brought by users against manufacturers. The truism noted by Justice La Forest, in any event, is at a date that is close to the one that will be retained by this Court on the basis of the evidence in this case.

[618] *Tobacco Act,* S.C. 1997, c. 13.

[619] Paragraphs 129 and 130 of the judgment have already been reproduced in paragraph [143] of these reasons.

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> decades of silence and mixed messages is not halted on a dime. The Titanic could not stop at a red light.
>
> [130] The Court estimates that it would have taken one to two years for the new addiction Warning to have sufficient effect among the public, which we shall arbitrate to about 18 months, i.e., March 1, 1996. We sometimes refer to this as the "knowledge date" for the Létourneau Class.
>
> [131] There is support for this date in one of the Plaintiffs' exhibits, a survey entitled "Canadians' Attitudes toward Issues Related to Tobacco Use and Control". It was conducted in February and March 1996 by Environics Research Group Limited for "a coalition" of the Heart and Stroke Foundation of Canada, The Canadian Cancer Society and the Lung Foundation. Although this is a "2M" exhibit, meaning that the veracity of its contents is not established, Professor Duch cites it at two places in his report for the Companies. This should have led to the "2M" being removed and the veracity, along with the document's genuineness, being accepted.
>
> [132] The Environics survey sampled 1260 Canadians, of which some 512 were from Quebec. When they were asked to name, without prompting, the health hazards of smoking, "only two percent mention the fundamental hazard of tobacco use which is addiction".
>
> [133] Since the Létourneau Class's knowledge date about the risks and dangers of becoming tobacco dependent from smoking is March 1, 1996, it follows that the Companies' fault with respect to a possible safety defect by way of a lack of sufficient indications as to the risks and dangers of smoking ceased as of that date in the Létourneau File.[620]
>
> [References omitted.]

[646] In the Court's opinion, this determination is not erroneous and is even conservative in that it does not take into account the confusion that, at the time, still surrounded the idea of "dependence," a term often associated with habit rather than addiction. The appellants themselves, after 1994 and again after 1996, promoted that confusion by continuing to deny the addictive nature of cigarettes[621] and to decry the use of the term "addiction,"[622] which the judge,

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620 The Environics survey referred to in para. 132 of the judgment is Exhibit 1337-2m.

621 The appellant RBH even seemed to challenge it again in its defence of February 29, 2008, (at paras. 57 to 64), arguing that smoking is a habit that can be difficult to break, but that it can still be done with good intentions. See also the defence filed by the appellant JTM in the Létourneau case, at paras. 282 to 285 and ITL's defence in the Létourneau case, dated February 29, 2008, at paras. 32, 198 and 201.

622 In 1997, as Parliament was about to pass the *Tobacco Act*, Rob Parker, President of the Canadian Tobacco Manufacturers' Council, replied to senators before whom he appeared as follows "[w]e don't have a definition of addiction − it is a matter of opinion, not a matter of fact" (Exhibit 200065.10692 − under Exhibit 20065 entitled "Flaherty Documents," at 134870 (J.S.), *The Gazette*, April 2, 1997. In 1995, RBH continued to defend the view expressed by Prof. Warburton and Prof. Cormier, who criticized the Royal Society of Canada's report on the addictive effect of cigarettes as biased and scientifically inaccurate. In a note to the Canadian Tobacco Manufacturers' Council, John Macdonald, RBH representative, stated the following: "Addiction is very much a concern recognizing the situation

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who documented this behaviour at length, knew about and should have considered. We understand that he did not do so because he distinguished the appellants' fault in this area from the fault consisting of deliberately failing in their duty to inform, but, as we saw, there is a mistake here as these two faults cannot be separated. That is what the respondents argue, saying quite rightly that the date the information could have been well known can only occur after the date on which the appellants ceased their disinformation campaign and other counter-discourse, which did not occur until 1998 (and which, they argue, actually continued under more subtle appearances).

[647] It should also be noted that it was only in 1998 that the appellant ITL recognized this characteristic of cigarettes (nicotine addiction)[623] on its own (i.e., other than through the mandatory statutory warnings). The appellant RBH did so in 1999[624] and the appellant JTM, in 2004.[625]

[648] The fact that, in these circumstances, the knowledge of this attribute of cigarettes was only truly known in March 1996 does not seem to be an unreasonable conclusion given the evidence. Indeed, it would not have been unreasonable either for the judge to have concluded that this fact only became well known starting on the date on which the appellants stopped

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with the class action suit. I think that, at this point, the CTMC position is already adequately reflected in the Professors's Warburton and Cormier critiques of the Royal Society of Canada report on Addiction" (Exhibit 61 at 3). The reports of Profs. Warburton and Cormier are found in Exhibits 430 and 9A respectively.

623 Document entitled "ITL's Position on Causation Admission" (at 2):

> Regarding the issue of addiction, the evidence is clear that awareness of the difficulty of quitting and the phenomenon of habituation was widely known throughout the Class Period (see ITL's Notes & Authorities). However, the evidence also confirms that in 1989, the Royal Society of Canada posited a new definition of addiction and, pursuant to that definition, concluded that smoking was addictive (see Exhibit 212). Pack warnings to this effect appeared as of 1994, and were voluntarily carried by ITL on its packs and advertising after the TPCA was struck down by the Supreme Court of Canada. In its first formal position statement on smoking and health in 1998 (Exhibit 34), ITL stated that smoking can be described as an addiction as addiction was then defined.

624 Document entitled "RBH Response to the Court's November 21, 2014 Question, December 10" (at 2):

> In 1999, Philip Morris Companies also stated on its website that "[c]igarette smoking Is addictive, as that term is most commonly used today. It can be very difficult to quit smoking, but this should not deter smokers who want to quit from trying to do so." RBH endorsed that statement in 1999, see Trial Exhibit 1341-2m, and had never disputed that smoking can be difficult to quit. See Testimony of Steve Chapman, Oct. 22, 2013, at 83−84.

Philip Morris Companies made a statement to this effect in 1997, acknowledging that "nicotine, as found in cigarette smoke, has mild pharmacological effects, and that, under some definitions, cigarette smoking is "addictive."" (Exhibit 981E at 2).

In October 1999, in a paper for the House of Commons Health Committee (UK), BAT acknowledged that nicotine "does have mild pharmacological properties and does play an important role in smoking" but does not prevent anyone from quitting smoking (Exhibit 20230 at para. 45). See also paragraphs 44 and 46, which, however, indicate a certain reluctance to accept the term "addiction," except in a popular and diluted sense.

625 Document entitled "JTIM's Response to the Court's November 21, 2014 Question":

> 5. In 2004, JTIM stated on the record, in the current proceedings, that smoking can cause the class diseases, as defined in the Blais class action, and that smoking can be addictive, as this term is now understood.

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denying it.[626]

[649] For all these reasons, the Court rejects the appellants' argument that the pathogenic and addictive effects of smoking could be considered well-known facts of general knowledge and therefore presumed to be known by all (art. 2846 and 2849 C.C.Q.) to a degree that would have allowed the parties concerned, as required by the applicable standards, to accept the risk and the harm (equivalent to renunciation of the right to sue). Contrary to what the appellants' suggest, not only was this information not well known during the 1950s, 1960s, or 1970s, but it is even doubtful that it was during the 1980s.

[650] Thus, the knowledge of the pathogenic effects alone, and more precisely of the causal relationship between smoking and lung or throat cancer and emphysema could not be acquired before January 1, 1980. Moreover, according to the Court, that date should coincide with the date on which the addictive effect of cigarettes became known, that is, March 1, 1996, since even if the persons concerned might have known about the pathogenic effects of cigarettes, they were deprived up until then of an essential factor for assessing the real risk posed by the use of the product. One might even be inclined to postpone the date on which the information became well known until 1998, when the information provided by the government and medical bodies combined with more explicit warnings prescribed by the 1997 *Tobacco Act*[627] finally prevailed in general over the strategy of disinformation that the appellants had been pursuing for 50 years and that they still did not immediately abandon.

[651] Consequently, the appellants have failed to establish that the class members had the presumed knowledge, which, within the meaning of the various applicable legislative provisions would have exonerated them from their liability despite their failure to fulfill their duty to inform.[628]

Even today, however, this recognition is still subject to certain reservations. The idea of addiction is indeed accepted, but in cautious language, intended to distinguish this type of addiction from that affecting users of certain illegal drugs (in the wake of the appellants' previous positions). Recognition is still mixed. For example, here is an excerpt from JTM's 2012 version of its website under the heading "addiction" (Exhibit 568):

> Many smokers report difficulties quitting smoking. The reasons they offer vary. Some say they miss the pleasure they derive from smoking. Others complain of feeling irritable or anxious. Others speak simply of the difficulty of breaking a well-ingrained habit. Given the way in which many people − including smokers − use the term 'addiction', smoking is addictive.
>
> **But no matter how smoking is described, people can stop smoking if they are determined to do so. No one should believe that they are so attached or 'addicted" to smoking that they cannot quit.**
>
> Over the past decades, millions of people − all over the world − have given up smoking. Most have done so by themselves. Recent studies have shown that the majority of ex-smokers have quit without treatment programs of other assistance. Other former smokers have used the many smoking cessation products or programs that are available.
>
> [Emphasis in original.]

[626] See also below at para. [1111].

[627] *Tobacco Act,* S.C. 1997, c. 13.

[628] It should be noted that this is not the first time that a court has concluded that the public, including smokers, is poorly informed about the harmful effects of smoking. In 2003, in *J.T.I. MacDonald Corp. c. Canada (Attorney General)*, [2003] R.J.Q. 181, the Superior Court had already reached this conclusion (see paras. 127, 468−469), which conclusion the Supreme Court adopted in its subsequent

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[652] In the case at bar, the judge apportioned liability for the members of the Blais Class. If we understand the judgment correctly, the members of the Blais Class who began smoking on January 1, 1976, would have engaged in reckless behaviour leading to the apportionment of liability by the judge according to the combined rules of arts. 1477 and 1478 C.C.Q. The judge set this date to take into account the fact that addiction, according to his decision, takes place four years after a certain amount of smoking. As of January 1, 1980, knowing what they knew or were presumed to know regarding the pathogenic effects of smoking, these people could have quit smoking, which they did not do:

> [833] As for the relative liability of each party, this is a question of fact to be evaluated in light of all the evidence and considering the relative gravity of all the faults, as required by article 1478. In that regard, it is clear that the fault of the Members was essentially stupidity, too often fuelled by the delusion of invincibility that marks our teenage years. That of the Companies, on the other hand, was ruthless disregard for the health of their customers.

[653] We can wonder, however, whether the members of the Blais Class, as of the date determined in the trial judgment, had sufficient knowledge of the safety defect such that they could be blamed with a fault (i.e., the “stupid” recklessness of starting or continuing to smoke after 1976, when it became well known that tobacco can cause various diseases). Because there were two possibilities: either the members had all the information they needed to know what they were getting into (and here we are talking about a level of knowledge, as we saw earlier, equivalent to full acceptance of the risk and renunciation of all recourse), or they did not. In the first case, there could be no shared liability, since the first paragraph of art. 1473 C.C.Q. calls for the complete exoneration of the manufacturer (as claimed by the appellants). In the second case, perhaps liability should not have been apportioned, since no one can be blamed for recklessness when they did not have all the information needed to make an informed decision.

[654] However, is it conceivable that the members of the Class knew enough (or are presumed to have known enough) to be accused of imprudence within the meaning of art. 1477 C.C.Q. (hence an apportionment of liability under art. 1478 C.C.Q.) without this constituting full acceptance of the risk within the meaning of art. 1473 C.C.Q.?

[655] This is a thorny question, which the Court does not deem useful to answer, since the respondents did not appeal the apportionment of liability imposed by the judge.

[656] In summary, with respect to the ground of exoneration raised by the appellants, the Court concludes that:

- the safety defect affecting cigarettes is not apparent;

- the appellants have not demonstrated that the class members had actual knowledge of the morbid and addictive effects of smoking;

- nor did the appellants establish that these effects were so well known that it can be inferred that all members of the Class had knowledge equivalent to

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decision (*Canada (Attorney General) v. JTI-Macdonald Corp.*, 2007 SCC 30, at para. 134 *in fine*).

> informed, full and complete acceptance of the risk and harm associated with using this product well before January 1, 1980. This knowledge was only acquired on March 1, 1996.

[657] However, this determination does not affect the outcome of the appeals. On the one hand, it leads to the result that the judge erroneously achieved by means of the inapplicability of knowledge to the distinct and independent fault allegedly committed by the appellants under art. 1457 C.C.Q. On the other hand, even if we retain the 1966 date, this has no effect on the quantum of compensatory damages awarded by the judge in the absence of a cross-appeal in the case of the Blais Class members. It also has no effect on the punitive damages awarded by the judge.

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C. Summary

[658] In conclusion, and like the trial judge, the Court finds that, during the entire period in question, the appellants failed in their duty to inform users and future users of the dangers and risks of smoking. They are therefore, *a priori*, responsible for the harm that the materialization of this safety defect in the product that they manufactured caused among members of the Class. Having failed to prove that the class members on the relevant dates were aware of this defect or were in a position to be aware of it, or to foresee the harm, the appellants cannot rely on the ground of exoneration set out in the first paragraph of art. 1473 C.C.Q., a ground that is recognized by prior law and which has its equivalent under s. 53 C.P.A.

[659] It remains to be seen whether, as they claim, the appellants can nevertheless deflect this liability by establishing a problem with respect to causation.

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D. Causation

i. General treatment of this issue under common law

[660] The principles of common law are not the only ones likely to apply in this case. This is because, as we will see below, the Quebec legislator has adopted legislation specifically targeting certain remedies related to tobacco products and it explicitly addresses causation. In order to fully understand the legal context of the dispute, it is nevertheless necessary to briefly discuss the various theories of causation developed under common law before focusing on the most distinctive elements of this case.

[661] In Quebec civil law, there are several theories that are both descriptive and normative to address the issue of causation. The main ones, and those on which the commentary focuses the most attention, are those dealing with equivalence of conditions,[629] adequate causation,[630] proximate cause[631] and the reasonable foreseeability of the consequences.[632]

[662] The theory of equivalence of conditions essentially consists in [TRANSLATION] "seeking all the facts, but for the presence of which, the damage would not have occurred."[633] Under this theory, identical causal value is conferred on all the facts necessary for the injury to exist.[634] Therefore, the elements that may have contributed to the injury are not sorted.[635] To establish the cause of harm under this theory is equivalent to identifying all the *sine qua non* conditions for

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629 Baudouin, Deslauriers & Moore, La responsabilité civile, vol. 1, *supra* note 265 at 713, para. 1-669; Frédéric Levesque, *Précis de droit québécois des obligations: contrat, responsabilité, exécution et extinction* (Cowansville, Qc.: Yvon Blais, 2014) at 242–243, paras. 464–466; Tancelin, *supra*, note 382 at 564–565, paras. 787–790; Centre de recherche en droit privé et comparé du Québec (ed.), *Dictionnaire de droit privé et lexiques bilingues: Les obligations* (Cowansville, Qc.: Yvon Blais, 2003), *sub verbo* "causalité"; Pierre Deschamps, "Conditions générales de la responsabilité civile du fait personnel" in *École du Barreau, Collection de droit 2018-2019*, vol. 5 "Responsabilité" (Montreal: Yvon Blais, 2018) at 43.

630 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 713, para. 1-669; Levesque, *supra* note 629 at 242–243, paras. 464–466; Patrice Deslauriers, "Injury, Causation, and Means of Exoneration" in Aline Grenon and Louise Bélanger-Hardy (eds.), *Elements of Quebec Civil Law: A Comparison with the Common Law of Canada* (Toronto: Thomson Carswell, 2008) at 418; Centre de recherche en droit privé et comparé du Québec, *supra* note 629, *sub verbo* "causalité"; Deschamps, *supra* note 629 at 43–44.

631 Karim, *Les obligations*, vol. 1, *supra*, note 389 at 1212, para. 2839; Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 713, paras. 1-669; Tancelin, *supra* note 382 at 564–565, paras. 787–790; Centre de recherche en droit privé et comparé du Québec, *supra* note 629, *sub verbo* "causalité"; Deschamps, *supra* note 629 at 42–43.

632 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 713, para. 1-669; Karim, *Les obligations*, vol. 1, *supra* note 389 at 1212, para. 2839; Deslauriers, *supra* note 630 at 418; Deschamps, *supra* note 629 at 44.

633 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 714, para. 1-670.

634 Centre de recherche en droit privé et comparé du Québec, *supra* note 629, *sub verbo* "Equivalence of Conditions".

635 Deschamps, *supra* note 629 at 43. See also Lara Khoury, *Uncertain Causation in Medical Liability*, Collection Minerve (Cowansville, Qc.: Yvon Blais, 2006) at 18.

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it to occur.[636]

[663] Unlike the previous theory, the doctrine of adequate causation calls for a selection, among all the circumstances, behaviours, or events that may have led to the injury.[637] Adequate causation attempts to distinguish the true cause of the harm from the mere occasion of its occurrence or the circumstances that coincided with it.[638] Originating [TRANSLATION] "from the desire to find a criterion making it possible to discriminate among all the *sine qua non* conditions"[639] of the harm, this theory relies, according to some, on the criterion of the objective possibility of the result, or, according to others, on the criterion of usual experience.[640] Under the first criterion, sufficient cause is [TRANSLATION] "the event which, by its mere existence, objectively makes it possible for the damage to occur;"[641] under the second criterion, it is [TRANSLATION] "the fact which, in the ordinary course of events, substantially increases the possibility [of it]."[642]

[664] Even more selective than the theory of adequate causation, the theory of proximate cause [TRANSLATION] "retains only the cause immediately preceding the injury as its real cause."[643] With much support in the common law,[644] this theory distinguishes among all the adequate causes to retain only [TRANSLATION] "the event that occurred last in time and which, by itself, could objectively be sufficient to produce all of the damage."[645]

[665] The theory of reasonable foreseeability of the consequences, on the other hand, [TRANSLATION] "accepts a causal relationship between the fault and the injury, when the injury caused was normally foreseeable for the party."[646] Originating in Anglo-American law, this theory allows, in certain circumstances, "the exclusion of unusual or uncommon damages that are of exceptional gravity in relation to the fault."[647]

[666] In general, Quebec courts find that causation exists when it is shown that the damage is the logical, direct and immediate consequence[648] of the fault.[649] This understanding of causation

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636 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 714, para. 1-670; Deschamps, *supra* note 629 at 43.

637 Deschamps, *supra* note 629 at 43.

638 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 714−715, para. 1-672; Levesque, *supra* note 629 at 242, para. 464; Centre de recherche en droit privé et comparé du Québec, *supra* note 629, *sub verbo* "causalité adequate"; Deschamps, *supra* note 629 at 43.

639 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 715, para. 1-672.

640 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 715, para. 1-672; Deschamps, *supra* note 629 at 43−44.

641 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 715, para. 1-672.

642 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 715, para. 1-672. See e.g., Tancelin, *supra* note 382 at 564, para. 789; Centre de recherche en droit privé et comparé du Québec, *supra* note 629, *sub verbo* "causalité adequate".

643 Centre de recherche en droit privé et comparé du Québec, *supra* note 629, *sub verbo* "causalité immédiate". See also Tancelin, *supra* note 382 at 565, para. 790.

644 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 715, para. 1-674.

645 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 715, para. 1-674.

646 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 716, para. 1-675.

647 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 717 para. 1-676.

648 See art. 1607 C.C.Q. This provision is applied both in terms of non-contractual and contractual liability. See, for example, *Videotron, s.e.n.c. c. Bell ExpressVu, l.p.*, 2015 QCCA 422 at para. 81; Baudouin,

is most often reflected in the dismissal of theories of equivalence of conditions and proximate cause[650] The theory of reasonable foreseeability of the consequences is sometimes applied in conjunction with the theory of adequate causation, but adequate causation is more widely used in the case law.[651]

[667] In comparison, in the common law provinces, the causation test most frequently used is the "but for" test).[652] This test is an application of the theory of equivalence of conditions.[653] We must therefore ask ourselves whether, but for the fault of the defendant, would the damage have

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Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 374, para. 1-333.

649 *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Centre)*, 2015 SCC 39 at para. 50, citing with approval: Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 720, para. 1-683. See also *Roberge v. Bolduc*,[1991] 1 S.C.R. 374; *Site touristique Chute à l'ours de Normandin inc. c. Nguyen (Succession de)*, 2015 QCCA 924 at para. 57; *Fédération des médecins spécialistes du Québec c. Conseil pour la protection des malades*, 2014 QCCA 459 at para. 139; *Wightman v. Widdrington (Estate of)*, 2013 QCCA 1187 at para. 243; *Syndicat des cols bleus regroupés de Montréal (CUPE, section locale 301) v. Coll*, 2009 QCCA 708 at para. 78; *Bourque c. Hétu*, [1992] R.J.Q. 960 (C.A.); Karim, *Les obligations*, vol. 1, supra note 389 at 1215, para. 2849; Tancelin, supra note 382 at 565, para. 791Centre de recherche en droit privé et comparé du Québec, *supra* note 629, *sub verbo* "causalité"; Nadeau & Nadeau, *supra* note 223 at para. 652.

650 Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 720−722 para. 1-683; Levesque, *supra* note 629 at 242−243, paras. 464−466; Tancelin, *supra* note 382 at 566, para. 794; Centre de recherche en droit privé et comparé du Québec, *supra* note 629, *sub verbo* "causalité immédiate".

651 *Laferrière v. Lawson*, [1991] 1 S.C.R. 541 at 602; Baudouin, Deslauriers & Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 720−721, para. 1-683; Levesque, *supra* note 629 at 242, para. 464; Tancelin, *supra* note 382 at 565, para. 791; Deschamps, *supra* note 629 at 45; Khoury, *Uncertain Causation*, *supra* note 635 at 27; Centre de recherche en droit privé et comparé du Québec, *supra* note 629, *sub verbo* "causalité adéquate". See e.g.,, *Crevette du Nord Atlantique inc. v. Conseil de la Première Nation malécite de Viger*, 2012 QCCA 7 at para. 93, leave to appeal to SCC refused, 34713 (19 July 2012); *Laval (Ville de) (Service de protection des citoyens, département de police et centre d'appels d'urgence 911) c. Ducharme*, 2012 QCCA 2122 at paras. 156−157; *Provencher c. Lallier*, 2006 QCCA 1087 at para. 40; *Viel c. Entreprises immobilières du terroir Ltée.*, [2002] R.R.A. 317 (C.A.) at paras. 77−80; *Chouinard c. Robbins*, [2002] R.J.Q. 60 (C.A.) at paras. 33−34; *Caneric Properties Inc. c. Allstate compagnie d'assurance*, [1995] R.R.A. 296 (C.A.).

652 See e.g., *Ediger v. Johnston*, 2013 SCC 18 at para. 28; *Clements v. Clements*, 2012 SCC 32 at paras. 8 and 13; *Fullowka v. Pinkerton's of Canada Ltd.*, 2010 SCC 5; *Resurfice Corp. v. Hanke*, 2007 SCC 7 at paras. 21−22; *Blackwater v. Plint*, 2005 SCC 58 at para. 78; *Athey v. Leonati*, [1996] 3 S.C.R. 458; *Snell v. Farrell*, [1990] 2 S.C.R. 311; *Horsley v. MacLaren*, [1972] S.C.R. 441; Philip H. Osborne, *The Law of Torts*, 5th ed., Collection "Essentials of Canadian Law" (Toronto, Irwin Law: 2015) at 54; Lara Khoury, "The Canadian, English and Australian Judge in the Face of Causal Uncertainty in Medical Liability" (2014) 594 McGill L.J. 989 at 994 and 1002; Erik S. Knutsen, "Coping with Complex Causation Information in Personal Injury Cases" (2013) 41 Adv. Q. 149; David Cheifetz, "The Snell Inference and Material Contribution: Defining the Indefinable and Hunting the Causative Shark" (2005) 30:1 Adv. Q. 1; Louise Bélanger-Hardy, "Les délits", in Aline Grenon & Louise Bélanger-Hardy, eds., *Elements of Québec Civil Law: A Comparison with the Common Law of Canada* (Toronto, Thomson Carswell: 2008) at 396.

653 Lara Khoury, Uncertain Causation in Medical Liability, Collection Minerve (Cowansville, Qc.: Yvon Blais, 2006) at 18 [Uncertain Causation].

occurred.[654] If it is established that the damage would have occurred even in the absence of the defendant's fault, the defendant cannot be held liable.[655]

[668] Exceptionally, and in the presence of specific conditions, Canadian common law courts are prepared to mitigate the rigour of this test by replacing it with the "material contribution test." In *Resurfice Corp. v. Hanke,* Chief Justice McLachlin wrote:[656]

> Broadly speaking, the cases in which the "material contribution" test is properly applied involve two requirements.First, it must be impossible for the plaintiff to prove that the defendant's negligence caused the plaintiff's injury using the "but for" test. The impossibility must be due to factors that are outside of the plaintiff's control; for example, current limits of scientific knowledge. Second, it must be clear that the defendant breached a duty of care owed to the plaintiff, thereby exposing the plaintiff to an unreasonable risk of injury, and the plaintiff must have suffered that form of injury. In other words, the plaintiff's injury must fall within the ambit of the risk created by the defendant's breach.

[669] More recently in *Clements v. Clements*, the Chief Justice revisited the pre-eminence of the "but for" test of causation – the nine judges of the Court were unanimous on this point – while making the following clarifications:[657]

> [43] It is important to reaffirm that in the usual case of multiple agents or actors, the traditional "but for" test still applies. The question, as discussed earlier, is whether the plaintiff has shown that the negligence of one or more of the defendants was a necessary cause of the injury. Degrees of fault are reflected in calculations made under contributory negligence legislation. By contrast, the material contribution to risk approach applies where "but for" causation cannot be proven against any of multiple defendants, all negligent in a manner that might have in fact caused the plaintiff's injury, because each can use a "point the finger" strategy to preclude a finding of causation on a balance of probabilities.
>
> [44] This is not to say that new situations will not raise new considerations. I leave for another day, for example, the scenario that might arise in mass toxic tort litigation with multiple plaintiffs, where it is established statistically that the defendant's acts induced an injury on some members of the group, but it is impossible to know which ones.

[670] These nuances are important because, as discussed below, Legislative Assembly of

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654 *Ediger v. Johnston,* 2013 SCC 18 at para. 28*; Clements v. Clements,* 2012 SCC 32 at para. 8; *Blackwater v. Plint,* 2005 SCC 58 at para. 78; P. H. Osborne, *supra* note 652 at 54.

655 In this sense, the criterion of the but for test can be described as "very narrow inquiry surgically aimed at the defendant's breach of the standard of care as" a "potential cause of some harm. (E. S. Knutsen, supra, note 652, 151). See also Allen M. Linden & Bruce Feldthusen, Canadian Tort Law, 10th ed., Markham, ON, LexisNexis, 2015, p. 126. As one author remarks: "The test is grammatically awkward but it does have the merit of focusing on the defendant's role in producing damage to the exclusion of other legal extraneous causes. (Osborne, supra, note 652, 54).

656 *Resurfice Corp. v. Hanke*, 2007 SCC 7 at paras. 24 and 25.

657 *Clements v. Clements,* 2012 SCC 32 at paras. 43 and 44.

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British Columbia passed legislation in July 2000 entitled *The Tobacco Damages and Health Care Costs Recovery Act,*[658] from which the Quebec legislator drew inspiration in 2009. However, the repeated use in this law of the words "causes, directly or indirectly" and "causes or contributes to" – words which recall the terminology used in the material contribution to risk approach – seems to indicate an intention to incorporate a more flexible test for causation than the but for test.

[671] To this we must add several important clarifications taken from the Act adopted by the Quebec legislator, like that of several other provinces, to regulate certain legal proceedings related to tobacco products. Before proceeding with this analysis, it is worth recalling the conclusion that the Court came to above in paragraphs [404] *et seq*.: when a manufacturer's liability is triggered under articles 1468 and 1469 C.C.Q., the victim of an injury caused by the safety defect of a product is not required to demonstrate anything other than the causal relationship between the safety defect of that product and the injury. From this perspective, therefore, evidence of "conduct causation" is superfluous. Nevertheless, for the sake of thoroughness, the issue of conduct causation will also be addressed in the following analysis because it has been argued persistently by both sides without the parties questioning the specific scope of articles 1468 and 1469 C.C.Q.

ii. Effect of the *Tobacco-related Damages and Health Care Cost Recovery Act*

[672] The T.R.D.A. came into effect on June 19, 2009. It is well known that it is modeled on British Columbia's *Tobacco Damages and Health Care Costs Recovery Act*. Both Acts have been the subject of constitutional challenges before the courts. In both cases, the validity of the Act was upheld – by the Supreme Court of Canada with respect to the British Columbia law (*British Colombia v. Imperial Tobacco Canada Ltd*[659]) and by the Quebec Court of Appeal with respect to the T.R.D.A. (*Imperial Tobacco Canada Ltd. v. Québec (Procureure générale).*[660]

[673] In this case, the trial judge, ruling on the applicability and scope of the T.R.D.A., found that the Act applied to the actions before him and that by virtue of section 15, the Act allowed the Respondents to provide epidemiological or statistical evidence of (individual) medical causation and (individual) conduct causation.

a. The apparent scope of the T.R.D.A.

[674] Like the Act on which it is based, the T.R.D.A. enacted a number of rules that derogate from the general law, in particular with respect to the extinctive prescription period applicable to actions against tobacco manufacturers and with respect to various presumptions that may be invoked in some of these actions. The T.R.D.A. exists in a particular context, that of the civil law in force in Quebec. It is not identical to the *Tobacco Damages and Health Care Costs Recovery Act*, as the Quebec legislature included a few additional important details. The T.R.D.A. must be

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658 *Tobacco Damages and Health Care Costs Recovery Act*, S.B.C. 2000, c. 30.

659 *British Columbia v. Imperial Tobacco Canada Ltd.,* 2005 SCC 49.

660 *Imperial Tobacco Canada Ltd. v. Québec (Procureure générale),* 2015 QCCA 1554, leave to appeal to SCC refused, 36741 (5 May 2016).

interpreted accordingly.

[675] A close reading of the T.R.D.A. is necessary to fully understand its impact on this dispute. The provisions cited below are the most immediately relevant and help identify what appears to be the intentional scope of this legislation.

[676] As of the first section, the legislature announces its intentions. The Act deals with health and smoking. We see that the legislator establishes specific rules to facilitate government recovery through the courts of the cost of health care resulting from a fault committed by tobacco manufacturers. i.e., a breach of one of their obligations, but also that it wishes to make “certain of these rules” applicable to actions for damages related to tobacco that are brought by others than the government.

CHAPTER I PURPOSE AND DEFINITIONS	**CHAPITRE I** OBJETS ET DÉFINITIONS
1. The purpose of this Act is to establish specific rules for the recovery of tobacco-related health care costs attributable to a wrong committed by one or more tobacco product manufacturers, in particular to allow the recovery of those costs regardless of when the wrong was committed.	**1.** La présente loi vise à établir des règles particulières adaptées au recouvrement du coût des soins de santé liés au tabac attribuable à la faute d'un ou de plusieurs fabricants de produits du tabac, notamment pour permettre le recouvrement de ce coût quel que soit le moment où cette faute a été commise.
It also seeks to make certain of those rules applicable to the recovery of damages for an injury attributable to a wrong committed by one or more of those manufacturers	Elle vise également à rendre certaines de ces règles applicables au recouvrement de dommages-intérêts pour la réparation d'un préjudice attribuable à la faute d'un ou de plusieurs de ces fabricants.

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[677] The foregoing serves as a sort of forward to some specific rules, the meaning and scope of which cannot be misunderstood. The legislator uses a double reference within the same Act. For the purposes of analysis of these appeals, the starting point is section 25.

25. Despite any incompatible provision, the rules of Chapter II relating to actions brought on an individual basis apply, with the necessary modifications, to an action brought by a person or the person's heirs or other successors for recovery of damages for any tobacco-related injury, including any health care costs, caused or contributed to by a tobacco-related wrong committed in Québec by one or more tobacco product manufacturers. Those rules also apply to any class action based on the recovery of damages for the injury.	**25.** Nonobstant toute disposition contraire, les règles du chapitre II relatives à l'action prise sur une base individuelle s'appliquent, compte tenu des adaptations nécessaires, à toute action prise par une personne, ses héritiers ou autres ayants cause pour le recouvrement de dommages-intérêts en réparation de tout préjudice lié au tabac, y compris le coût de soins de santé s'il en est, causé ou occasionné par la faute, commise au Québec, d'un ou de plusieurs fabricants de produits du tabac. Ces règles s'appliquent, de même, à toute action collective pour le recouvrement de dommages-intérêts en réparation d'un tel préjudice.

[Emphasis added.]

[678] There can be no doubt that the two class actions decided by the trial judge are, within the meaning of this article, "class action[s] based on the recovery of damages for [a tobacco-related] injury." If we refer to Chapter II of the T.R.D.A. (entitled "RECOVERY OF TOBACCO-RELATED HEALTH CARE COSTS"), we note that the "rules ... relating to actions brought on an individual basis" mentioned in section 25 are all set out in §3 '"Special provisions for an action brought on an individual basis" of Division II ("EXERCISING RIGHT OF RECOVERY"), which encompasses sections 22, 23 and 24 T.R.D.A.

[679] The first reference is found in section 25. Section 24, included in §3 described above, makes a second reference. It specifies the following:

24. The provisions of section 15 that relate to the establishment of causation between alleged facts and to proof of health care costs are applicable to actions brought on an individual basis.	**24.** Les dispositions de l'article 15, relatives à la preuve du lien de causalité existant entre des faits allégués et à la preuve du coût des soins de santé, sont applicables à l'action prise sur une base individuelle.

[Emphasis added.]

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[680] We must therefore deduce from the above that the effect of the double reference is as follows: section 25 refers to section 24, which itself refers to section 15, thereby making "'the provisions … relate(ing) to the establishment of causation between alleged facts"' applicable in the context of a class action for the recovery of damages.

[681] But what are these provisions that the relevant part of section 15 refers to? Here is what it says:

> **15.** In an action brought on a collective basis, proof of causation between alleged facts, in particular between the defendant's wrong or failure and the health care costs whose recovery is being sought, or between exposure to a tobacco product and the disease suffered by, or the general deterioration of health of, the recipients of that health care, may be established on the sole basis of statistical information or information derived from epidemiological, sociological or any other relevant studies, including information derived from a sampling.
>
> **15.** Dans une action prise sur une base collective, la preuve du lien de causalité existant entre des faits qui y sont allégués, notamment entre la faute ou le manquement d'un défendeur et le coût des soins de santé dont le recouvrement est demandé, ou entre l'exposition à un produit du tabac et la maladie ou la détérioration générale de l'état de santé des bénéficiaires de ces soins, peut être établie sur le seul fondement de renseignements statistiques ou tirés d'études épidémiologiques, d'études sociologiques ou de toutes autres études pertinentes, y compris les renseignements obtenus par un échantillonnage.

[682] Section 25 is explicit and provides that the double reference referred to above must apply "'with the necessary modifications." What are these modifications?

[683] With the modifications required, section15 necessarily means that in actions such as those that were before the Superior Court, evidence of causation between the facts alleged therein, such as the fault or failure of a defendant and tobacco-related harm, can be established on the sole basis of statistical information or information derived from epidemiological, sociological or any other relevant studies, including information derived from a sampling.

[684] The specific wording of this section calls for some additional comments. It states that proof of causation between alleged facts in a class action of this type, "in <u>particular</u>" the causation between "'<u>alleged facts</u>" can be made in various ways. It can be established "<u>on the sole basis of statistical information</u> or information derived from epidemiological, sociological or <u>any other relevant studies</u>."' And where such studies are relevant, this same proof can also be established "'<u>on the sole basis</u>"' of any other information (this is the meaning of the word "including") "<u>derived from a sampling.</u>" It is useful to draw attention to one thing: the words "<u>alleged facts</u>"' and "<u>on the sole basis</u>"' do not have a counterpart in the British Columbia legislation, which is reproduced in full in the appendix in *British Columbia* v. *Imperial Tobacco*

Canada Ltd.[661] Such differences are significant.[662]

[685] The above reading, which scrupulously follows the letter of the law, highlights the very general scope of the rule. In addition, the legislator took the trouble to add the following provision further on.

30. This Act may not be interpreted as preventing rules similar to those provided in the Act with respect to an action brought by the Government on a collective basis from being applied in a class action brought to recover damages for tobacco-related injuries.	**30.** Les dispositions de la présente loi ne peuvent être interprétées comme faisant obstacle à ce que des règles similaires à celles qui y sont prévues pour l'action prise sur une base collective par le gouvernement soient admises dans le cadre d'une action collective prise pour le recouvrement de dommages-intérêts en réparation de préjudices liés au tabac.

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661 *British Columbia v. Imperial Tobacco Canada Ltd.,* 2005 SCC 49.

662 Another comparable law, the *Tobacco Damages and Health Care Costs Recovery Act*, S.O. 2009, c. 13, is also devoid of the words "on the sole basis of." This is what makes Prof. Khoury say that [TRANSLATION] "the Quebec legislation goes much further" than that of other provinces (Lara Khoury, "Compromis et transpositions libres dans les législations permettant le recouvrement du coût des soins de santé auprès de l'industrie du tabac" (2013) 43 RDUS 1 at 16.

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[686] By this, it points out that once the modifications have been made by the T.R.D.A., the general rules of civil liability, including through incremental changes in the case law, remain the reference in a class action for damages. This obviously does not exclude the possibility that the general law may evolve in accordance with that Act and that evidence of this same kind may be admitted in a class action.[663]

b. The appellants' critique of the scope of section 15 T.R.D.A.

[687] The appellants all argued that the respondents did not discharge their burden of proof with respect to causation. Before considering this aspect of the matter, however, it should be noted that the appellant RBH went further and also argued that the trial judge erred in law by interpreting the T.R.D.A. as he did. In their arguments, the appellants ITL and JTM state that they share RBH's view in this respect.

[688] According to RBH, a joint reading of section 15 and certain other provisions of the T.R.D.A. inexorably leads to the conclusion that the respondents, in several respects, failed to discharge their burden of proof. By its nature, the evidence that they adduced are powerless in law to establish either medical causation or conduct causation for the members of the Blais and Létourneau Classes. To support these claims RBH relies primarily on paragraphs 16(2) and 17(2) of the T.R.D.A. Let us reproduce sections 16 and 17 in their entirety as well as the other related provisions of section 15, which seem likely to shed light on the scope of the latter section:

13. If the Government brings an action on a collective basis, it is not required to identify particular health care recipients individually or prove the cause of the disease suffered by, or the general deterioration of health of, a particular health care recipient or the portion of the health care costs incurred for such a recipient.	**13.** S'il prend action sur une base collective, le gouvernement n'a pas à identifier individuellement des bénéficiaires déterminés de soins de santé, non plus qu'à faire la preuve ni de la cause de la maladie ou de la détérioration générale de l'état de santé affectant un bénéficiaire déterminé de ces soins, ni de la part du coût des soins de santé afférente à un tel bénéficiaire.
Moreover, no one may be compelled in such an action	En outre, nul ne peut, dans une telle action, être contraint:
(1) to answer questions on the health of, or the health care provided to, particular health care recipients; or	1° de répondre à des questions sur l'état de santé de bénéficiaires déterminés de soins de santé ou sur les soins de santé qui leur ont été

[663] See *Clements v. Clements*, 2012 SCC 32 at para. 44.

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prodigués;

(2) to produce the medical records and documents of, or the documents related to health care provided to, particular health care recipients, except as provided by a law, rule of law or court or tribunal regulation that requires the production of documents relied on by an expert witness.

2° de produire les dossiers et documents médicaux concernant des bénéficiaires déterminés de soins de santé ou les documents se rapportant aux soins de santé qui leur ont été prodigués, sauf dans la mesure prévue par une loi, une règle de droit ou un règlement du tribunal exigeant la production de documents sur lesquels se fonde un témoin expert.

14. Despite the second paragraph of section 13, the court may, at the request of a defendant, order the production of statistically meaningful samples of records and documents concerning, or relating to health care provided to, particular health care recipients.

14. Nonobstant le deuxième alinéa de l'article 13, le tribunal peut, à la demande d'un défendeur, ordonner la production d'échantillons statistiquement significatifs des dossiers ou documents concernant des bénéficiaires déterminés de soins de santé ou se rapportant aux soins de santé qui leur ont été prodigués.

In that case, the court determines conditions for the sampling and for the communication of information contained in the samples, specifying, among other things, what kind of information may be disclosed.

Le tribunal fixe, le cas échéant, les conditions de l'échantillonnage et de la communication des renseignements contenus dans les échantillons, en précisant notamment la nature des renseignements qui pourront ainsi être divulgués.

The identity of, or identifying information with respect to, the particular health care recipients concerned by the court order may not be disclosed. Moreover, no record or document concerning, or relating to health care provided to, particular health care recipients may be produced under the order unless any information they contain that reveals or may be used to trace the identity of the recipients has been deleted or

L'identité des bénéficiaires déterminés de soins de santé visés par l'ordonnance du tribunal ne peut être divulguée, non plus que les renseignements permettant de les identifier. En outre, aucun dossier ou document concernant des bénéficiaires déterminés de soins de santé ou se rapportant aux soins de santé qui leur ont été prodigués ne peut être produit en exécution de cette ordonnance sans que les rensei-

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blanked out.

gnements identifiant ou permettant d'identifier ces bénéficiaires en aient été extraits ou masqués au préalable.

16. For a defendant who is a party to an action brought on a collective basis to be held liable, the Government must prove, with respect to a type of tobacco product involved in the action, that

16. Pour que la responsabilité d'un défendeur partie à une action prise sur une base collective soit engagée, le gouvernement doit faire la preuve, relativement à une catégorie de produits du tabac visée par l'action:

(1) the defendant failed in the duty to abide by the rules of conduct, to which the defendant is bound in the circumstances and according to usage or law, in respect of persons in Québec who have been or might become exposed to the type of tobacco product;

1° que le défendeur a manqué au devoir de respecter les règles de conduite qui, suivant les circonstances, les usages ou la loi, s'imposaient à lui envers les personnes du Québec qui ont été exposées à la catégorie de produits du tabac ou pourraient y être exposées;

(2) exposure to the type of tobacco product may cause or contribute to a disease or the general deterioration of a person's health; and

2° que l'exposition à la catégorie de produits du tabac peut causer ou contribuer à causer la maladie ou la détérioration générale de l'état de santé d'une personne;

(3) the type of tobacco product manufactured by the defendant was offered for sale in Québec during all or part of the period of the failure.

3° que la catégorie de produits du tabac fabriqués par le défendeur a été offerte en vente au Québec pendant tout ou partie de la période où il a manqué à son devoir.

17. If the Government establishes the elements of proof required under section 16, the court presumes

17. Si le gouvernement satisfait aux exigences de preuve prévues à l'article 16, le tribunal présume:

(1) that the persons who were exposed to the type of tobacco product manufactured by the defendant would not have been exposed had the

1° que les personnes qui ont été exposées à la catégorie de produits du tabac fabriqués par le défendeur n'y auraient pas été exposées n'eût été son manquement;

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defendant not failed in its duty; and

(2) that the exposure to the type of tobacco product manufactured by the defendant caused or contributed to the disease or general deterioration of health, or the risk of disease or general deterioration of health, of a number of persons who were exposed to that type of product.

2° que l'exposition à la catégorie de produits du tabac fabriqués par le défendeur a causé ou a contribué à causer la maladie ou la détérioration générale de l'état de santé, ou le risque d'une maladie ou d'une telle détérioration, pour une partie des personnes qui ont été exposées à cette catégorie de produits.

18. When the presumptions set out in section 17 apply, the court sets the cost of all the health care required following exposure to the category of tobacco products involved in the action and provided after the date of the defendant's first failure.

18. Lorsque les présomptions visées à l'article 17 s'appliquent, le tribunal fixe le coût afférent à tous les soins de santé résultant de l'exposition à la catégorie de produits du tabac visée par l'action qui ont été prodigués postérieurement à la date du premier manquement du défendeur.

Each defendant to whom the presumptions apply is liable for the costs in proportion to its market share in the type of product involved. That share, determined by the court, is equal to the relation between

Chaque défendeur auquel s'appliquent ces présomptions est responsable de ce coût en proportion de sa part de marché de la catégorie de produits visée. Cette part, déterminée par le tribunal, est égale au rapport existant entre l'un et l'autre des éléments suivants:

(1) the quantity of tobacco products of the type involved in the action that were manufactured by the defendant and that were sold in Québec between the date of the defendant's first failure and the date of the action; and

1° la quantité de produits du tabac appartenant à la catégorie visée par l'action fabriqués par le défendeur qui ont été vendus au Québec entre la date de son premier manquement et la date de l'action ;

(2) the total quantity of tobacco products of the type involved in

2° la quantité totale de produits du tabac appartenant à la catégorie

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the action that were manufactured by all the manufacturers of those products and that were sold in Québec between the date of the defendant's first failure and the date of the action.	visée par l'action fabriqués par l'ensemble des fabricants de ces produits qui ont été vendus au Québec entre la date du premier manquement du défendeur et la date de l'action.
19. The court may reduce the amount of the health care costs for which a defendant is liable or adjust among the defendants their share of responsibility for the health care costs if one of the defendants proves either that its failure did not cause or contribute to the exposure of the persons in Québec who were exposed to the type of product involved in the action, or that its failure did not cause or contribute to the disease suffered by, or the general deterioration of health of, a number of those persons, or cause or contribute to the risk of such a disease or such deterioration.	**19.** Le tribunal peut réduire le montant du coût des soins de santé auquel un défendeur est tenu ou rajuster entre les défendeurs leur part de responsabilité relativement au coût des soins de santé si l'un des défendeurs prouve soit que son manquement n'a ni causé ni contribué à causer l'exposition des personnes du Québec qui ont été exposées à la catégorie de produits visée par l'action, soit que son manquement n'a ni causé ni contribué à causer la maladie ou la détérioration générale de l'état de santé, ou le risque d'une maladie ou d'une telle détérioration, pour une partie de ces personnes.

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[689] RBH, we should repeat, bases its reasoning first on subsections 16(2) and 17(2) of the T.R.D.A. It is clear, according to RBH, that for a defendant's liability to be triggered in a class action, the government must, under subsection 16(2), prove *general* medical causation ("... may cause or contribute to a disease or the general deterioration of a person's health"). The methods of proof contemplated in section 15 can therefore only serve to provide evidence under section 16(2), i.e., proof of general medical causation and nothing else.

[690] In the same vein, RBH then argues that, if the government discharges the burden imposed on it by subsection 16(2), then section 17 should apply. Its second paragraph prescribes what the Court must presume, namely that exposure to certain tobacco products "caused or contributed to ... of a number of persons who were exposed to [it]" the health problems mentioned − which necessarily means *specific or individual* causation.

[691] In other words, according to RBH, section 15 serves to establish *general* medical causation (exposure to tobacco products is harmful to health) for which subsection 16(2) requires proof from the government. However, the same section 15 cannot be used to establish *specific* causation (i.e., exposure to tobacco products is the cause of a particular person's health problems) since this evidence would be superfluous: indeed, in accordance with subsection 17(2), specific causation would be presumed once proof of general causation has been provided by the government.

[692] In addition, according to RBH, the interpretation adopted by the judge violates certain other provisions of the T.R.D.A. The argument is expressed in these terms:[664]

> [The trial judge's] interpretation of s. 15 would effectively read ss. 18 and 19 out of the TRDA as well. Under those sections, the defendant in a collective recovery action by the government may rebut the s. 17 presumption of specific causation with proof that its fault did not cause the disease of some or all the persons whose medical costs the province seeks to recover. But the Trial Judge interpreted s. 15 to permit epidemiology to establish *conclusive* proof that smoking caused all class members' diseases, with no rebuttal as to other possible causes.

[693] This reading of the law, which is shared by all appellants, distorts its true scope.

[694] First, it is important to understand the effect of ss. 13 and 14 T.R.D.A. These two sections, like the following seven, make up § 2 ("Special provisions for an action brought on a collective basis") of the section concerning the government's right to recovery. They are used to define what constitutes and what may be covered by "collective action" by the government to recover healthcare costs as defined in section 10.

[695] Section 13 states a general principle and indicates in its first paragraph what is excluded from the judicial debate in the course of a class action: it cannot concern the particular situation of the specific beneficiaries of healthcare. Therefore, the identity of each beneficiary, the cause and development of his or her individual state of health, the specific care provided to him or her and the costs attributed to that care are irrelevant. What matters is a set or class of beneficiaries,

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[664] RBH's plan of argument at para. 119.

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considered collectively because of common characteristics, hence the qualification of “an action brought on a collective basis.” The government’s right of recovery is not related to the right of some beneficiaries to claim damages from tobacco manufacturers. That is why the second paragraph of section 9 T.R.D.A. specifies that the right of recovery “is not a subrogated right” and does not deprive the beneficiaries of the possibility of exercising their own remedies for their own damages. Admittedly, the second paragraph of section 13, in subparagraph 2, allows for particular medical information at the level of individual healthcare recipients, but in a very limited way, under distinct rules, foreign to the T.R.D.A., according to which an expert could be forced to disclose the documents used to produce his expert report.

[696] Section 14 significantly reinforces the idea that only the general situation of a group or class of beneficiaries considered collectively counts here. At the outset, it refers to “statistically meaningful samples” of records and documents relating to particular healthcare recipients. With respect to this information, the Court “determines the conditions for the sampling,” and the conditions for the communication of information contained in the documents. The T.R.D.A. also provides, in the third paragraph of section 14, that when the individual files are used to build a statistically meaningful sample, the identity of the healthcare recipients in those records, as well as any “information they contain that reveals ... the identity” of the recipients, must be rigorously purged.

[697] It is difficult to see, in these circumstances, how any genetic, behavioural or other characteristic specific to a particular beneficiary could be evidence in defence when the government is exercising the right of recovery. The debate must be conducted at the level of the target class, a comparable and representative class, or a representative subset of one of them, and can therefore only be done using collective data, which is exactly what section 15 of the T.R.D.A. covers, among other things.

[698] The double reference by which the legislator makes section 15 applicable to “any class action based on the recovery of damages for the [tobacco-related] injury” is a reference to section 15 and section 15 alone. It is not an additional or incidental reference to sections 16 to 19 since, obviously, no member of a class bringing such a class action holds the government’s right of recovery under section 9. The appellants, through RBH, argue that the evidence required from the government under subsection 16(2) is evidence of *general* medical causation. Once this proof has been established by the government in accordance with section 15, the la presumption of subsection 17(2) exempts the government from the requirement to prove *specific* medical causation. It should therefore be inferred from the foregoing that the object of the methods of proof listed in section 15 can only be general medical causation.

[699] In arguing thus, the appellants add an element to section 15 that is not there. In section 15, like section 24, it is a matter of “proof of causation between alleged facts.” These provisions make no distinction between the medical or conduct aspects of causation considered at the general or individual level: section 15 deals with proof of causation, a notion undertaken with its full singularity. There is therefore an inconsistency in the reasoning proposed by the appellants. Admittedly, the government, in the exercise of its right of recovery on a collective basis, benefits from a presumption that renders proof of specific causation superfluous by means of the particular methods of proof under section 15. But this in no way implies that, when a party other than the government brings a class action for tobacco-related harm, it must be deprived, on the pretext that it does not enjoy the same presumption of the government, of the ability to prove

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causation in all its aspects by the methods of proof that section 15 authorizes. The appellants' conclusion ("section 15 only refers to general medical causation") does not derive in any way from the premises they formulate ("only proof of general medical causation is required of the government under section 16, and this proof gives rise to presumption of specific medical causation in favor of the government under section 17.")

[700] Pushing this argument further, the appellant RBH also claims that the trial judge's finding on the meaning of section 15 "would effectively read ss. 18 and 19 out of the T.R.D.A. as well."[665] In reality, this is not the case, for the following reasons.

[701] All the provisions of § 2 (entitled, once again, "Special provisions for an action brought on a collective basis") must be understood in a way that is consistent with the first paragraph of section 13, with which those provisions must be compatible. An action "brought on a collective basis" by the government must proceed to a judgment on the merits, regardless of what may be revealed by one or more pieces of evidence relating to a specific healthcare recipient (or a "particular" healthcare recipient, to use the terminology of the Act).

[702] Section 18 sets out the conditions under which the court may fix the cost of healthcare recoverable by the government and prescribes the method to be used to determine the share of liability of each defendant depending on their respective market share. Section 19 authorizes the court to reduce a defendant's share of liability, to adjust the sharing of liability among the defendants, where one of them proves that their alleged fault (i) did not cause or contribute to the exposure to tobacco or (ii) did not cause or contribute to an adverse health effect. It should be noted from a reading of section 19 that again, as in subsection 17(2), the Act is expressed in terms of aggregates of persons ("persons," "a number of persons" and "a number of those persons").

[703] As recently pointed out by Justice Bich on behalf of a unanimous panel of five judges of the Court, legislative debates can provide useful clues as to the scope of legislation. In this regard, she stated:[666]

> [TRANSLATION]
>
> [166] We know that parliamentary debates are an interpretative tool whose use requires some caution, given their nature. We also know that the use of such a tool is not always decisive and cannot contradict an unambiguous text. Nevertheless, the tool has since earned its stripes in the case law, and the Supreme Court itself reiterated this point recently in *Mouvement laïque québécois v. Saguenay (Ville)*, where it stated that such debates (as well as other elements), when they are unambiguous, are part of the indications that allow us to establish the legislator's objective, and therefore its intention.
>
> [Cross-reference omitted]

[704] In this case, section 19 of the T.R.D.A. was the subject of some specific and

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665 RBH's plan of argument at para. 119.

666 *Air Canada c. Québec (Attorney General)*, 2015 QCCA 1789.

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unambiguous comments during the detailed study of the T.R.D.A. by the parliamentary committee (at the time Bill 43).

[705] The clause-by-clause study of Bill 43 took place on June 15, 2009, before the Standing Committee on Social Affairs. Introducing section 19, the Minister of Health and Social Services at the time, Yves Bolduc, first mentioned a minor amendment made at the request of the Barreau du Québec, which does not affect the issue discussed here. He then described the objectives sought by the presumptions in section 17. The Minister was accompanied by Mtre Pierre Charbonneau, a lawyer from the Department of Justice who, throughout the clause-by-clause study of the Bill, provided technical details to the members of the Committee. The debate on section 19, as far as what is relevant here, included the following discussion:[667]

> [TRANSLATION]
>
> **Mr. Bolduc:** Thank you, Mr. Chair. In section 19 of the draft Bill, replace the words "the alleged failure" by the words "its failure", and the words "this failure" by the words "its failure".
>
> The text of the amended Bill, section 19: "The court may reduce the amount of the health care costs for which a defendant is liable or adjust among the defendants their share of responsibility for the health care costs if one of the defendants proves either that its failure did not cause or contribute to the exposure of the persons in Québec who were exposed to the type of product involved in the action, or that its failure did not cause or contribute to the disease suffered by, or the general deterioration of health of, a number of those persons, or cause or contribute to the risk if such a disease or such a deterioration."
>
> Comments. This section properly recognizes the right of any defendant in an action brought on a collective basis to obtain a reduction in the amount of healthcare costs for which it may be held liable if it is able to rebut any of the presumptions of causation provided for in section 17.
>
> In such a case, this section also gives the Court the power to adjust the other defendants' share, if any, of the cost of healthcare for which they are held liable.
>
> **Chair (Mr. Kelley):** So, first, on the amendment, our usual question of omissions. Are there any comments? No. Then, the amendment is passed.
>
> We will now open the floor to a more general discussion on section 19, as amended. The Honourable Member for Hochelaga-Maisonneuve.
>
> **Ms. Poirier:** If I understand correctly, if it is proved that one of the defendants has a lesser involvement, the amount of costs could be reduced. Is that correct?
>
> **Chair (Mr. Kelley)**: Mr. Charbonneau.

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667 Quebec, National Assembly, Standing Committee on Social Affairs, *Journal des débats*, 39-1, vol. 41, No. 37 (June 15, 2009) at 49.

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> **Mr. Charbonneau (Pierre)**: Yes, that's right.
>
> **Ms. Poirier:** I'm trying to understand how we arrive at that.
>
> **Mr. Charbonneau (Pierre):** It could, for example, prove that it did not manufacture those products, except for from this year to that year, or that there was a period where there was no distribution in Quebec for that product, which would reduce its obligation.

[706] On the one hand, it follows from the text of the T.R.D.A. that the presumptions created by section 17 are *juris tantum* presumptions. The use of the word “presumes” in section 17 and the word “deemed” in section 21 shows that the legislator had in mind the distinction drawn by art. 2847 C.C.Q. On the other hand, with respect to the rules applicable in actions taken on a collective basis by the government, the effect of sections 13 and 14 is to considerably limit the type of evidence admissible to trigger the application of section 19. The comments above from the *Journal des débats* provide two illustrations of evidence administered in defence that could have this effect. Medical evidence or conduct evidence on an individual scale cannot be relevant to this debate, and the statistical sampling contemplated in section 14 necessarily goes beyond the scope of evidence targeting specific and identified individuals.

[707] The appellants are therefore correct in characterizing the presumptions set out in section 17 T.R.D.A. as simple presumptions, but for the rest, their claims, as described above in paragraphs [687] to [692] are unfounded. The trial judge could take into account the methods of proof listed in section 15 T.R.D.A. to determine, on the one hand, the alleged causation between the appellants’ fault and the likely conduct of the members of the Blais and Létourneau Classes, and, on the other hand, the alleged causation between cigarette consumption and the diseases contracted by these members, or their tobacco dependence.

[708] Moreover, it would be surprising, to say the least, if the sole intention of the legislator in adopting the T.R.D.A., and, more specifically, section 15 of the Act was to facilitate proof of general medical causation in litigation involving tobacco products. The T.R.D.A. received royal assent on June 19, 2009. At that time, it was common knowledge that tobacco is very harmful to health and that its consumption is highly addictive. Thus, and as an example among others, almost two years to the day before the adoption of the T.R.D.A. by the National Assembly, Chief Justice McLachlin wrote the following in a unanimous decision of the nine members of the Supreme Court of Canada:[668]

> Parliament was assisted in its efforts to craft and justify appropriately tailored controls on tobacco advertising and promotion by increased understanding of the means by which tobacco manufacturers seek to advertise and promote their products and by new scientific insights into the nature of tobacco addiction and its

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[668] *Canada (Attorney General) v.* JTI-Macdonald Corp., 2007 SCC 30 at para. 9. Already in 1995, in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 at para. 116, in a case concerning the constitutionality of the *Tobacco Products Control Act*, SC 1988, c. 20, La Forest J. observed: “The appellants are large corporations selling a product for profit which, on the basis of overwhelming evidence, is dangerous.” It is true that this remark appears in the dissenting reasons of Justices L'Heureux-Dubé, Gonthier and Cory regarding the validity of the Act under section 1 of the *Canadian Charter.*

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> consequences. On the findings of the trial judge in the present case, tobacco is now irrefutably accepted as highly addictive and as imposing huge personal and social costs. We now know that half of smokers will die of tobacco-related diseases and that the costs to the public health system are enormous. We also know that tobacco addiction is one of the hardest addictions to conquer and that many addicts try to quit time and time again, only to relapse.

[709] In the case at bar, the appellants themselves argued that these facts became public knowledge before the knowledge dates established by the trial judge. There can therefore be no doubt that in 2009, the legislator's intention was not to facilitate proof of a fact that was public knowledge, or even judicial knowledge, about the harmful effects of smoking on health, but rather with the explicit aim of facilitating, as it itself states, "proof of causation between alleged facts."

iii. Issue joined at trial

[710] The notion of causation was at the forefront of the Blais and Létourneau cases. It is appropriate to identify the relevance of the notion here before situating it in the specific context in which the parties addressed it.

[711] Fundamentally, if there is causation between the faults alleged against the appellants and the harm inflicted on the members of the Blais and Létourneau Classes, it can have both a medical and a conduct aspect at the same time. Beyond this first distinction, medical causation can be analyzed from four main angles, which are clearly discernable in the appeal cases. In Blais, there is first general medical causation − the fact that tobacco products manufactured by the appellants are allegedly toxic and constitute a major cause of certain serious diseases that are widespread among the population in question. Next comes individual medical causation, the fact that one of these diseases contracted by a member of the Blais Class could have as its true cause in that particular case and on the basis of overwhelming evidence, the person smoking a sufficient quantity of cigarettes manufactured by the appellants, rather than another cause unrelated to tobacco (for example, a genetic predisposition or prolonged contact with some carcinogenetic agent in the environment. In the Létourneau case, general medical causation is said to be due to the fact that cigarettes, the only product covered by the two actions, created an addiction that was abnormally difficult to overcome, without a smoker's knowledge. Individual medical causation refers to the fact that the addiction of each member of the Létourneau Class on tobacco is attributable to their smoking cigarettes manufactured and sold by the appellants and not to an unrelated cause. With respect to conduct causation, it is possible that for various reasons that should be explored, it is not the faults alleged against the appellants that had any impact on smoking by the members of the Blais and Létourneau Classes, or at least by some of them − for example, because long before the knowledge dates established by the trial judge, they were already fully aware of the risks they were taking when they started or continued to smoke.[669] Finally, these various smoking habits within a Class or even the general attitude of the individual members with respect to smoking, can also influence causation − this could be the case for a smoker, who by personal inclination, persisted in excessive smoking or who, aware of the health risks, never made any attempt to quit smoking. The line between those two types of

[669] The example of the active smoker who was a pulmonologist or oncologist practising in the 1960s was raised during the pleadings in the Court of Appeal.

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conduct causation is quite thin.

[712] It is therefore conceivable that many individual variables could be at play here.

[713] The motion to institute proceedings in the Blais case is divided into several parts in which causation is frequently discussed. First, it is alleged in very general terms that the appellants' faults caused harm to the members of the Class (para. 4). Cigarette smoking is alleged to caused or contributed to causing the lung cancer of Representative Blais (para. 21). Direct inhalation of tobacco smoke, combined with the phenomenon of addiction is said to be one of the leading causes of illness and death in Canada (para. 69), accounting for 85% of lung cancer and 30% of throat and pharyngeal cancer (para. 70) among the Canadian population. Smoking cigarettes manufactured and sold by the appellants is said to be the cause of cancers suffered by the members of the Blais Class (para. 71). Various scientific studies, including those conducted by the U.S. Surgeon General confirm the existence of this causation (paras. 73 and 74). The same would apply to 85% of the emphysema cases in Canada (para. 76), and therefore, of the members of the Class (para. 77). The respondents then list, with lengthy excerpts from what they anticipate will be their evidence, the alleged faults of the appellants and the impact of those faults on the members of the Class. The appellants are alleged to have known about causation between various types of cancer and cigarette smoking for many years. (para. 97−104), but deliberately refrained from disclosing this fact by artificially maintaining a fictitious scientific controversy (para. 110−116) and denying the existence of any authentic scientific causal demonstration (para. 117−123), choosing instead to systematically trivialize the risks associated with smoking (para. 124−131) and adopting a counter-discourse to encourage smoking, especially among young people, and through cigarettes misleadingly described as "light" or "mild" (para. 132−162). Many of these allegations are reflected in the motion to institute proceedings in the Létourneau file. The Blais file contains a number of allegations relating to the assessment of punitive damages and [TRANSLATION] "non-pecuniary compensatory" damages (para. 163−169), which as discussed below, were the subject of significant amendments during the trial.

[714] In defence, the position taken by the appellants − and reiterated many times in their submissions − is in substance that causation is inseparable from a case-by-case examination of the situation of each member of the Class, in both the Blais case and the Létourneau case. It is pointless here to go back over each aspect of the issue joined because the Ariadne's thread always remains the same. This can be illustrated by some excerpts from their arguments. Thus, in its amended defence of November 17, 2008, in the Blais case, the appellant JTM immediately showed its colours by stating:[670]

> [I]n order to determine the existence and cause(s) of, or the contribution of a risk factor to, any disease suffered by putative members of the Class, a full assessment as to each individual member's risk profile − including familial and occupational history, medical history, lifestyle factors, smoking history and a verification of the disease diagnosis itself − would be required.

[715] This is a recurrent theme. Concluding on this issue, the same appellant affirmed the following in its defence.

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[670] JTM's amended Defence, November 17, 2008, at para. 2c).

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218. In such individual assessments, there are many specific important facts that need to be determined on an individual basis for each class member, upon which JTIM has the opportunity to cross examine, where relevant, before the liability of JTIM can be determined in regard to any Class Member and an award for damages granted in respect of that individual. The non-exhaustive questions are, *inter alia:*

(i) Was, and if so, when was the Class Member aware (or could he have been aware) of the health risks associated with smoking as well as the risk that smoking may be difficult to stop?

(ii) If the Class Member was not so aware of the risks associated with smoking at certain points, would he or she have smoked even if he would have been aware of these risks?

(iii) If the Class Member was not aware of these risks on starting smoking, which must be assessed, when did he or she become aware of these risks and did he stop smoking when he or she became so aware of these risks? If no, why not?

(iv) If the Class Member stopped smoking when he or she became aware of these risks (or it is decided that he should have stopped smoking at that point), what was the risk of this smoking causing the disease at that point?

(v) For how long has a Class Member stopped smoking?

(vi) Did the Class Member smoke JTIM's products? If not, he or she has no legal interest in regard to JTIM;

(vii) If the Class Member smoked other products than JTIM's products, what, if any, is the risk attributable to the period he smoked JTIM's products? Did he also smoke the products of other Canadian tobacco manufacturers?

(viii) Which product(s) did he smoke, regular, LTN or descriptor cigarettes and what were the reason(s) for doing so? In what amounts and intensity did he smoke such cigarettes? When and where did he smoke such cigarettes? For what periods and with or without interruption?

(ix) Did the Class Member believe that LTN or Lights cigarettes were safer and, if so, why? Would the Class Member have stopped or not started smoking without his belief?

(x) When did he or she start smoking and at what age? Why did the Class Member start to smoke?

(xi) Was the Class Member aware of the alleged denials or trivializations, or statements made or views expressed by JTIM with regard to the health risks associated with smoking? If so, when did he or she become so aware and did he rely on any such alleged denials, trivialisation, statements or views in his smoking related decisions;

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> (xii) Was the Class Member aware of the alleged misleading marketing strategies and other marketing strategies that allegedly conveyed false information about the characteristics of the products sold? If so, when did he or she become so aware and did he or she rely on any such marketing and other marketing strategies in his smoking related decisions including the decision to start?
>
> (xiii) Has the Class Member been told to quit smoking by his/her doctor, teachers and/or family or friends? Did he or she follow that advice?

[716] In its defence, the Appellant RBH comments on the seven common questions to be addressed collectively as reformulated by the trial judge in paragraphs 3 to 5 of his reasons. It argues on this point that, in each case, "even if the Court were to give an affirmative answer to [this] Question, no finding of liability would be justified since such an answer cannot address in any fashion the issues of damages and causation."[671] And further on, in paragraph 98 of its defence, it follows in the footsteps of the appellant JTM by arguing the following

> As for the four diseases (cancer of the lung, cancer of the larynx, cancer of the throat and emphysema) covered by the CQTS [Centre québécois sur le tabac et la santé] class action:
>
> • Each of these diseases' etiology is complex and multifactorial;
>
> • While some smokers will develop one of these diseases, not all smokers will. Even non-smokers can develop one of these diseases;
>
> • Smoking in certain instances may only be one of many risk factors and in other instances it may not be the cause at all;
>
> • In order to determine a cause or several causes of any of these four diseases, it is absolutely necessary to proceed to an individual in depth examination of each member of the class since epidemiological studies cannot establish individual causation;

[717] To which the respondent Létourneau replied, in its Answer dated October 23, 2009: [TRANSLATION] "She has no knowledge of the allegations set out in paragraph 98 of the defence, which do not concern her."[672]

[718] This summarizes the terms in which the debate on causation was defined at first instance. But, to this must be added several contextual elements related to the conduct of the dispute at first instance.

iv. <u>An aspect of the conduct of the proceedings at first instance</u>

[719] The originating motions in the Blais et Létourneau cases both date back to September

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[671] RBH's defence, February 29, 2008, at para. 36.
[672] Respondent Letourneau's Answer to RBH's defence, October 23, 2009, at para. 59.

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30, 2005. There is significant overlap in the allegations they contain, particularly with respect to causation.

[720] On March 28, 2014, just over eight months before the end of the trial, the respondents filed an amended motion to institute proceedings in the Blais case, in which they reiterated all the allegations made on September 30, 2005, but made two significant changes to the lawsuit: (i) they replaced the description of the Class in accordance with terms of an interlocutory judgment dated July 3, 2013,[673] and (ii) in the wake of that amendment, as well as in light of expert evidence given by the respondents at trial, they substantially revised the calculation of damages claimed from the appellants.

[721] Following that, in the joint "notes and authorities" for both cases, that were communicated to the trial judge during deliberations, the respondents waived the recovery of individual claims for pecuniary damages that were the subject of their amended motion to institute proceedings. They did so in these terms:

> 2323. In both class actions, Plaintiffs seek collective recovery of moral and punitive damages.
>
> 2324. Should the Court grants both class actions, the issue that must be answered is whether or not for other damages the Court should order that they be the object of individual claims.
>
> 2325. Section 1028 of the C.c.P. provides that the Court has a discretion not to order those claim to be adjudicated.
>
> > 1028. Every final judgment condemning to damages or to the reimbursement of an amount of money orders that the claims of the members be recovered collectively or be the object of individual claims.
>
> 2326. Section 1034 provides guidance as to when the Court may exercise the discretion not to order such individual adjudication.
>
> 2327. One of the criteria is where it would be too expensive or impractical to order such individual adjudication.
>
> 2328. Section 1034 of the C.p.c. provides:
>
> > **1034.** The court may, if of opinion that the liquidation of individual claims or the distribution of an amount to each of the members is impossible or too expensive, refuse to proceed with it and provide for the distribution of the balance of the amounts recovered collectively after collocating the law costs and the fees of the representative's attorney.
>
> 2329. In the present cases, given that systemic abuse by Defendants described above, it will be impractical and excessively expensive to adjudicate each individual claims. Given the past behavior of the defendants, they will likely

[673] *Québec Council on Tobacco and Health cv. JTI-MacDonald Corp. (Létourneau v. JTI-MacDonald Corp.),* 2013 QCCS 4904.

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> succeeded in delaying for years the court process and in exhausting the financial resources of all class members who dare try to obtain compensation. Outside of collective recovery, recourses of the members against the defendants are just impossible.

[722] In response to this change of course, the trial judge made the following observations at the very end of his reasons:

> [1193] The Plaintiffs displayed an impressive sense of clairvoyance in their Notes when they opted to renounce to making individual claims, declaring that "Outside of collective recovery, recourses of the Members against the defendants are just impossible". The Court agrees.
>
> [1194] The Companies are of two minds about this. While no doubt rejoicing in the knowledge that there will be no need to adjudicate individual claims in the present files, they wish to avoid the possibility of any new actions being taken by current Class Members, a highly unlikely event, to be sure. That is why they insisted that the Plaintiffs not be allowed to remove the request for an order permitting individual claims and that the Court rule on it. The Plaintiffs do not object.
>
> [1195] Consequently, we shall dismiss the request for an order permitting individual claims of the Members against the Companies in both files.

[723] We can therefore see that proof of causation in each of the aspects identified above raised a problem of scale several times in the course of the litigation: was it necessary to present evidence of causation on a balance of probabilities at the level of each member of the two Classes, or could we be satisfied with evidence (also on a balance of probabilities, it goes without saying) allowing us to extrapolate the impact that cigarettes and the faults alleged against the appellants had on the members to all or part of each Class?

[724] This question was first addressed in an interlocutory judgment dated September 13, 2013,[674] which was partially overturned by a judgment dated May 13, 2014.[675] On that occasion, the trial judge was to rule on a motion to quash the subpoenas *duces tecum* by which the appellant ITL, through a test case, was attempting to obtain the complete medical records of the representatives Jean-Yves Blais and Cécilia Létourneau. This was not the first time the issue had surfaced because, as the trial judge pointed out, he had already rendered a judgment on July 22, 2011,[676] denying ITL the requested access to the medical records of members already listed in the Classes of representatives Blais and Létourneau. Confirming this dismissal by a

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674 *Québec Council on Tobacco and Health c. JTI-Macdonald Corp.,* 2013 QCCS 4863.

675 *Imperial Tobacco Canada Ltd c. Létourneau*, 2014 QCCA 944.

676 *Québec Council on Tobacco and Health c. JTI-MacDonald Corp.,* 2011 QCCS 4090. Previously, in 2008, the appellants sought permission to conduct pre-trial examinations of 100 Members of the Létourneau Class and 50 Members of the Blais Class, and attempted to obtain their medical records, which was refused in both cases: *Québec Council on Tobacco and Health c. JTI-MacDonald Corp. (Létourneau v. JTI-MacDonald Corp.)*, 2009 QCCS 830, leave to appeal to the C.A. refused, 2009 QCCA 796 (27 April 2009).

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decision rendered on October 2, 2012,[677] Wagner J.A., as he then was, stated the following, with which his colleagues Pelletier and Hilton, J.J.A. :

> [TRANSLATION]
>
> [51] I am of the opinion that the judge's reasoning in dealing with access to the medical records, like the order to submit to medical examinations, is consistent with the state of the law, and I do not see how obtaining the medical records, or the order to submit to medical examinations, could allow for a relevant debate on common questions that go beyond the individual personality of the members. In all respects, this is a management decision and, in the absence of an error of law or a palpable and overriding error of fact that could jeopardize the right to a full and complete defence, the Court should not intervene.

[725] By its application, which concerned only the medical records of the two representatives, the appellant ITL was seeking a decision in principle.

[726] On appeal, the Court found [TRANSLATION] "that the disputed subpoena were valid with respect to the respondent Létourneau personally and the successor or successors of the respondent Blais".[678] Access was therefore granted to their medical records. The unanimous decision, dated May 13, 2014, was written by Bich, J.A.

[727] It is useful to reproduce large excerpts from these reasons here to set out the background to the issue:

> [TRANSLATION]
>
> [17] Since at least 2009, at both the pre-trial and trial stages, the appellant repeatedly requested permission, in various ways, to examine not only representatives Létourneau and Blais, but also a number of Class Members *and* to have access to their medical records. The appellant invoked its right to a full and complete defence (in particular with respect to causation between fault and harm); and argued that even if it could be held liable in any way, this evidence is necessary to demonstrate the inappropriateness of the collective recovery sought by the respondents. In essence, the appellant argued that this evidence would allow it to establish, for example, that the members were warned of the dangers of smoking by their physicians and nevertheless chose to continue smoking, or that, (particularly in the case of the Blais Class), other factors may have caused or contributed to the disease or that the situations of the Class Members are so disparate that collective recovery cannot be considered (even for only an award of moral damages).
>
> [18] As for examining the Members, we understand from the judgment *a quo* that the appellant was finally granted permission to examine some of the persons registered in both actions. With respect to the medical records of these individuals, however, permission was consistently denied, including by this Court

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677 *Imperial Tobacco Canada Ltd. c. Létourneau*, 2012 QCCA 2013.

678 *Imperial Tobacco Canada Ltd. c. Létourneau,* 2014 QCCA 944 at para. 5.

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in 2012.

...

[30] Indeed, relevance is one of those concepts whose application may well vary during a proceeding and even during the trial: what does not seem relevant one day may become relevant at a later time, depending on how the evidence unfolds, and vice-versa. A judge who allows an objection to the evidence can later realize that, on the contrary, such evidence was necessary, or is necessary, or useful, to resolve the issues in dispute and therefore has the power to rescind his or her previous determinations or change his or her mind for the future.[679] This proposition is supported by *Allali c. Lapierre*.[680] ...

[31] Obviously, it is clear that a party cannot repeatedly request what has been refused, in the same way that the opposing party cannot repeatedly oppose evidence that the judge declares admissible. Such behaviour could rightly be interpreted as an attempt to circumvent or as an abuse and could constitute a *fin de non-recevoir.* The circumstance of this case, however, do not lend themselves to such a qualification (nor did they lend themselves to it in the case decided by this Court in 2012).

...

[35] These common questions were stated in the authorization judgment in 2005. We see that they were defined in terms that target the fault of the defendant companies. The questions, therefore, are whether, together or individually, the companies knowingly or negligently marketed a product harmful to the health of consumers, whether they tried to conceal the risks and dangers associated with smoking, whether they marketed the product on the basis of false and misleading information, whether they deliberately used ingredients in their products that were likely to increase the dependence of users, etc.

[36] The wording of these questions in such terms does not, however, complete the list of questions that the trial judge will have to resolve in order to decide the respondents' action. It should also be noted that the authorization judgment was intended to determine only "the main questions of fact and law" at stake. It goes without saying, however, that in the case of extracontractual liability actions, where the class action is merely the procedural vehicle, the trial judge, if he or she answers any of the questions defined by the authorization judgment in the affirmative (thus finding a fault), must also answer the questions of whether this fault caused the harm alleged by the respondents, the existence of which must also be established.

[728] Then, after citing *Bou Malhab v. Diffusion Metromedia CMR inc.*[681] and various sources of commentary, Justice Bich added:

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[679] See Léo Ducharme, *Précis de la preuve*, 6th ed. (Montreal: Wilson & Lafleur, 2005) at 601, para. 1472.
[680] *Allali v. Lapierre*, 2007 QCCA 904.
[681] *Bou Malhab v. Diffusion Metromedia CMR inc.,* 2011 SCC 9.

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[TRANSLATION]

> [41] It follows from all this that the respondents' burden does not stop at demonstrating the existence of the fault of the appellant and its co-defendants with respect to the class members, but includes the inseparable aspects of harm and causation, with respect to each of the members of these classes. It is also their responsibility to demonstrate the appropriateness and feasibility of the collective recovery they require. The trial judge will have to rule on all these elements, which are part of the common questions to be resolved in order to rule on these actions, i.e., to decide whether to allow or dismiss them and if they are allowed, to then decide on the appropriate method of recovery and other accessory determinations.

[729] It follows from the foregoing that the relevance of evidence relating to individual members of each Class is a matter to be reassessed, in light of what the trial reveals at each stage in regard to the issues in dispute, including causation. Justice Bich went on to say:

[TRANSLATION]

> [48] To discharge their burden of proof with respect to injury and causation, the respondents chose the means of essentially expert statistical and epidemiological evidence. They consider that this method of proof will allow the judge to draw a sufficient (i.e., on a balance of probabilities) inference of harm and causation (which is confirmed by s. 15 of the *Tobacco-related Damages and Healthcare Costs Recovery Act*, a provision applicable to the two actions in this case under ss. 24 and 25 of the Act), while sufficiently establishing the conditions for collective recovery (art. 1031 C.C.P.). However, neither the representatives nor any of the class members were heard as plaintiffs at the trial.
>
> ...
>
> [51] The trial judge allowed the appellant to question members of both classes. However, the appellant would like to have at its disposal and potentially produce the medical files of the representatives, as well as those of the members it plans to examine. Is the appellant entitled to have those files?
>
> [52] As a matter of principle, it should be noted, first, that it is certainly not because the respondents chose the path of expert statistical and epidemiological evidence, excluding evidence related to individual cases (including those of the representatives), that the appellant should be forced to do the same. The appellant, in fact, wants to challenge the respondent's evidence not only with expert statistical and epidemiological evidence with respect to harm and causation, but also individual evidence. It also appears destined to serve as a counterbalance to the respondents' evidence with respect to fault by focusing on the free will of smokers, as well as establishing the inappropriateness of an order for collective recovery because of the disparity in causes and damages, if any.
>
> [53] In accordance with article 4.1 C.C.P., which applies to class actions, taking into account their particularities, the respondents are the masters of their case and

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> are free to decide on their strategies and means of proof. The appellant, however, has the same freedom to refute the respondents' evidence and exercise its right to a full and complete defence. In short, if the appellant must be restricted in the choice of evidence or in the scope of evidence, it cannot be because of the choices made in this regard by the respondents, nor, moreover, because of s. 15 of the *Tobacco-related Damages and Healthcare Costs Recovery Act.* This provision does not prevent a defendant from using the means it deems necessary to counter the presumption that the judge is authorized to draw from the statistical, epidemiological and other evidence.
>
> ...
>
> [59] At the appeal hearing, counsel for Mr. Blais and the Conseil québécois sur le tabac et la santé indicated that he did not object to the representatives being examined in this way (obviously, Mr. Blais himself will not be examined, given his death), including questions on their respective medical records, nor did he oppose their production. Ms. Létourneau's lawyer was less agreeable. In any event, it should be noted that the appellant already has Mr. Blais's and Ms. Létourneau's medical records in its possession, that it already examined them on this matter (at the pre-trial stage), and that they even obtained a second opinion in Mr. Blais's case. In these circumstances, it seems normal and appropriate to allow both the examination and the production of this information, which the judge will, in any event, need to rule on the particular cases of Ms. Létourneau and Mr. Blais (even if this does not necessarily lead to the same conclusion with respect to the other members of the class).
>
> [61] What about the members (other than the representatives) whom the appellant wants to examine (as the trial judge allowed), and whose medical records the appellant would also like to obtain? It goes without saying that one cannot consider obtaining testimony from all the members, or even a significant number of the members, which, in any event, would not be feasible, without infringing the legislative intent underlying class actions, and distorting them. That being said, we know that it is not uncommon, precisely because we want to support the evidence one way or another, for some members of a class to be heard (this was the case, for example, in *Bou Malhab*, *Biondi* and *Fédération des médecins spécialistes du Québec v. Conseil pour la protection des malades).* We also know this was allowed in this case by Justice Riordan.
>
> [Emphasis added; references omitted.]

[730] Although less restrictive, no doubt, than the ruling the trial judge handed down on September 13, 2013, this decision nevertheless defines a perimeter within which the issue of conduct causation could legitimately be debated, on an individual scale, but as evidence representative of the members of each Class.

[731] That judgment had consequences. To clarify, we will reproduce here an extract of the oral arguments of November 24, 2016, before the Court of Appeal, when the issue of the impact this decision had on the proceeding in the Superior Court arose. Mtre Johnston and Mtre

Lespérance, counsel for the respondents, replied as follows:[682]

> [TRANSLATION]
>
> Mtre BRUCE JOHNSTON:
>
> > And there is something very important in that regard because before this Court, in the home stretch of the trial, permission was requested to question the members. This is a judgment that has been quoted extensively by our colleagues, a judgment from May 2014, written by Madam Justice Bich, the defendants' attorneys stated before the Court that they would call witnesses and that they had to do so now. And the Court asked them, [TRANSLATION] "But are you going to ask the members to come in?" The answer was yes, and they never called anyone.
> >
> > We prepared ... how many?
>
> Mtre ANDRÉ LESPÉRANCE:
>
> > A hundred and fifty (150).
>
> Mtre BRUCE JOHNSTON:
>
> > A hundred and fifty (150) people to be examined at trial, and they didn't call one of them. If you want to talk about a strategic decision, here is one.
>
> THE COURT (YVES-MARIE MORISSETTE):
>
> > You mean a hundred and fifty (150) members ... of the Class.
>
> Me BRUCE JOHNSTON:
>
> > Yes.
> >
> > …
> >
> > We identified members; we met with them ...
> >
> > ...
>
> Mtre ANDRÉ LESPÉRANCE:
>
> > They chose the members.
>
> Mtre BRUCE JOHNSTON:
>
> > They chose them, yes. But we prepared them.

[682] Stenographic notes of November 24, 2016 (SténoFac) at 179–182.

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…

But regardless of all that, the important thing is that there was a choice that was made. They preferred ... they criticized us; it's everywhere in the brief, they ...

THE COURT (ALLAN R. HILTON):

Was it during the trial that you met the ... the members of the ... Class?

Mtre BRUCE JOHNSTON:

Yes, yes.

THE COURT (YVES-MARIE MORISSETTE):

Following the Court of Appeal judgment?

Mtre BRUCE JOHNSTON:

Yes, that's right.

THE COURT (YVES-MARIE MORISSETTE):

Did you read it carefully?

Mtre BRUCE JOHNSTON:

Yes, including paragraph 48. The strategic choice that was made was to preserve ... the defendants probably felt they would have arguments to make in their favour if no member came in. They preferred those arguments to the possible arguments they could have had from bringing the people in.

[732] Although this last comment is only an interpretation of the events by one party's counsel, the facts are clear: approximately 150 members were chosen by the appellants and prepared by the respondents' counsel. Subsequently, the appellants refrained from questioning them, such that the record contains no individual evidence (with the exception of the very fragmented evidence relating to the Blais and Létourneau representatives) and no evidence relating to the conduct of individual members of either Class.

[733] It seems, moreover, that the appellants' decision not to call these witnesses was made in full knowledge of the facts. Thus, on May 23, 2014, ten days after the judgment in question here, ITL announced at the hearing before the trial judge that it would not call these witnesses. Counsel spoke to the issue in these terms:[683]

Mtre SUZANNE CÔTÉ:

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[683] Submissions of Mtre Côté, May 23, 2014, at 43−44.

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> So, Mr. Justice, I promised, I undertook to come back to you today with our ... with Imperial's decision regarding the testimony of the class members and the representatives. I already thanked you last week when, I answered your email, for the extension that you have granted to us. ...
>
> And I think that you will be very pleased to know that the fact that you gave us the extension, gave us more time ... because we had to do a lengthy analysis of the decision of the Court of Appel [sic], it's an important decision, there are a lot of things mentioned in that decision, so we needed to involve many people, more than one (1) or two (2) people. And we came to the decision, because of what is in that decision of the Court of Appeal, not to call any Class member evidence, nor to call any of the representatives.
>
> So I am pleased to tell you that sometimes, when we have more time to think and to discuss, it permitted us to come to that decision.
>
> So this is it. As far as Imperial is concerned, no more evidence in terms of class members and representatives.

[734] Although there is no need to dwell further on this point, one may wonder why the appellants did not take the opportunity to interview the members identified for this purpose. Perhaps they considered that these persons could not constitute a representative sample of the members' situation, but this seems incompatible with the guidelines set by the Court in its 2014 judgment cited in paragraph [728] above. Perhaps they felt, in the wake of one of their main arguments, that the absence, in their view, of any evidence of individual causation by the respondents should necessarily result in the dismissal of the actions or, in the alternative, that the actions should result in individual claims rather than a collective recovery. We do not know. But by explicitly authorizing epidemiological evidence through section 15 T.R.D.A., the legislator wanted to allow causation to be established at the collective level of a population, so that − at the very least − evidence of causation that could be refuted by evidence to the contrary could be inferred. Contrary evidence here could have taken the form of a demonstration that, among the members appointed for individual examination or questioning, a significant proportion of them had a conduct profile that could blur the lines of inquiry and significantly weaken the respondents' thesis. But this was not done.

v. Appellants' complaints regarding evidence of causation

[735] *A priori*, at trial, the onus was on the respondents to prove causation between the appellants' alleged fault(s) and the harm(s) alleged by the respondents. The appellants all argue, each in its own way, that the deficiencies in the evidence administered at trial by the respondents required the outright dismissal of both actions.

[736] The appellant RBH gives the argument the most weight but does not differentiate it as much as ITL and JTM do. The absence of proof ("no evidence") is strongly asserted starting on the fourth page of its brief, where it states in the following terms what it considers to be a fundamental and insurmountable weakness in the judgment:

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> 11. As the Trial Judge recognized, Plaintiffs needed to prove two separate causal links:
>
> (a) *Conduct causation*: Defendants' faults caused each and every class member to smoke; and
>
> (b) *Medical causation*: for all class members, wrongfully caused smoking led to their injuries − *i.e.,* to disease in *Blais* and to dependence in *Létourneau.*
>
> 12. Plaintiffs led no evidence on the first link and did not carry their burden on the second. Either failure was sufficient to preclude liability. The Trial Judge erred in nonetheless imposing liability, and proceeding directly to collective recovery, without Defendants' being able to test for any class member either of the two causal links the Trial Judge simply presumed for everyone.

[737] In the appellants' briefs, there are a total of 56 allegations relating to the complete absence of proof ("no evidence"), which vary in intensity from "without evidence" to "without any evidence whatsoever," and which of course overlap.

[738] However, caution must be exercised in considering these claims. The Supreme Court of Canada's recent decision in *Benhaim v. St-Germain*[684] reiterates certain constants in the case law that are relevant here.

[739] First, the existence or non-existence of causation between two known elements is a question of fact, and the conclusion drawn from the facts commonly takes the form of an inference, with respect to which the standard of appellate intervention is significantly more restricted than on a question of law. Justice Wagner, author of the Supreme Court's majority reasons in *Benhaim v. St-Germain*, noted the following in this regard:[685]

> [36] The standard of review is correctness for questions of law, and palpable and overriding error for findings of fact and inferences of fact: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8, 10 and 19; *St-Jean*, at paras. 33-36. Causation is a question of fact, and so the trial judge's finding on causation is owed deference on appeal: *St-Jean*, at paras. 104-5; *Clements v. Clements*, 2012 SCC 32, [2012] 2 S.C.R. 181, at para. 8; *Ediger v. Johnston*, 2013 SCC 18, [2013] 2 S.C.R. 98, at para. 29.
>
> [37] It may be useful to recall the many reasons why appellate courts defer to trial courts' findings of fact, which were described at length in *Housen*, at paras. 15–-18. Deference to factual findings limits the number, length and cost of appeals, which in turn promotes the autonomy and integrity of trial proceedings. Moreover, the law presumes that trial judges and appellate judges are equally capable of justly resolving disputes. Allowing appellate courts free rein to overturn trial courts' factual findings would duplicate judicial proceedings at great expense, without any

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684 *Benhaim v. St-Germain,* 2016 SCC 48.

685 The citation refers to *St-Jean v. Mercier,* 2002 SCC 15.

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> concomitant guarantee of more just results. Finally, according deference to a trial judge's findings of fact reinforces the notion that they are in the best position to make those findings. Trial judges are immersed in the evidence, they hear *viva voce* testimony, and they are familiar with the case as a whole. Their expertise in weighing large quantities of evidence and making factual findings ought to be respected. These considerations are particularly important in the present case because it involves a large quantity of complex evidence.

[740] Particular note should be taken of the last four sentences of this passage.

[741] Very tangible institutional constraints justify this division of roles between trial and appellate courts. As it was a medical liability case, Justice Wagner wrote that *Benhaim v. St-Germain* involved a large quantity of complex evidence. All the more so in a case such as these appeals: their complexity by far overshadows that of most, if not all, medical liability cases. The *Benhaim v. St-Germain* trial lasted six days. In comparison, the trial in these cases lasted 251 days, spread over 33 months, during which 74 witnesses, including 21 experts, were heard, sometimes at the request of several parties. As for the documentary evidence on file, tens of thousands of numbers were assigned to the exhibits, many of which include numerous decimals[686] (such that on appeal, Schedule III, together with the appellants' briefs, is over 265,000 pages long). The pace of such a trial is obviously not that of an appeal hearing. The trial judge had ample opportunity to question witnesses, obtain oral or written explanations and clarifications from them (giving them time to do so), and assimilate details that will not even be likely to be mentioned in the Court of Appeal. Despite an exceptionally long hearing period on appeal – these appeals required six days of hearings – the parties' lawyers are obliged to be selective. It necessarily follows from the foregoing that the detailed understanding of the evidence and the overall assessment of it are primarily the responsibility of the trial judge. When an error capable of being corrected on appeal enters into this overall assessment, it is up to the appellants to define it clearly, and by its nature, such an error, if it deserves to be qualified as "palpable and overriding," will be easy to demonstrate.

[742] More recently, in *Nelson (City) v. Mowatt,*[687] a panel of seven Supreme Court Judges issued a unanimous decision in which they reiterated the importance of deference to the findings and inferences of fact made by the trial courts. The reasons of the Court were written by Justice Brown, who stated:

> [38] I acknowledge that the Court of Appeal's finding of fact that adverse possession of the disputed lot was continuous from December 1909 to at least February 1923 is not unreasonable. It is certainly possible to weigh parts of the evidence differently than the chambers judge did. The possibility of alternative findings based on different ascriptions of weight is, however, not unusual, and presents no basis for overturning the findings of a fact-finder. It is not the role of appellate courts to second-guess the weight to be assigned to the various items of evidence. Absent palpable and overriding error — that is, absent an error that is "plainly seen" and has affected the result — an appellate court may not upset a

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686 Exhibit 987, for example, decimalized 50 times, is over 12,000 pages divided into 28 volumes of schedules.

687 *Nelson (City) v. Mowatt*, 2017 SCC 8.

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> fact-finder's findings of fact (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 6 and 10; see also *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401, at para. 55). The standard of palpable and overriding error applies with respect to the underlying facts relied upon by the trial judge to draw an inference, and to the inference-drawing process itself (*Housen*, at para. 23). In my respectful view, the Court of Appeal erred by interfering with a factual finding where its objection, in substance, stemmed from a difference of opinion over the weight to be assigned to the evidence. The chambers judge, having held two hearings, the latter of which occurred as a result of his allowing the Mowatts an opportunity to adduce further evidence, and having carefully canvassed the evidence in two sets of cogent and thorough reasons for judgment, reached findings that were available to him on the evidence. Those findings should not have been disturbed.

[743] In sum, to paraphrase Justice Brown, it is never sufficient to argue that "some evidence could be assessed differently than the trial judge did."

[744] Secondly, we must always be careful not to confuse scientific causation with legal causation. This warning was repeated twice by Justice Wagner in *Benhaim v. St-Germain*:[688]

> [47] [...] Sopinka J. held that it is not necessary that the plaintiff adduce expert scientific or medical evidence definitively supporting the plaintiff's theory of causation, as "[c]ausation need not be determined by scientific precision" (p. 328; see also pp. 330-31). This is because the law requires proof of causation only on a balance of probabilities, whereas scientific or medical experts often require a higher degree of certainty before drawing conclusions on causation (p. 330). Simply put, scientific causation and factual causation for legal purposes are two different things. Factual causation for legal purposes is a matter for the trier of fact, not for the expert witnesses, to decide: *Laferrière v. Lawson*, [1991] 1 S.C.R. 541, at pp. 607-8; see also *Sentilles v. Inter-Caribbean Shipping Corp.*, 361 U.S. 107 (1959), at pp. 109-10.
>
> …
>
> [54] In sum, the Court held in *Snell* that "the plaintiff in medical malpractice cases — as in any other case — assumes the burden of proving causation on a balance of the probabilities": *Ediger*, at para. 36. Causation need not be proven with scientific or medical certainty, however. Instead, courts should take a "robust and pragmatic" approach to the facts, and may draw inferences of causation on the basis of "common sense": *Snell*, at pp. 330-31; *Clements*, at paras. 10 and 38. The trier of fact may draw an inference of causation even without "positive or scientific proof", if the defendant does not lead sufficient evidence to the contrary. If the defendant does adduce evidence to the contrary, then, in weighing that evidence, the trier of fact may take into account the relative ability of each party to produce evidence: *Ediger*, at para. 36.

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[688] *Benhaim v. St‑Germain,* 2016 SCC 48. See also *Harper v. Canada (Attorney General),* 2004 SCC 33 at para. 78.

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[745] In Quebec law, article 2804 C.C.Q. sets out the meaning of evidence on a balance of probabilities by stating that "[e]vidence is sufficient if it renders the existence of a fact more probable than its non-existence, unless the law requires more convincing proof.".

[746] This idea of the balance of probabilities is generally foreign to the decisions that would be made by the peer review committee of a good scientific journal. A committee of this type will be guided first and foremost by the search for scientific certainty. Nevertheless, it will not hesitate to accept for publication works that are innovative or controversial if they seem promising, if they seem likely to stimulate a serious debate and if they are based on an intelligible methodology that can be repeated.[689] Demonstrating the case for a disputed fact before the courts is something of a completely different nature, partly because of the necessary purpose of court decisions. As Justice Binnie wrote in an article cited by the trial judge in paragraph 766 of his reasons, "[t]he court is a dispute resolution forum, not a free-wheeling scientific enquiry, and the judge must reach a timely decision based on the available information."[690]

[747] There are countless judgments which, on the basis of evidence "on a balance of probabilities" within the legal meaning of the expression, i.e., that of article 2804 C.C.Q., find that this or that fact is the cause of this or that other fact. In a large majority of cases, the court reaches this conclusion without having been able to benefit from scientific research on the facts at the origin of the dispute, which are long past, and *a fortiori* without having had the luxury of laboratory work, cross-referenced studies or double-blind controlled studies carried out over many years. In this case, the appellants complain that the trial judge was satisfied with evidence that is not the evidence of the last or ultimate cause – biological, genetic, molecular or other – of the disease or addiction from which each member of the Blais or Létourneau Class allegedly suffer. However, judges are not medical researchers. They must rule at that moment on what "renders the existence of a fact more probable than its non-existence" (art. 2804 C.C.Q.), based on the evidence before them at trial.

[748] Finally, the rules with which courts must comply in matters of causation are also intended to guide them in the assessment of evidence. As Justice Wagner stated in *Benhaim v. St-Germain*:[691]

> [66] In cases of causal uncertainty, both parties face the difficulty of attempting to establish facts in the absence of complete information. This case raises the issue of how that difficulty ought to be distributed between plaintiffs and defendants in cases involving what Prof. Lara Khoury calls "negligently created causal uncertainty": *Uncertain Causation in Medical Liability* (2006), at p. 223 (emphasis deleted). That distribution must balance two considerations: ensuring that defendants are held liable for injuries only where there is a substantial connection between the injuries and their fault, on the one hand, and preventing defendants

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689 During his cross-examination on his expert status, Dr. Siemiatycki, discussed below, observed in this regard: "An editor would require that any novel methods be explained and described in such a way that they are persuasive and / or that they are sufficiently understandable, that a critical reader can understand what was done." (testimony of Dr. Jack Siemiatycki, February 18, 2013, at 58)

690 Ian Binnie, "Science in the Courtroom: The Mouse that Roared", (2007) U.N.B.L.J. 307 at 312.

691 *Benhaim v. St−Germain,* 2016 SCC 48. The work cited is that of Prof. Khouri (L. Khoury, *Uncertain Causation*, supra note 635).

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> from benefitting from the uncertainty created by their own negligence, on the other. In *Snell*, this Court struck a balance by clarifying that an adverse inference may be available in such circumstances, while leaving the decision on whether to draw that inference to the trial judge as part of the fact-finding process, which is governed by ordinary principles of causation.

[749] In this case, we should repeat that the appellants consistently argued in their written submissions and oral arguments that a complete absence of evidence on several logical links essential to the respondents' case should seal the fate of these actions. Such an appeal argument forces the opposing parties to guide the court to the evidence likely to refute it. However, it is not for the respondents to demonstrate that the trial judge would have committed a palpable and overriding error of fact if he had found in favour of the appellants – to argue that this is so would amount to reversing the roles of the appellants and the respondents. It is the former, not the latter, who must overcome the obstacles to the reopening of factual issues on appeal.

[750] With these clarifications in mind, it is now appropriate to reconsider the evidence in the trial record and the judge's assessment of it.

vi. Evidence of causation and its assessment by the judge

[751] At trial, the dispute was heard taking into account the distinction between medical causation and conduct causation. Medical causation raises the following questions: were the moral damages allegedly suffered by the respondents caused by the illnesses of the Blais Class members and by the addiction demonstrated by the Létourneau Class members? Did smoking cause the illnesses suffered by members of the Blais Class, or did it cause the tobacco addiction suffered by members of the Létourneau Class? Conduct causation as contemplated by the judge raises the following question: are the faults alleged against the appellants the cause of the smoking of members of both Classes? The judge devoted Chapter VI of his reasons to causation, which is considered under all these aspects.

a. Medical causation

[752] The trial judge discussed the issue of medical causation at paragraphs 654 to 767 of his judgment. The link between the harm and the alleged faults is a logical part of this analysis, but an even more central issue drew his attention. He formulated it under subtitle C of his reasons: "Were the Diseases caused by smoking?". It is this question that we will focus on first, because it is undoubtedly this aspect of the matter that is the subject of the most extensive evidence on the record by the parties. The matter is the subject of a marked disagreement between the appellants and the respondents. In the wake of this question is the one concerning the Létourneau case, stated as follows by the judge: "Was the tobacco dependence caused by smoking?" We will then examine the relationship between the damages and the alleged faults.

a.1. Blais file

[753] Was it open to the judge to find that smoking is the cause of the diseases in question?

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[754] First of all, it should be noted that, on the issue of medical causation, the same generic argument runs through the briefs of all the appellants. A clear and succinct statement of this argument is found in a passage from the plan of argument filed by the appellant JTM in the Superior Court. It should be mentioned here because it clearly highlights the claim argued before the trial judge on which he had to rule:[692]

> The law requires that the Plaintiffs demonstrate that each member of the class has an injury caused by smoking. Plaintiffs have attempted to prove only that a disembodied, theoretical average of the class has an injury caused by smoking. Even on the assumption that they have succeeded in that proof (and they have not, for all the reasons given), Plaintiffs have not demonstrated that each member of the class has an injury caused by smoking. Proof with respect to a theoretical average member of the class is not proof with respect to each member of the class. The evidence with respect to smoking behavior and other risks tells U.S. [sic] that it is not.
>
> [Emphasis in original.]

[755] Many excerpts from the briefs and plans of argument echo this same argument. Thus, and for example, the appellant RBH expresses it in these terms in its Factum:[693]

> By its very nature, however, epidemiology cannot prove specific causation. Epidemiology is the study of disease in a population as a whole. Epidemiology could, for example, compare a population of smokers to a similar population of non-smokers. If the smokers had a significantly greater incidence of a disease, and the study adequately controlled for other possible causes, the epidemiology could identify smoking as a cause of that type of disease. Thus, epidemiology can prove that smoking causes a particular disease and it can estimate how many smokers in a given population developed that disease because of smoking. It cannot, however, tell us *which* smokers in a population developed the disease because of smoking and which developed it because of some other factor:
>
> > [TRANSLATION] Epidemiology is a branch of public medicine that studies the frequency and distribution of diseases in time and space in a human population, as well as the factors that determine such frequency and distribution.
>
> [Emphasis in original; references omitted]

[756] Based primarily on the testimony of two of the experts cited by the plaintiffs, Dr. Desjardins[694] and Dr. Guertin,[695] the judge referred to very general epidemiological statistics. Dr. Desjardins said that smoking causes 85% to 90% of lung cancers. He added that smoking, according to the American Cancer Society, causes between 93% and 97% of deaths from this

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692 JTM's plan of argument at para. 2536. Obviously, it should read "us" instead of "U.S." in the last line of the quotation.

693 RBH's argument at para. 97. The quotation in the quotation is from *Spieser c. Canada*, 2012 QCCS 2801 at para. 469.

694 Recognized by the Superior Court as “an expert chest and lung clinician.”

695 Recognized by the Superior Court as " as an expert in ear, nose and throat medicine (otorhinolaryngology) and cervico-facial oncological surgery ".

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cancer in men over 50 years of age and between 86% and 94% of these deaths in women. Dr. Guertin stated that cigarettes are the main etiological agent for 80% to 90% of “throat” cancers (remember that this term refers to cancers – squamous cell carcinomas[696] – of the larynx, oropharynx and hypopharynx).[697] Equally important and alarming figures were provided by Dr. Desjardins for emphysema. The judge pointed out three times the lack of convincing evidence to the contrary[698] and went on to state: “[A]s indicated, these opinions are not effectively contradicted by the Companies, who religiously refrain from allowing their experts to offer their own views on medical causation between smoking and the Diseases".[699] This led him to the following question:

> [677] It remains to determine what "smoking" means in this context, i.e., how many cigarettes must be smoked to reach the probability threshold on each of the Diseases. For that, the Plaintiffs turn to their epidemiologist, Dr. Jack Siemiatycki.

[757] We can therefore see on which specific aspect of the problem the respective arguments of the respondents and the appellants were likely to clash.

[758] As the Judge mentioned, Dr. Siemiatycki, the main expert witness called by the respondents to resolve this issue, is an epidemiologist. He produced a lengthy report and testified for over twenty hours in February and March 2013. This testimony was supplemented by a first table updated and filed in February 2014,[700] then by a second table requested by the judge during deliberations and submitted on March 13, 2015.[701] It is not necessary to give a detailed account of this evidence here because the judge deals with it in several places in his reasons and gives an overview of it in paragraphs 695 to 718. In order to determine what smoking dose is likely to increase the relative risk (“RR”) of contracting any of the diseases covered by the actions (and thus, in his opinion, to satisfy the burden of the balance of probabilities) to at least two (2), Dr. Siemiatycki conducted meta-analyses combining the results of various epidemiological studies published between 1965 and 2000 relating to the diseases in question. He concluded that, evaluated in pack years,[702] the dose that reaches this level of RR (the critical dose of smoking) is about four pack years. Using data from various sources, including the Quebec cancer registry compiled by the Ministère de la Santé et des Services sociaux, he then estimated

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[696] Dr. Guertin explained that squamous cell carcinoma accounts for 90% of cancers that develop in the upper airways and that only this type of cancer is formally associated with smoking: Exhibit 1387 at 2.

[697] *Québec Council on Tobacco and Health c. JTI-MacDonald Corp.*, 2013 QCCS 4904 at paras. 9–16 and 83.

[698] In fact, the experts cited by the appellants admitted to these figures or failed to question them.

[699] Judgment *a quo* at para. 676. Perhaps there is a certain exaggeration (“religiously”) in this sentence, but its meaning is clear.

[700] Dr. Siemiatycki modified his calculations to take into account some of the criticisms made by the appellants’ experts. In particular, they criticized him for using data from a Statistics Canada survey to establish the smoking profile of the Quebec population. In his recalculations, Dr. Siemiatycki used data from a study of the Montreal population: testimony of Dr. Jack Siemiatycki, February 18, 2013, at 99–102. The results of his recalculations were introduced into evidence with Exhibit 1426.6.

[701] See exhibit 1426.7.

[702] Recall that a pack year is a unit of measurement equivalent to 7,300 cigarettes. This unit of measurement is attained by smoking one pack of twenty cigarettes a day for one year, but can also reflect consumption that is otherwise equivalent, such as, for example, half a pack (10 cigarettes) a day for two years or any other rate of consumption totalling 7,300 cigarettes.

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the number of people affected by the diseases in Quebec, based on smoking doses ranging from four to twenty pack years.

[759] Dr. Siemiatycki's methodology is somewhat innovative, as he himself acknowledged during his testimony, when he commented on the section of his report entitled "*Estimating smoking patterns among diseased population*":[703]

> Q. Okay. You have to agree, though, that the first step – what I call the first step, major step, that is to say the determination of a critical amount – is also where you had to innovate in order to develop a critical amount? You say that at page 33 of your report.
>
> R. H'm ... I guess the word "innovate", one has to think ... figure out what you mean by that. The components of that process were not novel, putting them together the way I did was novel.
>
> Q. Very well.
>
> R. As far as I know. Other people may have done it; I wasn't aware of it. That's all I would say.
>
> …
>
> Q. Okay. Is it fair to say that that, at least putting together all these various components, was the innovation and it was novel?
>
> R. I don't know that it hasn't been done before. What I meant is that it is not. this is not described in textbooks that I had available, how to do this. The components are very straightforward and it's part of the statistical and epidemiological canon, but doing it in this context for this purpose, I wasn't aware of this.

[760] That being said, this is a far cry from the kind of "junk science" denounced by Justice Binnie in *R. v. J.-L.J.*,[704] and which should be excluded at the admissibility stage. Dr. Siemiatycki's evidence was most certainly admissible here and had to be assessed on its probative value.

[761] Three experts called by the appellants, Mr. Marais,[705] PhD in mathematics/statistics, Dr. Mundt,[706] epidemiologist, and Mr. Price,[707] PhD in mathematics/statistics, criticized Dr.

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[703] Testimony of Dr. Jack Siemiatycki, February 20, 2013, at 13–15.

[704] *R. v. J.-L.J.*, 2000 SCC 51 at para. 25.

[705] Recognized by the Superior Court "as an expert in applied statistics, including in the use of bio-statistics and epidemiological data and methods to draw conclusions as to the nature and extent of the relationship between an exposure and its health effects.".

[706] Recognized by the Superior Court "as an expert in epidemiology, epidemiological methods and principles, cancer epidemiology, etiology and environmental and lifestyle risk factors and disease causation in populations."

[707] Recognized by the Superior Court "as an expert in applied statistics, risk assessment, the statistical

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Siemiatycki's report from many angles. The judge discussed this in paragraphs 719 to 767 of his reasons. In paragraphs 745 to 748, he explained why he dismissed Price's report in its entirety. The reasons he offers are serious. In short, this report is an application in the field of statistics of the thesis defended by the appellants and summarized above: it is, in a way, an exacerbated version of criticisms repeated by experts Marais and Mundt, a version that could be summarized by the contention that epidemiology is not a diagnostic tool at the individual level.

[762] It is certain that the methodology used by Dr. Siemiatycki left more room for extrapolation than that proposed by Mr. Marais, who would have been satisfied only with a detailed survey of a representative (and homogeneous) sample of a few thousand people with the targeted diseases in Quebec. However, there is every indication that the judge was fully aware of the risk of distortions in the results obtained by meta-analyses. This explains why he incorporated in his analysis a datum from Dr. Mundt's testimony, for whom the relative risk of developing lung cancer only becomes really significant between 10 and 15 pack years.[708] Hence the following conclusion by the judge:

> [759] Since Dr. Siemiatycki's method necessarily ignores several relevant, albeit minor, variables and, in any event, is not designed to calculate precise results, the Court will pay heed to Dr. Mundt's comments. Accordingly, we shall set the critical dose in the Blais File at 12 pack years, rather than five. The Class description shall be amended accordingly.

[763] This major change to the Class description for the Blais Class significantly affected its composition. There is one specific fact that shows this. According to figures collected by Dr. Siemiatycki, 112,506 new cases of lung cancer were diagnosed in Quebec between 1995 and 2011. Of these, 98,730 people would meet the four pack years criterion, which falls to 82,271 when the twelve pack years criterion is applied.

[764] In fact, the reservations expressed by Dr. Mundt and, above all, by Mr. Marais, are also a statistical extension of the legal argument that medical causation is only precisely understood at the individual level. When the cause is considered at the population level, regardless of size, distortions would appear and skew the results. The criticism of Dr. Siemiatycki's treatment of heterogeneity, insisted upon by Mr. Marais, illustrates this.

[765] The notion of heterogeneity is introduced as a fundamental reason to reject the critical dose of smoking criterion. In essence, this notion refers to the variation in the results observed among the studies chosen for the purpose of a summary such as a meta-analysis. During his testimony, Mr. Marais clarified the meaning in these terms:[709]

> [E]ven if he could rely on the critical amounts, the critical amounts fail to distinguish between smokers on dimensions of heterogeneity such that inference is that Dr. Siemiatycki bases on the critical amounts are, in effect, assigning an

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analysis of health risks and the use and interpretation of epidemiological methods and data to measure statistical associations and to draw causal inference."

[708] It is also interesting to note that, in his report, Mr. Marais (JTM) wrote that, assuming that Dr. Siemiatycki's method is valid, the "tobacco dose" at which the relative risk would hypothetically reach 2.0 would be 11 pack years: Exhibit 40549 at 71, paragraphs 57 and at 73, paragraphs 63–64.

[709] Testimony of Laurentius Marais, March 10, 2014 at 72.

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> average metric, an average measure for a heterogeneous group. This is calculated from all the individual members of the class, a single average, assigning that average back to each individual member of the class and labelling that an individual assessment. But there's nothing individual about it.

[766] He went on to provide the example of a measure of the average size of individuals in a given population:[710]

> It is as if one is concerned with measuring the heights of Quebecers, and one goes and measures individual heights and calculates an average height for all Quebecers, and then assigns that average back to each individual Quebecer and labels the result an individual assessment; there's nothing individual about it.

[767] These explanations were elaborated on later in his testimony with figures from Statistics Canada on the average size of Canadians.

[768] In this case, however, the plaintiffs' evidence was more than sufficient to consider the meta-analyses conducted by Dr. Siemiatycki to be conclusive. In addition to the fact that he claimed to have solid experience in analyses of this type, which was noted by the judge in paragraph 701 of his reasons, this expert considered, that in this case, the heterogeneity factor had no consequences for the purposes of his study. He accepted almost all the theoretical proposals presented to him in cross-examination, but also stated the following:[711]

> Q. Okay. All right. The numbers, the formal tests, though, don't tell you that they're telling the same story, the measures of heterogeneity; right?
>
> R. Not those tests.
>
> Q. Right.
>
> R. But, you know, tests of heterogeneity can be deceptive. You might ... there's a difference between statistical significance and clinical significance. And you'll find this described in statistics textbooks, as well as in... as well as sort of the methodologies of conducting statistical tests.
>
> So, if you have large enough study samples, for example, you'll find that the difference between a treated group and an untreated group might be statistically significant, but the effect of the treatment is so trivial, a change of one millilitre (1 ml) of mercury in blood pressure or something like that, that it has no clinical relevance.
>
> So, clinical importance and statistical significance are two different things. And what I contend is that the heterogeneity among these studies has no meaningful clinical impact.
>
> Q. You actually, though, didn't inquire to look, to consider the actual source of

[710] Testimony of Laurentius Marais, March 10, 2014 at 73.
[711] Testimony of Dr. Jack Siemiatycki, March 19, 2013, at 96–97

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the heterogeneity.

R. No, I didn't.

Q. Because, in fact, you didn't know that there was that amount of statistical heterogeneity?

R. I saw the lists of estimates of relative risks and of slopes, I saw that there was heterogeneity, but I saw that all of the estimates were within a range that would tell the same story.

[769] In this case, Dr. Siemiatycki concluded that, regardless of the degree of heterogeneity between the studies he used for his meta-analyses, "the range of values from all [of them] was so far off the charts for what we usually see in terms of the magnitude of relative risks and the magnitude of dose-response relations, that it would have little impact of [sic] the final results. [712]

[770] It is clear that he knew what such distortions consisted of. At another point during cross-examination, he expressed himself in a way that showed that he understood very well what he was being accused of but that in his eyes this accusation was a misrepresentation:[713]

Q. All right. But ... okay, we'll just look at what that means for lung cancer. But if I wanted to know the average height of Quebecers and I didn't know anything about their average height, and I relied ... and I simply took the average height of everyone in the world...

R. Yes.

Q. ... Chinese, whatever it is, and if the data is extremely ...

R. Heterogeneous.

Q. ... heterogeneous, I cannot be that confident as to whether I've hit the right parameter for Quebec; is that not correct?

R. That's correct.

Q. Right.

R. I certainly would not do the exercise that I did to estimate the height of Quebecers.

Q. Okay.

R. It's a different problem and I wouldn't address it in the same way.

[771] In addition, as the judge noted in paragraphs 762 *et seq*. of his reasons, the record

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[712] Testimony of Dr. Jack Siemiatycki, March 19, 2013, p. 70.
[713] Testimony of Dr. Jack Siemiatycki, February 20, 2013, at 196.

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contains several pieces of information that converge with the evidence offered by Dr. Siemiatycki and corroborate its content. The evidence thus clearly shows that smoking is by far the most significant risk factor for each of the diseases involved.[714] For example, there is some evidence that smoking is the cause of nearly 90% of lung cancers, while occupational exposure to carcinogens is thought to be responsible for less than 15% of these cancers[715] (in cross-examination, Dr. Barsky (JTM) acknowledged in particular that asbestos exposure is responsible for about 2% of lung cancers).[716] Moreover, Exhibit 40549.1 suggests that even after a period of abstinence of more than 40 years, "the risk for lung cancer among former smokers remains elevated compared with never-smokers."[717] In the same vein, the Surgeon General acknowledged that "[l]ung cancer risk decreases with successful cessation and maintained abstinence, but not to the level of risk for those who have never smoked, even after 15 to 20 years of not smoking."[718] This observation applies to smokers of both sexes and to all histological types of lung cancer.[719] In sum, still according to the Surgeon General:[720]

> Even with the longest durations of quitting that have been studied ... the risks for lung cancer remain greater in former smokers compared with lifetime nonsmokers (NCI 1997). The absolute risk of lung cancer does not decline following cessation, but the additional risk that comes with continued smoking is avoided. The study of veterans in the United States that was initiated in the early 1950s provides some of the lengthiest follow-up data. Although smoking was assessed only at the beginning of the study, those who reported having quit were assumed to have remained nonsmokers during the follow-up period. With this assumption, the veterans study provides a picture of risks for lung cancer up to 40 years after smoking cessation. Even for this duration, former smokers have a 50 percent increased risk of death from lung cancer compared with lifetime nonsmokers. The 1990 Surgeon General's report (USDHHS 1990) reviewed findings of additional cohort and case-control studies. The results consistently showed declining RRs, compared with continuing smoking, with increasing duration of not smoking. The general pattern of this decline was the same for men and women, for smokers of filtertipped and unfiltered cigarettes, and for all major histologic types of lung cancer. However, lung cancer incidence in former smokers, even decades after quitting, has not been shown to return to the rate seen in persons who have never smoked.

[772] Dr. Siemiatycki also addressed this phenomenon in his testimony.[721]

[773] Exhibit 40549.1 also shows that there is no significant gender difference in the "susceptibility" of developing lung cancer: "[T]he results of studies that have compared the RR estimates for men and women for a specific degree of smoking history demonstrate very similar

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[714] See in particular Lung Cancer (Exhibit 1382 at 58; Exhibit 1428 at 504 *et seq*.; Exhibit 1709 at 42 *et seq*.); Throat Cancer (Exhibit 1387 at 24); Emphysema / COPD (Exhibit 1382 at 14).
[715] Exhibit 40504.21 at 216 *et seq*.; Exhibit 40549.1 at 34S.
[716] Testimony of Dr. Sanford H. Barsky, February 18, 2014, at 23 *et seq*.
[717] Exhibit 40549.1 at 35S and 41S–43S.
[718] Exhibit 601-2004 at 43.
[719] Exhibit 601-2004 at 49.
[720] Exhibit 601-2004 at 49.
[721] Testimony of Dr. Jack Siemiatycki, February 19, 2013, at 23–24.

associations."[722]

[774] And, in fact, there is ample evidence that smoking is a major risk factor for each of the diseases involved, despite the existence of individual factors that are capable of influencing – either negatively or positively – the risk of developing a disease. The "power" of smoking as a risk factor is so strong that the Surgeon General repeatedly concluded that "[t]he evidence on the mechanisms by which smoking causes disease indicates that there is no risk-free level of exposure to tobacco smoke."[723] Let us again cite the Surgeon General, in his 2004 report:[724]

> The excess risks for smokers, compared with persons who have never smoked, are remarkably high. Many studies provide RR estimates for developing lung cancer of 20 or higher for smokers compared with lifetime nonsmokers (USDHHS 1990; Wu-Williams and Samet 1994). A risk-free level of smoking has not been identified, and even involuntary exposure to tobacco smoke increases lung cancer risks for nonsmokers (USDHHS 1986).
>
> [Emphasis added.]

[775] In the same vein, with regard to the relationship between smoking and the various other risk factors for the diseases in question, Dr. Siemiatycki offered the following explanation: "Because smoking is such a dominant risk factor compared to any of the others, whether it's radon, whether it's alcohol, whether it's asbestos, we're talking about Mount Everest compared to Mount-Royal and which one can obscure the other one."[725] In his report, he illustrated the relative importance of smoking as a risk factor, noting in particular that "in the populations in which these [other risk] factors have been studied, the relative risk of lung cancer in relation to those factors rarely exceeded 3.0. ... By contrast, ... the relative risk due to smoking is around 10.0, and even more for heavy smokers."[726] This statement is based on his knowledge of "hundreds and perhaps thousands of publications.".[727] The evidence provided by Dr. Desjardins and Dr. Siemiatycki revealed that cigarette consumption is a major confounding factor in epidemiological studies to determine the association between other risk factors and lung cancer.[728]

[776] With respect to, for example, "throat cancers," Dr. Guertin's evidence, cited by the respondents, reveals that the "power" of smoking far exceeds that of other risk factors, including alcohol. In his report, Dr. Guertin stated the following on this subject:[729]

> [TRANSLATION]
>
> Alcohol is reported in several studies as important etiological factors[sic] in the development of SCC of the UAT [squamous cell carcinomas of cancers of the upper aerodigestive tract].[730] It acts as a contributing factor in nearly three-

[722] Exhibit 40549.1 at 37S.
[723] Pièce 601-2010A at 9.
[724] Exhibit 601-2004 at 43.
[725] Testimony of Dr. Jack Siemiatycki, March 19, 2013, at 171.
[726] Exhibit 1426.1 at 23.
[727] Exhibit 1426.1 at 23.
[728] See in particular Exhibit 1382 at 59–60; Exhibit 1426.1 at 22–23.
[729] Exhibit 1387 at 21 and 24.
[730] Cancers of the upper aerodigestive tract correspond to cancers of the larynx, pharynx [oropharynx and

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> quarters of UAT SCCs. As reported in the study by Day *et al*. the cigarette-alcohol combination is responsible for 73% of the SCCs in the oral and pharyngeal cavity. The effect of alcohol alone without cigarette exposure on the risk of developing SCC of the UAT is significant only at very high levels of consumption…
>
> The major clinical significance of alcohol consumption is in potentiating the carcinogenic effect of tobacco at all levels of tobacco consumption. This effect is most noticeable at the highest levels of exposure and the magnitude of this effect is at least additive and most often multiplicative depending on the sub-sites UAT SCCs and the exposure levels.
>
> ...
>
> Alcohol is involved in the carcinogenesis of SCC of the UAT [throat cancers]. However, it becomes significant at very high levels of consumption. Its role seems to be mainly related to the multiplier effect it has on the relative risk associated with smoking.
>
> …
>
> It is clear that cigarettes are the main etiological agent involved in the occurrence of nearly 80 to 90% of UAT SCCs. …
>
> [References omitted.]

[777] As for emphysema and COPD,[731] Dr. Desjardins stated that doctors hold smoking responsible for 85% of COPD cases.[732] In comparison, alpha-1-anti-trypsin deficiency − an inherited disease that is also recognized as a risk factor for emphysema and COPD − is a very rare cause of these diseases (it is attributed to less than 1% of emphysema cases).[733] In fact, in Dr. Siemiatycki's words, the evidence shows that "[n]o other factor approaches smoking in terms of the strength of association"[734] with respect to emphysema and COPD.

[778] What conclusions could the judge draw from these expert reports?

[779] The experts who testified for the plaintiffs on the medical and epidemiological aspects of the case were all highly qualified and had extensive clinical or field experience.

[780] The experts cited in defence to answer the experts Desjardins, Guertin and Siemiatycki were also highly qualified. In contrast, however, the general impression that emerges from the evidence they provided is that it was directed at the methodology of the epidemiological work

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hypopharynx] and oral cavity. In common parlance, these types of cancers are sometimes referred to as "throat cancers." It is important to remember that in this case, however, the notion of "throat cancers" refers only to squamous cell carcinomas of the larynx, oropharynx and hypopharynx (see *supra* note 151).

731 See the definition of COPD, *supra* note 43.

732 Exhibit 1382 at 14.

733 Exhibit 1382 at 14.

734 Exhibit 1426.1 at 26.

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used by the plaintiffs and that its main and perhaps only objective was to confine the debate to the possible etiology of the diseases diagnosed for the members of each Class − but considering each of them individually, from the first to the very last, without leaving any out. In so doing, it sought to raise doubts about the usefulness of epidemiological research in proving causation and, beyond this issue, about the applicability of collective recovery in both actions.

[781] The criticism of Dr. Siemiatycki's report and testimony by Mr. Marais suggests that, with respect to the incidence of smoking on the diseases covered by the Blais action, fully reliable epidemiological statistics on group size are very difficult to collect. It is argued that to be valid as evidence, they should be at a level of granularity such that any imaginable causal factor (congenital, environmental, behavioural, etc.) is taken into account for each member of the Class, before one can venture to suggest that tobacco is probably responsible for anything regarding the health of each of these people suffering from any of the diseases in question − and furthermore, in the case of an unknown number of them, tobacco may have been only a secondary, even marginal or even inoffensive factor. A valid approximation, as Mr. Marais said at the very end of his testimony,[735] could perhaps be obtained by conducting a survey from a representative sample of the Blais Class members on the thirteen topics previously mentioned in paragraph [715]. Mr. Marais acknowledged, however, that he had never tested such a method before. Had he done so (which he did not), the judge would most certainly have considered such evidence relevant and useful − he stated as much in paragraph 740 of his reasons.

[782] Finally, and in any event, the surest method according to the defence experts would be to demonstrate a clinical diagnosis by a pathologist of the origin of the disease in the case of each Class Member. In this regard, Dr. Barsky,[736] called by JTM, placed particular emphasis on the crucial role of a pathologist in diagnosing a cancer patient:[737]

> There's an idiom or axiom in our field that states "the tissue is the issue," meaning that it's the gold standard. Virtually every case of cancer in a patient is never treated until there is tissue confirmation, tissue verification of this diagnosis.

[783] It is this histology of cancerous tissue that, according to the same witness, would make it possible to separate the causes of certain cancers, for example by detecting DNA mutations attributable to certain carcinogenic substances contained in tobacco.

[784] This contrasting evidence in response to Dr. Siemiatycki's evidence seems to result

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[735] He described it in these terms: "I think it may well be and that statistical methods can actually be applied to that situation, to that problem, but I think that the first necessary step in applying statistical methods to that question would be a kind of statistical method that we have not seen in this case. And that would be to perform a survey for mapping the demographics of the potential Class in this case that would actually ... that would actually be illuminating about the dimensions of the population we're talking about here. [T]his kind of survey is very much likely the polling example that I used, and the sample size would be comparable, in fact could … in my judgment … be comparable to both the kind of political poll sample size that we see in the real world and to the sample size used in the Stats 12 Canada survey that I used as the example of heights here, yesterday, which was only a handful of thousands of people. … [M]y sense is that this could be accomplished with a sample size in the low single digits of thousands …" (testimony of Dr. Marais, March 12, 2014, at 323−325).

[736] Recognized by the Superior Court as an expert in pathology and cancer research.

[737] Testimony of Dr. Sanford H. Barsky, February 17, 2014, at 107−108.

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largely from a confusion of genres. Indeed, the purpose of the class action is not to attempt to restore the health of each member of the class, but to compensate the victims of an injury which, according to preponderant evidence, even epidemiological evidence, would have been caused by the fault of one or more defendants. The judge was therefore correct in stating, in regard to the expert reports prepared by experts Marais, Mundt and Price:

> [737] As a general comment, the Court finds a "fatal flaw" in the expert's reports of all three experts in this area in that they completely ignored the effect of section 15 of the [*Tobacco-Related Damages and Health Costs Recovery Act*], which came into effect between 18 and 24 months prior to the filing of their respective reports. Dr. Marais and his colleagues preferred to blinder their opinions within the confines of individual cases, even though they should have known (or been informed) of the critical role that this provision plays with respect to the use of epidemiological evidence in cases such as these.

[785] Contrary to what the appellants claim, it can be assumed that the Classes as defined by the judge are most likely under-inclusive. Let us take the Blais Class. In this case, it is because significant numbers of people (let us call them subset A) may suffer from one of the diseases identified in the judgment, and may be affected by it because of, scientifically speaking, their smoking, but do not qualify as members of the Class because the definition of the critical dose of smoking excludes them[738] if they smoked less than 12 pack years[739] over the course of their life.

[786] It can also be assumed that in another respect, and for the opposite reason, the Class thus defined is over-inclusive. Indeed, people (let us call them subset B) may have the same diseases and qualify as members of the Class because they have smoked 12 or more pack years, when in reality, scientifically speaking, they contracted their disease because of a causal factor unrelated to tobacco use.

[787] In either case, it will almost always be impossible to provide a scientific demonstration of the only true causal factor, namely, smoking in the first case and another factor in the second. Even today, this data still escapes any rigorous demonstration that fully meets the requirements of science: the last or ultimate cause is an unknown and will remain so in the current state of scientific knowledge.

[788] Here, however, the legislator clearly allows epidemiological evidence of general *and* individual causation. In the case at bar, by defining the Class as he did, the judge ensured that, in all likelihood, the population constituting subset B will be reduced to very few, at the expense, of course, of the much larger population constituting subset A. One is the counterpart of the other.

[789] If, however, the difficulty created by the unknown can be overcome, on a balance of

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[738] Similar reasoning is possible for other elements that fall within the definition of the Classes or Sub-Classes set by the trial judge. This is the case, for example, when the judge, in paragraphs 761, 996 and 997 of his reasons, reduced the size of the emphysema Sub-Class from 46,172 to 23,086 Members, to reflect the high error interval in the statistics compiled by Dr. Siemiatycki. The first Class was probably over-inclusive. There is every reason to believe that, reduced to 23,086 Members, the revised Class is under-inclusive.

[739] That is to say 87,600 cigarettes.

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probabilities, by epidemiological evidence, the result remains fundamentally fair to the respondents as soon as sub-set A is given a magnitude that far exceeds the size of sub-set B. These parties are thus ordered to pay significantly less damages than they would have to face if there were a scientifically recognized way to eliminate the unknown at the individual level of each patient or Class member.

[790] In the case at bar, the judge therefore found that the respondents provided evidence, on a balance of probabilities, of medical causation for each of the members of the Blais Class. In essence, the reasoning behind this finding is set out in the following reasons:

> [740] To be sure, such a study would have made the Court's task immeasurably easier. That does not mean that it was absolutely necessary in order for the Plaintiffs to make the necessary level of proof at least to push an inference into play in their favour. In fact, it is our view that they succeeded in doing that through Dr. Siemiatycki's work. Thus, "an inference of causation", as Sopinka J. called it in *Snell*, is created in Plaintiffs' favour.
>
> [741] In the same judgment, he noted that where such an inference is drawn, "(t)he defendant runs the risk of an adverse inference in the absence of evidence to the contrary".[740] Here, the Companies presented no convincing evidence to the contrary. Logically, once the inference is created, rebuttal evidence must go beyond mere criticism of the evidence leading to the inference. That tactic is exhausted in the preceding phase leading to the creation of the inference.

[791] In the presence of serious, precise and concordant presumptions that were not countered with convincing evidence to the contrary, the judge was justified in finding, as he did, on medical causation in the case of the Blais Class.

a.2. Létourneau file

[792] Was it open to the judge to find that smoking is the likely cause of tobacco addiction for the members of the Létourneau Class?

[793] With regard to this aspect of medical causation between smoking and tobacco dependence, the judge was obviously correct to say, at paragraph 768 of his reasons, that only tobacco is likely to create tobacco dependence in its users.

[794] It is more difficult to formulate an objective criterion to distinguish between people who developed such dependence and those who did not. Nevertheless, again, the expert evidence provided by the respondents was overwhelming. The report and testimony of Dr. Negrete,[741] which the judge preferred to those of expert witnesses Davies[742] and Bourget,[743] for the reasons

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740 *Snell v. Farrell*, [1990] 2 S.C.R. 311 at 330.

741 Recognized by the Superior Court “as an expert psychiatrist with a specialization in addiction.”

742 Recognized by the Superior Court “as an expert in applied psychology, psychometrics, drug abuse and addiction.”

743 Recognized by the Superior Court “as an expert in the diagnosis and treatment of mental disorders, including tobacco use disorder, as well as in the evaluation of mental.”

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explained in paragraphs 156 to 165 of his reasons, are convincing. They place the sure signs or symptoms of tobacco dependence well below the thresholds set by the judge. Faced with this evidence based on an exhaustive study of the phenomenon and the scientific literature on it, the judge noted, in paragraph 167 of his reasons, that "[a]s usual with the Companies' experts, they were content to criticize the opinions of the Plaintiffs' experts while voicing little or no opinion on the main question."

[795] There was ample evidence to ground the conclusion that a person with the characteristics listed by the judge in paragraph 788 of his reasons will have developed a tobacco dependence, in the clinical sense of the term. As in the case of the Blais Class, and again according to the explanations already given above starting at paragraph [785], the judge defined the Class in a way that, in light of this evidence, necessarily makes it under-inclusive. This neutralizes any distortion that would result from the approximations that may be included in the epidemiological evidence.

b. Conduct causation

[796] This part of the analysis, as already mentioned in paragraph [671], is unnecessary if we accept the conclusions already stated by the Court and if we consider the perspective provided by articles 1468 and 1469 C.C.Q. That being said, for the purposes of the dispute between the parties, proof of conduct causation is also governed by section 15 T.R.D.A. Consequently, to the extent that this evidence was incumbent on them to establish the conditions for liability based solely on article 1457 C.C.Q.(which must be distinguished in this regard from articles 1468, 1469 and 1473 C.C.Q.), it was open to the respondents, in accordance with section 15, to make this demonstration "on the sole basis of statistical information or information derived from epidemiological, sociological or any other relevant studies, including information derived from a sampling." And that is indeed what they did, by means of presumptive evidence that the appellants were powerless to refute. The reasoning followed here is similar to that previously discussed in relation to medical causation.

[797] The evidence of conduct causation presupposes, in short, that the appellants' faults are a likely factor in the decision of the members of the Blais and Létourneau Classes to start and to continue smoking. Reduced to its simplest expression, the respondents' argument was that the failure for such a long period of time to recognize the toxic nature of cigarettes, known to the appellants, and the failure for such a long period of time to recognize the addictive nature of nicotine, known to the appellants, omissions moreover reinforced by advertising, sponsorship and conduct likely to encourage smoking, were together the likely causes of smoking among these members.

[798] The trial judge considered these assumptions in paragraphs 791 to 817 of his reasons. He concluded that the appellants' faults "were one of the factors that caused the members to smoke," both in the case of the Blais Class (paragraph 806) and in the case of the Létourneau Class (paragraph 813). This results in an inference of conduct causation that is not refuted in the case of either the Blais Class (paragraphs 807 and 808) or the Létourneau Class (paragraphs 813 to 816).

[799] In this analysis, conduct causation closely parallels a crucial fact that has long been denied or ignored by the appellants, namely the dependence that nicotine creates because of its

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addictive nature. As one of the respondents' lawyers argued at the November 24, 2016, hearing, [TRANSLATION] "... when we talk about conduct causation, the most rational and probable explanation for smoking is addiction."[744] The inference of conduct causation is a corollary of the addictive nature of the product: what, more likely than any other factor, leads the smoker to smoke and continue to smoke is addiction, which is developed relatively quickly.

[800] According to the evidence, however, the appellants had known for a long time that their product had this characteristic; they had every reason to suspect it and then to be aware of its indisputable existence long before the public became aware of it. With respect to conduct causation, it is not appropriate here to review all of the evidence adduced by the respondents or the appellants for or against the argument summarized above. But some representative information from this evidence provides a good idea of its overall content.

[801] First of all, as an introduction, we cannot ignore the many reports of the US Surgeon General on tobacco use,[745] which are rich in information and fill some 35 volumes of the schedules attached to the briefs. The 1988 report, entitled *The Health consequences of Smoking: Nicotine Addiction. A Report of the Surgeon General*, probably the most eloquent report on the effects of tobacco addiction, provides an overview of prior and contemporary work. It is appropriate to quote here, in full, the first few paragraphs of the preface to this report, as they provide a concise and reliable idea of the context that the judge had to consider:[746]

> The 20th Report of the Surgeon General on the health consequences of tobacco use provides an additional important piece of evidence concerning the serious health risks associated with using tobacco.
>
> The subject of this Report, nicotine addiction, was first mentioned in the 1964 Report of the Advisory Committee to the Surgeon General, which referred to tobacco use as "habituating." In the landmark 1979 Report of the Surgeon General, by which time considerably more research had been conducted, smoking was called "the prototypical substance-abuse dependency." Scientists in the field of drug addiction now agree that nicotine, the principal pharmacologic agent that is common to all forms of tobacco, is a powerfully addicting drug.
>
> Recognizing tobacco use as an addiction is critical both for treating the tobacco user and for understanding why people continue to use tobacco despite the known health risks. Nicotine is a psychoactive drug with actions that reinforce the use of tobacco. Efforts to reduce tobacco use in our society must address all the major influences that encourage continued use, including social, psychological, and pharmacologic factors.
>
> After carefully examining the available evidence, this Report concludes that:
>
> • Cigarettes and other forms of tobacco are addicting.

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[744] Stenographic notes of November 24, 2016 (SténoFac) at 66.

[745] They cover a very long period, from 1964 to 2014, the first research having been launched by the Surgeon General in 1959.

[746] Exhibit 601-1988 at i.

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> • Nicotine is the drug in tobacco that causes addiction.
>
> • The pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine.
>
> We must recognize both the potential for behavioral and pharmacologic treatment of the addicted tobacco user and the problems of withdrawal. Tobacco use is a disorder which can be remedied through medical attention; therefore, it should be approached by health care providers just as other substance-use disorders are approached: with knowledge, understanding, and persistence. Each health care provider should use every available clinical opportunity to encourage or assist smokers to quit and to help former smokers to maintain abstinence.

[802] The judge sets 1996, which is 18 months after the appearance of the warnings that refer to it, as the time when tobacco dependence became a known fact for a vast majority of people. It can be said that, in doing so, he was very cautious. What is certain is that, as early as 1989, the appellants could not ignore the Surgeon General's formal findings. It is not unrealistic to generally attribute to them a much more extensive knowledge of the characteristics of their products than that which could have been available to the general public. According to the judge's findings from the evidence, the appellants were aware of the issue of tobacco dependence since the beginning of the period covered by the actions.

[803] More specifically, the respondents filed the minutes of a meeting dated November 15, 1961, written by Sir Charles D. Ellis. At the time, he was Director of Research for British American Tobacco, the parent company of Imperial Tobacco in Canada and Brown & Williamson in the United States. As previously noted (see paragraph [130]), he wrote:[747]

> Smoking demonstrably is a habit based on a combination of psychological and physiological pleasure, and it also has strong indications of being an addiction. It differs in important features from addiction to other alkaloid drugs, and yet there are sufficient similarities to justify stating that smokers are nicotine addicts.

[804] After listing various explanatory hypotheses that had already been the subject of research on the possible physiological causes of addiction, he went on to say:[748]

> [S]o much progress has been made that it is reasonable to hope we might solve these problems with a little more work.
>
> The need to do this is emphasised by the rapid increase in the use of "tranquilisers" and "pep" pills which may become very serious competitors to smoking. There is little knowledge of how tranquilisers work, but extensive experimentation is going on. If the competition is to be met successfully it must be important to know how the tranquilising and stimulating effects of nicotine are produced, and the relation of addiction to the daily nicotine intake.

[805] Nearly fifteen years later, in October 1976, an Imperial Tobacco public relations

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[747] Exhibit 1379 at 2.
[748] Exhibit 1379 at 2.

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executive, Michel Descoteaux, wrote a memo to Anthony Kalhok, then Vice President of Marketing of the company. Both testified at the trial. The document in question was prepared for a meeting in the United Kingdom organized by British American Tobacco and attended by executives of companies controlled by the latter. Marked confidential, the document attempts to provide an update on what the company's public relations strategy, understood in a very broad sense, should be. It contains the following passage:[749]

> A word about addiction. For some reason, tobacco adversaries have not, as yet, paid much attention to the addictiveness of smoking. This could become a very serious issue if someone attacked us on this front. We all know how difficult it is to quit smoking and I think we could be very vulnerable to such criticism.
>
> I think we should study this subject in depth, with a view towards developing products that would provide the same satisfaction as today's cigarettes without "enslaving" consumers.

[806] Much of the evidence presented by the plaintiffs shows that the phenomenon of tobacco dependence, or addictiveness, was known to the appellants and had been confirmed very early on in reliable scientific literature.

[807] Among the experts they called to testify on conduct causation, the respondents called Dr. Juan Negrete,[750] a psychiatrist. During his testimony on March 20, 2013, Dr. Negrete wanted to comment on a study published in 2007 in an American scientific journal by twelve co-authors entitled "*Symptoms of Tobacco Dependence After Brief Intermittent Use*." Two of the appellants objected to the filing of this article on the ground that it had been sent to them by email only shortly before Dr. Negrete's examination. The judge dismissed the objection as follows:

> I understand both objections. In the context of this case, however, I am going to allow the filing of the report. You will be able to have all the time necessary for your experts to review it and counter it, should that be appropriate, since they will probably not be testifying for another year or so.

[808] One of the interesting points raised in this 2007 study, to which the judge refers in paragraph 773 of his reasons, is that it places the emergence of serious research by the scientific community on tobacco dependence very early.

[809] Thus, referring to three articles by researcher M.A. Russell published respectively in 1971, 1971 and 1974 in medical and scientific journals, the 2007 study states the following: [751]

> Among his many important contributions, Russell outlined a "model of smoking behavior" in a series of influential essays published more than 30 years ago. In this model, initial experimentation with smoking is motivated by psychosocial factors and curiosity, but quickly the "pharmacological rewards" of nicotine in the form of "indulgent," "sedative," or "stimulation" smoking provide the motivation for

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749 Exhibit 11 at 4. This passage is also reproduced above at para. [129]; see also para.[619] above.

750 Recognized by the Superior Court as an "expert psychiatrist with a specialization in addiction."

751 Exhibit 1471 at 704.

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> use prior to dependence. According to Russell, "After 3 or 4 years of intermittent smoking, regular adult-type dependent smoking sets in." When intake exceeds 20 cigarettes per day, "addictive smoking" ensues and the "smoker experiences withdrawal symptoms whenever he has gone 20 to 30 minutes without smoking."
>
> This classic description of the natural history of nicotine dependence was only rarely challenged through the end of the 20th century.
>
> [References omitted.]

[810] The trial judge summarized Dr. Negrete's testimony in his reasons. He found, as reflected in the amended definition of the Létourneau Class in subparagraph 2 of paragraph 1233 of the reasons set out in his judgment, that a person (1) who started smoking before September 30, 1994;[752] (2) who smoked on average at least 15 cigarettes[753] per day between September 1 and 30, 1998; and (3) who, as of February 21, 2005, or until his death if before that date, was still smoking on average 15 cigarettes[754] per day would be tobacco dependent. On this point, the judge stated the following:

> [786] Based on the above, the Court holds that the threshold of daily smoking required to conclude that a person was tobacco dependent on September 30, 1998 is an average of at least 15 cigarettes a day. The Companies steadfastly avoided making any evidence at all on the point, so there is nothing to contradict such a finding.
>
> [Emphasis added.]

[811] According to the judge, this definition allows us to conclude that a person is addicted to tobacco. But this does not resolve the issue of the right to compensatory damages for the members of the Létourneau Class. As the judge explains in paragraphs 946 to 951 of his reasons, this Class is too heterogeneous, particularly in terms of the damage actually inflicted on members: "[T]he level of difficulty experienced by smokers attempting to quit varies greatly," the judge noted.

[812] This statement can be accepted without hesitation. On the other hand, it will be understood that, in terms of dependence and conduct causation, people who, for example, started smoking before January 1, 1976, who smoked twelve pack years and who developed one of the diseases in question and were diagnosed before March 12, 2012, would present a considerably more homogeneous picture than that described above in the amended Létourneau Class definition.

[813] It should be recalled once again that, according to the respondents' argument, the appellants' liability arises from their denial or failure to disclose (i) the toxic nature of smoking and, later, (ii) the addiction created by tobacco, practices combined with advertising, sponsorship and the appellants' conduct. According to this argument, it is these elements together that explain the consumption habits of smokers during the relevant period. In structuring his reasoning, the judge took into account the date on which the risk of developing any of the

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752 And who, since that date, have been smoking mainly cigarettes manufactured by the plaintiffs.

753 Manufactured by the plaintiffs.

754 Manufactured by the plaintiffs.

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diseases involved as a result of cigarette consumption became known to a large majority of the public (he set it at January 1, 1980) and the date on which the addiction warnings had the desired impact on the public (he set it at March 1, 1996). In the assessment of damages, he attributed an estimated 20% share of responsibility to persons who, otherwise meeting the conditions for inclusion in the Blais Class, started smoking as of January 1, 1976. He obviously considered that these people were partly responsible for their situation because they had started smoking less than four years before the risk of developing one of the diseases in question became known and persisted in their smoking habits even though, on the one hand, this risk, in his opinion, was now known,[755] but on the other hand, they had not yet crossed the threshold for tobacco dependence established by the judge. The addiction factor was not known, however, and this factor alone significantly increases the risk to health. It is in this context that evidence of conduct causation must be assessed, with the knowledge cigarette sales are still legal and that, even long after January 1, 1980, or March 1, 1996, many people continue to smoke.

[814] If care is taken to distinguish analytically between causation, the alleged faults and injury, the issue of causation can be resolved without difficulty on the basis of the statistics presented in evidence by the appellants and the respondents.

[815] Some data on the extent of smoking in Canada are significant in this regard. Exhibit 40495.33, produced by one of the appellants, to which the judge refers in footnote 355 of his reasons, describes the results of research conducted on behalf of the Canadian Cancer Society. It includes tables on the prevalence of smoking in Canada among people over 15 years of age. According to Table 1.1, the proportion of smokers in 1965 was 50% (61% for men, 37% for women).[756] By 2010, it had dropped to 21% (25% for men, 19% for women). According to Table 1.7, between 1999 and 2010, among people aged 15 to 19, the proportion of smokers fell from 27.5% to 12%.[757] It is certain that various factors combined to cause this clear downward trend in smoking. In view of these figures, however, there can be no doubt that a high prevalence of smoking is a function of both a lack of knowledge of the health effects of smoking and a lack of knowledge of the addictive nature of nicotine. Conversely, there can be no doubt that fewer and fewer people will smoke if the public is better informed and if the social acceptability of tobacco use continues to decline. The latter two factors are the very ones that sponsorship and advertising, including lifestyle advertising,[758] are intended to combat, as is the refusal to publicly concede that nicotine is highly addictive, creating dependence on a product that is harmful to health.

[816] The judge could most certainly draw the conclusions he made in paragraphs 803 to 817 of his reasons from the evidence before him.

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[755] Describing the nature of the respective faults of the Members who started smoking after January 1, 1976, and the appellants, he wrote the following at paragraph 833 of his reasons: “In that regard, it is clear that the fault of the Members was essentially stupidity, too often influenced by the delusion of invincibility that marks our teenage years. That of the Companies, on the other hand, was ruthless disregard for the health of their customers.”

[756] Exhibit 40495.33 at 14.

[757] Exhibit 40495.33 at 17.

[758] This concept is defined in the *Tobacco Act*, SC 1997, c. 13, s. 22(4) as follows: “advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring. (*publicité de style de vie*).”

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[817] To contradict the hypothesis of conduct causation attributable to the faults alleged against them, the appellants cited various experts who, for example, responded to Dr. Negrete's expert report, challenged the effectiveness of the mandatory warnings on cigarette packages or argued that tobacco advertising did not have the impact that the respondents attributed to it.

[818] It should be recalled, however, that in 1994, in *RJR − Macdonald Inc. v. Canada (Attorney General),* ITL and JTM acknowledged that warnings serve to alert and raise public awareness of the risks associated with smoking and help reduce tobacco use:[759]

> These are clear indications that the government passed the regulations with the intention of protecting public health and thereby furthering the public good. Further, both parties agree that past studies have shown that health warnings on tobacco product packages do have some effects in terms of increasing public awareness of the dangers of smoking and in reducing the overall incidence of smoking in our society. The applicants, however, argued strenuously that the government has not shown and cannot show that the specific requirements imposed by the impugned regulations have any positive public benefits. We do not think that such an argument assists the applicants at this interlocutory stage.
>
> [Emphasis added.]

[819] Chief Justice McLachlin, for a unanimous court, reiterated this conclusion in 2007 in *Canada (Attorney General) v. JTI-Macdonald Corp.*[760] Moreover, in that case, the Chief Justice expressly acknowledged that, since the 1994 litigation, a "[a] mass of evidence in the intervening years supports this conclusion,"[761] i.e., that warnings produce results and contribute to reducing the incidence and prevalence of tobacco use.

[820] In this case, the judge was sceptical of the expert opinions provided by the witnesses called by the appellants and clearly explained why. The case of experts Davies and Bourget has already been discussed. With respect to Professor Viscusi,[762] an economist by training, and Mr. Young,[763] an ergonomist with a PhD in Engineering Psychology from Rice University, the judge discusses their testimony in paragraphs 290 to 309 of his reasons, where he identifies their weaknesses. This explains his subsequent comment on the inference of a causal link between the appellants' faults and the smoking of the members of the Blais Class:

> [808] The Companies were entitled to rebut that inference, a task entrusted in large part to Professors Viscusi and Young. We have examined their evidence in detail in section II.D.5 of the present judgment and we see nothing there, or in any other part of the proof, that could be said to rebut the presumption sought.

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759 *RJR-Macdonald Inc. v. Canada (Attorney General),* [1994] 1 S.C.R. 311 at 353.

760 *Canada (Attorney General) v. JTI-Macdonald Corp*., 2007 SCC 30.

761 *Canada (Attorney General) v. JTI-Macdonald Corp*., 2007 SCC 30 at para. 135.

762 Recognized by the Superior Court "as an expert on how people make decisions in risky and uncertain situations and as to the role and sufficiency of information, including warning to consumers, when making the decision to smoke."

763 Recognized by the Superior Court "as an expert in the theory, design and implementation of consumer product warnings and safety communications."

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[821] As for the expert report of Professor Soberman,[764] who teaches marketing at the University of Toronto, the judge had harsh words for the conclusions in that report: "This flies so furiously in the face of common sense and normal business practice that, with respect, we must reject it." That said, a reading of Professor Soberman's testimony and paragraphs 426 to 435 of the judgment shows without a doubt that the judge assessed this testimony at its true value. In the final analysis, moreover, he drew no inference, positive or negative, from this expert opinion, in regard to the appellants or the respondents. But the rejection of this report allows us to focus on the effects of cigarette advertising.

[822] The trial judge is criticized for not having referred in his reasons to the testimony of James J. Heckman,[765] an expert called by ITL and whose name appears only in the list of expert witnesses attached to the judgment.[766] Professor of Economics at the University of Chicago and winner of the Nobel Prize in Economics[767] in 2000, Mr. Heckman was called upon to respond to the expert opinion of Professor Pollay.[768] The respondents had called the latter, a marketing professor at the University of British Columbia, to testify as to what the appellants' tobacco product advertising and marketing practices revealed about their intentions. The judge faithfully summarized Professor Pollay's conclusions in paragraphs 383 to 391 and then 415 to 417 of his reasons. Further on, it is clear from paragraph 530 that, although the judge considered this expert opinion to be largely well founded, he considered it to be insufficiently probative.

[823] In addition to his opinion on Professor Pollay's methodology, Professor Heckman was invited by ITL to comment on the following questions: does the advertising in question substantially increase total ("aggregate") tobacco consumption? Does it attract new smokers? In the absence of an impact on total tobacco consumption, what economic incentives are likely to encourage advertising? In his report, Professor Heckman summarizes his findings as follows:[766]

> Dr. Pollay's analysis does not provide reliable empirical support for the conclusion that tobacco company advertising was a causal factor in initiation, quitting or intensity of smoking decisions. As a result, his work does not provide reliable evidence addressing the narrower question of whether tobacco company alleged misconduct caused harm to the class.

[824] However, the judge had good reasons not to subscribe unreservedly to the conclusions of

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764 Recognized by the Superior Court "as an expert in marketing, marketing theory and marketing execution."

765 Recognized by the Superior Court "as an expert economist, expert econometrician and an expert in the determination of causality."

766 ITL thus expresses this complaint: "Notably, in so ruling, the Trial Judge did not even make so much as a passing reference to the extensive evidence proffered by Dr. James Heckman, a Nobel Prize-winning econometrician, which dispositively demonstrated that there was no evidence of impact of advertising on overall consumption rates." Arguments of ITL at para. 348 [emphasis in original.]). Paragraph 77 of RBH's Arguments and note 359 of JTM's Arguments echo this criticism.

767 As is called the Bank of Sweden's economics prize in memory of Alfred Nobel that the Royal Swedish Academy of Sciences awards.

768 Recognized by the Superior Court "as an expert on marketing, the marketing of cigarettes and the history of marketing."

this report, which ITL described as "dispositively demonstrated."[769]

[825] Professor Heckman repeated several times that the price of cigarettes is one of the main factors influencing smoking prevalence. His tables on smoking prevalence in Canada cover the period from 1965 to 2008. He had to admit on cross-examination, however, that he was unaware that the appellants had been involved in cigarette smuggling and that ITL had pleaded guilty to one charge of smuggling cigarettes between 1989 and 1994. He also acknowledged that, had he known this, he would likely have taken it into account in his econometric modelling since smuggling normally affects the price of cigarettes, and therefore their level of consumption. Similarly, he had to admit on cross-examination that he did not know when the Canadian Parliament had passed the new version of the *Tobacco Act*[770] (following the invalidation of the first version of the Act by the Supreme Court of Canada in 1995) and admitted that he had not analyzed the effect of the new Act. It also appears from his testimony that he was unaware that the appellants had increased the number of advertisements in the form of sponsorships following the adoption of the first version of the *Tobacco Act*.[771]

[826] On this subject, he testified as follows:[772]

> Q. ... In nineteen ninety-eight (1998), just assume that the Government comes and says, "Sponsorship is over, it's finished". This is a total ban, nineteen ninety-eight (1998); would that be an important event?
>
> R I mean, each of these events that tightens the law and makes it more astringent is going to be an event, yes.
>
> ...
>
> Q. ... a total ban, would it be important if you tried to estimate ...
>
> R. A total ban on what, I'm sorry, sale of cigarettes?
>
> Q. Advertising, sponsorship.
>
> R. Okay.
>
> Q. Nineteen ninety-eight (1998), a total ban. Would that ...
>
> R. Yes.
>
> Q. ... be important?
>
> R. Would that be important?
>
> Q. Yes.

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769 Exhibit 21320.1 at 3−4.
770 *Tobacco Act,* SC 1997, c. 13.
771 *Tobacco Act,* SC 1997, c. 13.
772 Testimony of Professor Heckman, April 15, 2014, at 98−99.

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R. It might, it might be important, yes, that's to be determined with the data; it might be.

[827] Still on cross-examination, the same witness conceded that knowledge of the risks and dangers associated with smoking had an impact on an individual's decision to start or continue smoking. He also acknowledged that the disclosure of new or more complete information should in principle have the effect of reducing the prevalence of smoking. The analysis he presented seems to be based on the idea that the population had access to sufficient information about the risks and dangers associated with smoking. However, this assumption is not consistent with the trial judge's findings that the risks and dangers of disease and addiction were only known to the general public in 1980[773] and 1996, respectively. In addition, the impact of advertising in its various forms, warnings, and the phenomenon of addiction is not directly reflected in the model used by Professor Heckman. Like the other experts called in defence, he criticized the methodology of the expert opinion filed by the plaintiffs (in particular because it does not exclude confounding factors). His own testimony, however, certainly does not constitute counter-proof demonstrating the absence of a causal link between advertising, marketing, warnings and smoking prevalence.

[828] In short, in addition to the fact that the judge was not required to mention Professor Heckman's testimony, his decision not to do so can be explained by the flaws that seriously eroded the probative value of this expert opinion.

c. Dependence and definition of the Létourneau Class

[829] There remains one last aspect that needs to be addressed.

[830] The judge specifically addressed the notion of dependence in paragraphs 771 *et seq*. of his reasons. Based, among other sources, on the evidence provided by Dr. Negrete and a Statistics Canada survey he cited in his report, the judge concluded that a person who usually smokes 15 cigarettes a day is addicted to tobacco. Then, at paragraph 788, he turned to the definition of the Létourneau Class, which he reformulated in the terms already set out above, specifying that membership in the Class presupposes that each member, on February 21, 2005, or until his or her death if it occurred before that date, was still smoking an average daily dose of 15 cigarettes manufactured by the appellants and that he or she had smoked for at least four years in this manner. According to the judge, for any person with this profile, the medical causation of his or her tobacco dependence must be considered proven.

[831] The appellants challenged this definition of tobacco dependence from various angles. In summary, their claims consist of the following. The judge's findings were based not on Dr. Negrete's report but on Dr. DiFranza's article (an issue already discussed above). The judge was allegedly mistaken when he considered that dependence is established after four years of daily consumption, a piece of information from a third-party source cited in Dr. DiFranza's article. In addition, the Negrete report was refuted by the expert opinions of Prof. Davies and Dr. Bourget (an issue already discussed above), and the evidence showed that only an individual clinical diagnosis can establish the existence of tobacco dependence, as confirmed by the *Diagnostic*

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773 And even later: see in particular paras. [650] and [656] above.

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and Statistical Manual of Mental Disorders − V (or "DSM – V").[774] The judge notes, in paragraph 784 of his reasons, that 95% of daily smokers are addicted to nicotine, but this conclusion is allegedly not supported by the evidence, even though the DSM − V sets the incidence of addiction at 50% of current daily smokers. In the final analysis, the judge included in the Létourneau Class many smokers who cannot be considered to be addicted to tobacco.

[832] The respondents first respond to this by stating that, for the reason already cited, the judge did not award compensatory damages to the members of the Létourneau Class,[775] although he considered it possible to order the appellants to pay punitive damages to them on a collective basis. On this subject, he wrote in paragraph 950 of his reasons: "The inevitable and significant differences among the hundreds of thousands of Létourneau Class members with respect to the nature and degree of the moral damages claimed make it impossible to establish with sufficient accuracy the total amount of the claims of the Class." There is no cross-appeal in the Létourneau case, however, which makes the appellants' appeals on the definition of dependency for the most part, moot. Indeed, the definition of the Létourneau Class will have no impact on the outcome of the litigation.

[833] Nevertheless, and notwithstanding the foregoing, the respondents reply that, on the merits of the appellants' grievances, the evidence consulted and heard by the judge provided a more than sufficient basis for his findings on the definition of dependence. The "gestation" period for dependency retained by the judge is based on the testimony of Dr. Negrete, which is based, among other things, on an article co-authored by 12 researchers and published in a scientific journal involving a peer-review process. In addition, the "gestation" period for addiction discussed in that article was based on an article written by an eminent scientist, Dr. Russell. In addition, at the trial, Dr. Negrete explained that [TRANSLATION] "meeting the clinical criteria [for addiction] takes longer than starting to experience the symptoms that form part of the addiction syndrome much sooner."[776] The same witness also reported that 38.3% of children who started smoking met the clinical criteria for addiction after only two years of use. In light of these elements, the judge's conclusion that addiction sets in after four years of daily smoking is therefore conservative and, the respondents argue, certainly not vitiated by a palpable and overriding error.

[834] In reality, the question of the definition of tobacco dependence remains relevant only with respect to the determination of the "smoking date" in the Blais case, that is, January 1, 1976. This date is exactly four years before the knowledge date on which the health hazards in the Blais case became known, set by the judge at January 1, 1980.[777] In fact, according to the evidence that the judge considered preponderant, tobacco dependence would occur four years after the beginning of cigarette consumption.

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774 This is a standard reference work published by the American Psychiatric Association. The fifth edition was published in 2013.

775 He also concluded that, even if the award of compensatory damages had been possible in the Létourneau case, the distribution of an amount to each of the Members of the Class would be "impossible or too expensive" within the meaning of article 1034 f.C.C.P.

776 Testimony of Dr. Negrete, March 20, 2013, at 130.

777 Recall that the Court fixed this date on 1 March 1996, see in particular paras. [642], [648] and [656] above.

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[835] The appellants argue that the judge erred in fact and in law in finding that tobacco dependence manifests itself after a four-year "gestation period." In essence, their claims on this point are directed at the judge's assessment of the evidence, but they do not establish that he committed a palpable and overriding error in his assessment of that evidence.

[836] First, the judge is criticized for the fact that he preferred Dr. Negrete's evidence to that of Professor Davies and Dr. Bourget. However, as we have seen, the judge very explicitly stated the reasons why he retained the first testimony and dismissed the other two. With regard to the latter, the judge stated, *inter alia*,: "They used semantics as a way of side-stepping the real issue of identifying the harm that smoking causes to people who are dependent on tobacco." And further on, he added: "Unlike Professor Davies, [Dr. Negrete] is a medical doctor and, unlike Dr. Bourget, he has significant experience in the area of tobacco dependence, including as seminar leader of the post-graduate course in psychiatry at the McGill University Medical School. This impresses the Court." Here, we are at the epicentre of the trial judge's unfettered discretion in regard to the assessment of evidence.

[837] Moreover, the four-year period identified by the judge echoes Dr. Negrete's testimony that the first clinically verifiable symptoms of addiction (according to current diagnostic criteria) appear between three and a half and four years after the start of smoking. This statement is based in part on an extensively documented and previously mentioned article by Dr. DiFranza, whose research has been frequently cited in the reports of the U.S. Surgeon General,[778] as well as the work of psychiatrist M. A. Russell, who was quoted by the U.S. Surgeon General in his 1988 report on tobacco addiction.[779] In a complementary expert report, Dr. Negrete provides additional details on the incidence of tobacco dependence among young people:[780]

> [TRANSLATION]
>
> The smoker's loss of autonomy with regard to consumption is a prodromal indicator of dependence that manifests itself very early in the clinical course of the disorder. Follow-up studies with children who started smoking around the age of 12 years revealed a certain loss of autonomy – defined as the presence of any of the manifestations in the Hooked on Nicotine Checklist – from their first experiences with smoking. This phenomenon is more firmly established among young people, who experience a feeling of relaxation. At the end of the two-year follow-up (second year of high school), 38.2% of children who smoked already met the criteria for clinical diagnosis of nicotine dependence (ICD-10).
>
> ...
>
> A similar study, conducted among grade 7 I students in Montreal (age 13), found loss of autonomy in all (100%) of those who smoked daily; and the clinical diagnosis of nicotine dependence was retained for 70% of girls and 65% of boys who smoked at that rate.

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778 See e.g., Exhibit 601-2012.

779 See references cited in Exhibit 601-1988.

780 Exhibit 1470.2 at 3

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[838] These observations coincide with several other pieces of evidence on file that show that the vast majority of smokers start smoking during adolescence.[781] The 2012 report of the U.S. Surgeon General reveals that "among adults who become daily smokers, nearly all first use of cigarettes occurs by 18 years of age (88%)."[782]Similarly, it appears that for most smokers, the transition from occasional to daily cigarette consumption occurs during that period.[783]

[839] Given this evidence – of which only a very selective overview is provided here, and which undeniably constitutes sociological, epidemiological or "other" studies covered by section 15 of the T.R.D.A. – it is clear that the judge could conclude, as he did, that tobacco dependence, which results from the appellants' faults, is acquired four years after the onset of smoking (with an average consumption of at least 15 cigarettes per day). The appellants have not demonstrated that this conclusion is tainted by a palpable and overriding error that would justify the Court's intervention. In fact, as previously stated, the judge's conclusion in this regard appears rather conservative in light of the evidence referred to above, much of which suggests that tobacco dependence is likely to develop in a period of less than four years and with a consumption of fewer than 15 cigarettes a day.

vii. Summary

[840] Among various theories of causation, the vast majority of Quebec courts have opted for the theory of adequate causation: is the damage the logical, direct and immediate consequence of the fault? The T.R.D.A., a statute whose scope is misunderstood by the appellants, has significantly facilitated the manner in which such evidence can be provided in litigation against cigarette manufacturers. The appellants challenged this evidence from various angles but mainly argued that it could only be provided on a case-by-case basis, depending on the particular circumstances of each member of the Blais and Létourneau Classes. When they were given the opportunity during the trial to question several of these members, they abstained. On appeal, they argued that no preponderant evidence of causation had been adduced at trial. However, substantial evidence, mainly in the form of medical (including epidemiological) expertise, provided a sufficient basis on which to ground the conclusion that there were serious, precise and concordant presumptions, unrebutted by the evidence adduced by the appellants. These presumptions made it possible to infer, from both a medical and behavioural perspective, and at the general and individual levels, that the illnesses and dependence of the Blais and Létourneau Class members, as defined by the judge, were caused by the faults committed by the appellants. They also provided the basis for the judge's definition of tobacco dependence.

2. *CONSUMER PROTECTION ACT* (sections 219, 228 and 272 C.P.A.)

[841] The appellants argue that the judge erred at various stages of the analysis of their liability under the C.P.A. Recall that the justice ordered the appellants to pay compensatory damages based on three liability regimes (the general law, the *Charter* and the C.P.A.), regimes which overlap in several aspects, including with respect to the principle of *restitutio in integrum*.

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781 See e.g., Exhibit 30025.1 at 268.

782 Exhibit 601-2012 at 165.

783 See e.g., Exhibit 601-2012 at 134; Exhibit 40499 at 573; Exhibit 30025.1 at 268.

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2.1. Background

[842] The trial judge found the appellants liable under section 272 C.P.A. for both moral damages caused to members of the Blais Class, and punitive damages, the payment of which was ordered in favour of both Classes. To reach that conclusion, he first found that the appellants had made false or misleading representations (s. 219 C.P.A.) and failed to mention an important fact (s. 228 C.P.A.), and then applied the four criteria of absolute presumption of prejudice set out by the Supreme Court of Canada in *Richard v. Time Inc.*[784]

[843] The appellants challenged these conclusions on various fronts, which we will regroup under four principal themes.

[844] First, with respect to the application of the C.P.A. over time, ITL and JTM are of the view that it is impossible to anchor liability on the C.P.A. in favour of all of the members since a portion of the impugned practices of the appellants took place prior to the adoption of the relevant provisions in 1980. Certain members thus allegedly do not have sufficient legal standing under the C.P.A., in particular those who stopped smoking prior to 1980.

[845] Along similar lines, the appellants argue that the public awareness of the toxic nature of tobacco as of January 1, 1980, renders any prohibited practice irrelevant. JTM adds that the ban against advertising in 1989 is tantamount to the cessation of any prohibited practice, and ITL is of the view that the prohibited practices can *a fortiori* be examined solely from 1980 to 1988 and during the interval from December 1995 to April 1997, i.e., the periods when it actually engaged in advertising, which, furthermore, was permitted by law.

[846] Second, the appellants take issue with the characterization of the prohibited practices by the trial judge. JTM is of the view that the judge erred in concluding that its advertising constituted false or misleading representations within the meaning of section 219 C.P.A., insisting on the contradiction between this finding and other findings of the judgment *a quo* to the effect that the appellants had not disclosed information that could, strictly speaking, be deemed false with respect to their products. The general impression test that takes as its benchmark a credulous and inexperienced consumer should necessarily take into account the public knowledge of the toxic nature of tobacco acquired in 1980 and the presence of warnings approved by the government.

[847] On the issue of the failure to disclose important facts (s. 228 C.P.A.), ITL criticizes the judge for not having sufficiently detailed his findings (i) by not mentioning the scope of the important fact at issue, (ii) by failing to proceed with the analysis of the general impression and (iii) by ignoring the warnings. Furthermore, according to JTM, this finding gives rise to absurd results since the appellants are basically being criticized for an "omission within the omission." Finally, it is alleged that the judge provided no explanation of the notion of important fact.

[848] Third, the judge allegedly erred in applying the third and fourth criteria of the presumption of prejudice set out in *Richard v. Time Inc*. With respect to the third criterion, JTM and ITL argue that the judge erred in concluding that all the members were aware of their representations since there is no evidence of the circulation of their advertising materials. Furthermore, JTM calls into

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[784] *Richard v. Time Inc.*, 2012 SCC 8.

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question the analysis of the criterion of sufficient nexus, arguing that no evidence supports the conclusion that it was satisfied. ITL adds that the judge improperly applied the causation rule by imposing an erroneous standard ("capable of influencing a person's decision"). It is of the view that it rebutted the evidence of the fourth criterion in the case of false or misleading representations by the testimony of Dr. Heckman.

[849] Fourth, and finally, according to ITL, section 272 should not apply within the framework of an extracontractual claim on the basis of the principles set out in *Richard v. Time Inc.*, both with respect to compensatory and punitive damages.

[850] In view of these arguments, we propose to analyse the impact of the C.P.A. on class actions based on the following aspects: (A) its adoption and scope, (B) the conditions of the implementation of the remedies set out in section 272 C.P.A., (C) the impact of the presumption of prejudice and (D) the availability of penalties imposed under section 272 C.P.A.

2.2. Analysis

A. Adoption and scope of application of the C.P.A.

[851] The relevant provisions of the C.P.A. entered into force on April 30, 1980.[785] The appellants insist on the fact that the C.P.A. cannot therefore apply to a significant part of the relevant period, i.e., from 1950 until April 30, 1980.

[852] The judge was not unaware of this reality, however, as demonstrated in the excerpt from the judgment where he specifies that the order for punitive damages is based on infringements of the C.P.A. only after April 30, 1980:

> [1024] Quebec law provides for punitive damages under the Quebec Charter and the CPA and we have ruled that in these files such damages are warranted under both. We recognize that neither one was in force during the entire Class Period, the Quebec Charter having been enacted on June 28, 1976 and the relevant provisions of the CPA on April 30, 1980. Consequently, the punitive damages here must be evaluated with reference to the Companies' conduct only after those dates.

[853] Although the judge did not reiterate this in the analysis of moral damages, it is clear that the order arising out of the facts and events triggering liability that occurred during the period from 1950 to April 30, 1980, are based on the general principles of civil liability. Furthermore, the judge applied the reasoning based on the general principles of liability throughout the relevant period. Thus, without going so far as to say that the analysis based on the C.P.A. is not necessary in order to award the appellants moral damages, it is certainly possible to conclude that it overlaps with the general law governing civil liability in this regard for the period from April 30, 1980, until service of the claim in November 1998.

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[785] *Consumer Protection Act*, S.Q. 1978, c. 9; *Proclamation concernant l'entrée en vigueur de certaines dispositions de la Loi sur la protection du consommateur*, (1980) 112 G.O.Q. II, No. 10, 1083.

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[854] The appellants accurately point out that their actions prior to April 30, 1980, cannot be considered under the C.P.A. Excluding a reference to advertising that appeared in 1979[786] and another that apparently appeared in January 1980,[787] the analysis of the trial judge focused on subsequent advertising, although it frequently concerns a temporal continuum of events and failure to act. With respect to the reference to the 1979 and 1980 advertisements, this error is inconsequential because the judge also referred to other advertising after April 30, 1980.[788] We note that he could just as easily have cited a myriad of other examples.[789]

[855] Furthermore, the appellants argue that since the C.P.A. entered into force after the date of public knowledge, established as being January 1, 1980, for the Blais Class, the judge erred in concluding that prohibited practices had been committed since the appellants were not required to disclose what everyone was deemed to know, i.e., that tobacco products could cause the diseases at issue. As will be discussed later on, the obligation of the merchant to refrain from making false or misleading representations exists notwithstanding the state of knowledge of the consumer.[790]

B. Conditions of application of the remedy set out in section 272 C.P.A.

[856] The orders handed down against the appellants for the period subsequent to April 30,1980, are based on section 272 C.P.A., in addition to the *Charter* and the C.C.Q. That provision provides:

> **272.** If the merchant or the manufacturer fails to fulfil an obligation imposed on him by this Act, by the regulations or by a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1, the consumer may demand, as the case may be, subject to the other recourses provided by this Act,
>
> (a) the specific performance of the obligation;
> (b) the authorization to execute it at the merchant's or manufacturer's expense;
>
> **272.** Si le commerçant ou le fabricant manque à une obligation que lui impose la présente loi, un règlement ou un engagement volontaire souscrit en vertu de l'article 314 ou dont l'application a été étendue par un décret pris en vertu de l'article 315.1, le consommateur, sous réserve des autres recours prévus par la présente loi, peut demander, selon le cas:
>
> a) l'exécution de l'obligation;
> b) l'autorisation de la faire exécuter aux frais du commerçant ou du fabricant;

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786 Judgment *a quo* at para. 535, referring to Exhibit 152.
787 Judgment *a quo* at para. 535, referring to Exhibit 40436.
788 Judgment *a quo* at para. 535, referring to Exhibits 1381.9 (1983), 1240B (1997), 1240C (1997), 1381.33 (1988), 1532.4 (1984), 40479 (1982), 573C (1983), 771A (1987) and 771B (1985).
789 There are multiple examples among the hundreds of samples of advertising material filed in the Court record: Exhibits 1381.1-1381.107, 1500.1, 1500.2 et 1501.1-1534.11.
790 The Court notes that the date of public knowledge for the two Classes should not have been set prior to March 1, 1996. See paras. [650] *et seq.* above.

(c) that his obligations be reduced;	c) la réduction de son obligation;
(d) that the contract be rescinded;	
(e) that the contract be set aside; or	d) la résiliation du contrat;
(f) that the contract be annulled,	e) la résolution du contrat; ou
	f) la nullité du contrat,
without prejudice to his claim in damages, in all cases. He may also claim punitive damages.	sans préjudice de sa demande en dommages-intérêts dans tous les cas. Il peut également demander des dommages-intérêts punitifs.

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[857] In *Richard v. Time Inc.*,[791] Justices LeBel and Cromwell reviewed the conditions giving rise to the remedies set out in section 272 C.P.A. They first analyzed the interest required to exercise these remedies. The consumer who is victim of the breach of an obligation imposed by the C.P.A. upon a merchant must have contracted to procure a good or a service related to the breach of the obligation (s. 2 C.P.A.). Without a contract there is no remedy under section 272 C.P.A., even to claim only punitive damages.

[858] The Supreme Court in *Richard v. Time Inc.* set out four criteria to give rise to the presumption of prejudice and the granting of the remedies set out in section 272: (1) that the merchant or manufacturer failed to fulfil one of the obligations imposed by Title II of the Act, (2) that the consumer became aware of the representation constituting a prohibited practice, (3) that the consumer's becoming aware of the representation resulted in the formation, amendment or performance of a consumer contract, and (4) that a sufficient nexus existed between the content of the representation and the goods or services covered by the contract.[792]

[859] It should be noted that the expression "absolute presumption of prejudice," generally used to characterize the impact of these criteria, but also the mechanism of application of the section 272 remedies, does not refer to prejudice in the usual meaning of the word in civil liability matters, but to the fraudulent impact on the consumer triggered by the merchant's breach of its obligations. We shall return to this point

[860] In what follows, each criterion will be analyzed in order to examine the proper scope for the appeals, and for each of them, to dispose of the appellants' arguments with respect to the evidence accepted by the trial judge.

i. Violation of an obligation imposed by Title II of the C.P.A.

[861] The C.P.A. does not refer to the notion of fault, but rather that of noncompliance with the rules governing the making of contracts or the formal requirements of the Act (s. 271 C.P.A.) or the merchant's breach of its obligations (s. 272 C.P.A.).[793] In the latter case, these breaches may

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[791] *Richard v. Time Inc.*, 2012 SCC 8 at para. 104.
[792] *Richard v. Time Inc.*, 2012 SCC 8 at para. 124.
[793] *Vidéotron c. Girard*, 2018 QCCA 767 at para. 50, leave to appeal to SCC refused, 38225 (21 February 2019).

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fall under two categories, either the breach of a contractual obligation (Title I) or breaches that fall under prohibited commercial practices (Title II) and thus most frequently during the pre-contractual phase. It is clear that the existence of this latter category is not subject to the existence of a contract *per se* (s. 217 C.P.A.).

[862] TA merchant's breach of its legal obligations is therefore substituted for fault as the primary component triggering its liability within the scheme of the C.P.A. The violation of the law provides the consumer the possibility of relying on the remedy set out in section 272 C.P.A.

[863] Title II sets out a series of prohibited commercial practices. It is established that the notion of general impression set out in section 218 C.P.A. is the criterion that is used to characterize a representation as a prohibited commercial practice. That provision states as follows:

> **218.** To determine whether or not a representation constitutes a prohibited practice, the general impression it gives, and, as the case may be, the literal meaning of the terms used therein must be taken into account.
>
> **218.** Pour déterminer si une représentation constitue une pratique interdite, il faut tenir compte de l'impression générale qu'elle donne et, s'il y a lieu, du sens littéral des termes qui y sont employés.

[864] The analysis required by this criterion is undertaken in relation to a normal consumer "in the abstract, that is, without considering the personal attributes of the consumer."[794] The general impression triggered by a representation is neither the "rushed or partial reading" nor the "the minute dissection of the text" of an advertisement, but particularly and above all a "reading over [of] the entire text."[795] As noted by the Supreme Court of Canada in *Richard v. Time Inc.*, this is a high standard for the merchant, but nevertheless, it is not an absolute standard, nor is it absolutely inflexible: "the legislature intended to ensure that consumers could view commercial advertising with confidence rather than suspicion."[796] Thus, the criterion of general impression necessarily calls for an objective or *in abstracto* approach, and its reference point is the general impression left by a representation on a credulous and inexperienced consumer. Where the general impression is not true to reality, this amounts to a prohibited practice.[797]

[865] How do these principles apply to this case?

[866] Following his review of the evidence, the judge came to the conclusion that the appellants engaged in two types of prohibited commercial practices, either by failing to mention important facts (s. 228 C.P.A.) or by making false or misleading representations (s. 219 C.P.A.). Since the appellants challenge these findings, it is appropriate to examine them individually. However, because the judge ruled that the appellants did not falsely attribute any special advantage to

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794 *Richard v. Time Inc.*, 2012 SCC 8 at para. 49.
795 *Richard v. Time Inc.*, 2012 SCC 8 at para. 56.
796 *Richard v. Time Inc.*, 2012 SCC 8 at para. 60.
797 *Richard v. Time Inc.*, 2012 SCC 8 at para. 78.

cigarettes in their representations and that their conduct did not violate paragraph 220(*a*) *C.P.A.*, it is not necessary to address that aspect.

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a. Failing to mention an important fact (s. 228 C.P.A.)

[867] Quebec consumer law legislation prohibits merchants from failing to mention a fact that is "important." Section 228 states:

228. No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.	**228.** Aucun commerçant, fabricant ou publicitaire ne peut, dans une représentation qu'il fait à un consommateur, passer sous silence un fait important.

[868] Prior to examining what constitutes an important fact, it is important to properly define the very broad scope of the concept of "representation." This concept includes much more than just traditional advertising campaigns, whether for example by radio or in print. Section 216 C.P.A. lists in a non-exhaustive manner acts of communication, behaviour and omissions:

216. For the purposes of this title, representation includes an affirmation, a behaviour or an omission.	**216.** Aux fins du présent titre, une représentation comprend une affirmation, un comportement ou une omission.

[869] The notion of representation thus embraces all forms of communication by a merchant, manufacturer or advertiser that are likely to reach consumers, and it is necessary to give the notion of representation a broad interpretation.[798] Moreover, the notion is not limited to pre-contractual representations[799]

[870] The appellants submit that the interpretation of section 228 C.P.A. adopted by the judge gives rise to an absurd result insofar as it is tantamount to saying that there was an "omission within the omission." In other words, because as of 1989 (the date of coming into force of the 1988 federal Act), they were prohibited from engaging in advertising, they cannot be now criticized for a representation made to a consumer on the ground of having omitted to disclose an important fact.

[871] The literal and joint reading of sections 216 and 228 C.P.A. can in fact produce a result that appears incoherent if taken out of context. It goes without saying that when a good or a service is unknown to consumers, it is difficult to criticize a merchant for an omission in the

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[798] *Richard v. Time Inc.*, 2012 SCC 8 at para. 44; Luc Thibaudeau, *Guide pratique de la société de consommation* (Cowansville, Qc.: Yvon Blais, 2013) No. 47.6.

[799] *Dion v. Compagnie de services de financement automobile Primus Canada*, 2015 QCCA 333 at para. 48.

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complete absence of any explicit representation in the public sphere. The analysis proves necessarily different, however, where it is a question of a hazardous product such as in this case. In fact, some might argue that it is impossible that the appellants failed to mention important facts during the period of prohibition against advertising because they were muzzled and prevented from engaging in any form of advertising by law. This assertion, however, does not take into account the fact that the idea of "representation" is truly a broad notion that comprises the marketing of cigarette packages even during the period of prohibition against advertising.

[872] Furthermore, where a good or service is the object of various forms of representation over the years and constitutes a good consumed by a significant part of the population, as is the case with cigarettes, it is not necessary that the omissions be linked to a statement or precise conduct. The manufacturer must actively alert the public if it acquires important information concerning the danger of a product offered to the public, even more so where the product creates a toxic dependence, and must disclose this without delay (which is furthermore consistent with the obligation set out in the second paragraph of article 1473 C.C.Q.). This obligation is fully justified in view of the informational disequilibrium that underlies certain obligations of the manufacturer, who is better informed than the consumer on the properties of the goods and services that it offers to the public. This duty is all the more justified in a context where the manufacturer is investing significant sums in "research." The C.P.A., by its eminently social character, which is now fully recognized,[800] commands such an approach.

[873] The argument that an omission can exist solely in the presence of a statement by the merchant is unfounded in the context of this case, where we find over the years numerous public statements made by the appellants, not to mention their advertising of tobacco products. It is clear that the appellants did not merely forget to disclose an important fact – the judge concluded that they knowingly failed to disclose important facts in their advertising and by their policy of silence.[801] The appellants have not established that these conclusions of the trial judge are tainted by palpable and overriding errors.

[874] The notion of important fact set out in section 228 C.P.A. has a very broad scope that covers the decisive elements of the consumer's consent. It includes the safety of a good and its quality, as the Court of Appeal noted in *Fortin v. Mazda Canada inc*., a matter concerning the defective locking system of vehicles sold to consumers :[802]

> [TRANSLATION]
>
> [139] With all due respect for the judge, I am of the view that the "important fact" in section 228 C.P.A. does not aim solely to protect the physical safety of the consumer. It also encompasses all the fundamental elements of the contract

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800 *Richard v. Time Inc.*, 2012 SCC 8 at para. 119.

801 Judgment *a quo* at paras. 269, 271, 337, 523, 574 and 631.

802 *Fortin c. Mazda Canada inc.*, 2016 QCCA 31. On the issue of the determinative effect of an important fact on consent, see also *Amar c. Société des loteries du Québec*, 2015 QCCA 889 at para. 49. See also *Vidéotron c. Union des consommateurs*, 2017 QCSC 738, at para. 97. Moreover, this is the approach preferred by Prof. Masse: C. Masse, *C.P.A. : analyse et commentaires*, *supra* note 445 at 862.

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> likely to interfere with an informed choice. ...
>
> [140] The "important fact" referred to in section 228 C.P.A. therefore deals with the determinative elements of the contract of sale, such as the price, warranty, payment terms, quality of the good, nature of the transaction and <u>any other decisive considerations with respect to which the consumer has agreed to contract with the merchant</u>.
>
> [Emphasis added; references omitted.]

[875] This excerpt demonstrates that the quality of the good and considerations related to risk for the consumer, arising from the normal use of the good, may enter into account.

[876] Considering that the judge concluded that the appellants were aware since the 1950s of the risks of developing the diseases at issue and the addictive properties of tobacco, it goes without saying that their duty to disclose these risks persisted as of April 30, 1980, under the C.P.A.

[877] The evidence retained by the judge, notably in the analysis of the common questions,[803] allowed him to rule that the appellants had failed to frankly disclose such information to the ordinary smoker, and although the judge did not specify it in his analysis of liability under the C.P.A., the concerted action of the appellants within the CTMC, their resistance to warnings, their challenging of scientific reports and their advertising and sponsorship were all occasions where, in these representations, including omissions as contemplated by section 216 C.P.A., they failed to disclose important facts following the coming into force of the C.P.A. By doing so they acted in a manner to confirm the impression that the knowledge of risk was still uncertain. Worse, they provided misleading information where their representatives glossed over both the risks of developing diseases but also that of addiction. The appellants did not seriously call into question their policy "of silence." These findings of the judge do not give rise to appellate intervention.

[878] The appellants submit that the judge erred by imposing the duty to disclose a fact that had been known since January 1, 1980. In fact, the justice concluded that on January 1, 1980, it was known by a vast majority of the Quebec population that tobacco use could trigger the diseases at issue. The Appellants submit that a fact cannot be characterized as important if it is known to consumers. With respect, they are mistaken. The importance of a fact concerning a good or a service as contemplated by section 228 C.P.A., does not flow from the state of knowledge of consumers. For example, one might be surprised to read a sign in a service station which warns against the accidental flammability of gas, a fact which is, however, well known to consumers. It is not hard to understand that this danger is nevertheless an important fact with regard to this product.

[879] Even supposing that the appellants are not wrong on this point, the failure to mention the addictive nature of tobacco in the Appellants' advertising or in their sponsorship activities, in conjunction with the policy of silence,[804] negates this argument.[805] The ordinary consumer,

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[803] Judgment *a quo* at para. 37-642

[804] Judgment *a quo* at paras. 56, 271, 337, 523, 574 and 631.

[805] See paras. [636] *et seq.* above.

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whether a smoker or not, has to be warned that the product he or she is purchasing is a product both likely to cause the diseases at issue and that it is addictive. It is thus evident that by not mentioning the risk of addiction in its advertising or warnings that appeared on cigarette packages up until 1994, the appellants failed to disclose an important fact. The fact that the warnings gradually became part of federal law changes nothing of the fact that the appellants were silent on the issue of addiction, an important and even vital fact.

[880] Finally, the Appellants' criticism that the judge failed to specify what they had to disclose is also groundless. It is clear, upon an overall reading of the decision, that the judge was of the view that the appellants should have, for several years, publicly recognized the significant health risks presented by the consumption of cigarettes. This emerges from paragraph 512 of the judgment:

> [512] In sections II.D.5 and 6 of the present judgment, we hold that the Companies were indeed guilty of withholding critical health-related information about cigarettes from the public, i.e., important facts. Since a "representation" includes an omission, the Companies failed to fulfil the obligation imposed on them by section 228 of Title II of the CPA. We also hold that their failure to warn lasted throughout the Class Period, including some twenty years while the relevant portions of the CPA were in force.
>
> [Emphasis added, reference omitted.]

[881] It is worth repeating that the appellants had to disclose not only the risks of developing the diseases at issue, but also the risk of becoming addicted to cigarettes. The question of addiction − an expression that they furthermore had difficulty in recognizing and using during the hearing before this Court − is an important fact that they should have disclosed well prior to the imposition of warnings concerning addiction as of 1994.[806] Certainly, the judge's reasons were succinct in this regard, but the appellants have not demonstrated any reviewable error on the failure to mention an important fact.

[882] There remains the question raised by the appellants of whether the judge erred by not clearly specifying whether the prohibited practices continued after 1998, i.e., after advertising became prohibited, and if so, and whether they continued during the remainder of the relevant period. This will be dealt with at paragraphs [893] *et seq.* below.

b. False or misleading representations (s. 219 C.P.A.)

[883] The second type of prohibited practice alleged against the appellants is that they made false or misleading representations by presenting positive situations in their advertisements that gave the impression that cigarettes are not dangerous.

[884] False or misleading representations are prohibited by section 219 C.P.A.:

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[806] Judgment *a quo* at para. 110; the judge refers to Exhibit 40003E-1994, i.e., the *Tobacco Products Control Regulations, amendment*, SOR/93-389, regulation made under the *Tobacco Products Control Act*, S.C. 1988, c. 20.

219. No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.	**219.** Aucun commerçant, fabricant ou publicitaire ne peut, par quelque moyen que ce soit, faire une représentation fausse ou trompeuse à un consommateur.

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[885] Quebec law contains several occurrences of the tandem expression "false or misleading." The statutes[807] and regulations[808] that make use thereof often create penal offences prohibiting "false or misleading statements" or providing "false or misleading information."

[886] In the C.P.A., the legislator was careful to distinguish between false representations and misleading representations. While the notion of false representations requires no precision due to the clarity of the meaning that must be attributed to it, the notion of misleading representations deserves some commentary.

[887] Since the term "*trompeur*/misleading" is not defined in the C.P.A., we must refer to its ordinary meaning. *Le Grand Robert de la langue française* defines it by referring to the verb "*tromper*/mislead"), the primary meaning of which is [TRANSLATION] "to induce error with respect to facts or intentions by using lies, dissimulation and cunning."[809] The Académie française, in the 8th edition of its dictionary − the 9th edition has no entry for "*trompeur*" indicates that "*tromper*/mislead" means:[810]

> [TRANSLATION]
>
> To induce into error by artifice. *Mislead the purchaser on the quality of merchandise, mislead adroitly, flagrantly. Mislead boldly, brazenly. This merchant misled us. The most refined were misled. He misled his father.* Absolutely. *He is unable to mislead.*

[888] The *Shorter Oxford English Dictionary* defines the term *misleading*, used in the English version of the law as "[t]hat leads someone astray, that causes error; imprecise, confusing, deceptive."[811]

[889] If to mislead means to induce into error, it is obvious that the implementation of representations in which information or an image conceals a fact, reports a false reality or yet

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807 See e.g., the *Tobacco Control Act*, CQLR c. L-6.2, s. 54; the *Act to promote access to justice through the establishment of the Service administratif de rajustement des pensions alimentaires pour enfants*, CQLR, c. A-2.02, ss. 24(1) and (2); the *Act respecting transparency measures in the mining, oil and gas industries*, CQLR, c. M-11.5, s. 41(2); the *Act respecting immigration to Québec*, CQLR, c. I-0.2, s. 3.2.1.

808 *Code of Professional Conduct of Lawyers*, CQLR, c. B-1, r. 3.1, s. 122; *Regulation respecting snow elimination sites*, CQLR, c. Q-2, r. 31, s. 4.

809 *Le Grand Robert de la langue française*, *supra* note 473, sub verbo "*trompeur*" and "*tromper*."

810 Académie française, *Dictionnaire de l'Académie française*, 8th ed., Tome second (Paris: Librairie Hachette, 1932−1935) sub verbo "tromper."

811 *Shorter Oxford English Dictionary,* 6th ed., vol. 1 (Oxford: Oxford University Press, 2007, sub verbo "misleading."

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again glosses over certain facts, may constitute, depending on the circumstances, a misleading representation. The failure to mention an important fact may, under certain circumstances, be misleading and thus overlap with the notion of misrepresentation.

[890] The appellants' claim according to which the public knowledge of the hazards of tobacco neutralizes the prohibited practices must be set aside. It adds a ground of defence to the law that the law does not recognize. The aim of protecting the public from legislation calls for a generous interpretation of the scope of prohibited practices. The prohibition does not involve variable geometry, based on the merchant's ability to demonstrate the consumer's knowledge of a danger, thereby releasing it from its obligations to adopt lawful commercial practices. Moreover, notwithstanding the public nature of information, it is possible that a merchant will mislead the consumer in relation to this information by a representation, just as it may expose the consumer to information which is unequivocally false.

[891] An analysis of the appellants' innumerable advertisements filed as evidence led the judge to conclude that an important part of them, of the "lifestyle" variety, associated tobacco products with social or sporting activities, highlighting young people apparently brimming with health. He found that the advertising was misleading in this sense as it concealed the harmful and toxic effects of the product on the health of consumers and instead presented smoking in a positive light.[812]

[892] This conclusion, in the absence of a palpable and overriding error, is sheltered from the intervention of the Court of Appeal. The appellants failed to make any such demonstration. It is certainly not unreasonable to conclude that the presence of warnings in small letters at the bottom of these advertisements does not counter the general impression it gives, as contemplated by section 218 C.P.A. In distinguishing between advertisements that he characterized as "neutral" and the misleading advertisements in paragraphs 534 and 535 of his judgment, the justice analyzed the evidence as was incumbent upon him and committed no reviewable error in this regard.

c. End of the prohibited practices

[893] The appellants allege that the prohibited practices did not continue until the end of the relevant period and that the judge was unfounded in so finding. The judge's findings in this regard warrant some particulars. He did in fact implicitly conclude that there were prohibited practices during the period from the coming into force of the 1980 C.P.A. until service of the fall 1998 claims. An overall reading of his reasons support this conclusion.[813] It should also be noted that the judge did not ignore the cessation of advertising between 1989 and 1995.[814] His finding that the claims for punitive damages until 1995 were prescribed[815] also grounds the conclusion that, in his view, the prohibited practices persisted from 1995 until the fall of 1998.

[894] In order to properly frame this issue, it is necessary to recall the chronology of events and the legislation over the final two decades of the 20th century and then analyze the advertising

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812 Judgment *a quo* at para. 535.
813 Judgment *a quo* at paras. 541 and 1024.
814 Judgment *a quo* at para. 420.
815 Judgment *a quo* at para. 900.

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practises from 1988 to 1998.

[895] The initial warnings on cigarette packages appeared as of 1972 and were the result of Voluntary Codes agreed upon between the members of the Canadian tobacco industry, including the appellants under their corporate forms at that time. The Voluntary Codes were implemented as a reaction to a growing expectation of oversight of the industry by the legislator. The 1972 warnings specified, without elaboration, "danger ... increases with use." Then in 1975, it contained a recommendation to avoid inhaling smoke.[816] The subsequent Codes maintained these warnings while modifying their size on occasion and at other times prescribing the recommended content of cigarettes in tar and nicotine.[817]

[896] As discussed above, in 1988, the *Tobacco Products Control Act*[818] was adopted, including section 9 that provided for certain labelling rules including the addition of messages related to health. Paragraph 11(1)(*a*) of its Regulation required cigarette manufacturers to print new warnings on cigarette packages as of October 31, 1989:[819]

> (i) "Smoking reduces life expectancy. L'usage du tabac réduit l'espérance de vie."
>
> (ii) "Smoking is the major cause of lung cancer. L'usage du tabac est la principale cause du cancer du poumon."
>
> (iii) "Smoking is a major cause of heart's disease. L'usage du tabac est une cause importante de la cardiopathie."
>
> (iv) "Smoking during pregnancy can harm the baby. L'usage du tabac durant la grossesse peut être dommageable pour le bébé.

[897] Several requirements ensure the visibility of these warnings, notably with respect to their size and the use of contrasting colours.[820] It should be noted here that these messages do not contain any disclosure of the risk of contracting all of the diseases at issue, nor, furthermore, the danger of developing an addiction to cigarettes. Among the diseases at issue, only lung cancer is referred to.

[898] As discussed above,[821] the Regulation[822] enacted under the *Tobacco Products Control Act*[823] was amended in 1993 in order to modify the content of the warnings, which became more severe. Thus, as of September 12, 1994, eight warnings appeared, including "Smoking can kill you / *Fumer peut vous tuer*" and "Cigarettes are addictive / *La cigarette crée une dépendance*."

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816 Judgment *a quo* at para. 110.

817 See in this regard various Voluntary Codes and regulations: exhibits 40005C-1972, 40005D-1972, 40005G-1975, 40005H-1975, 40005K-1975, 40005L-1976, 40005M-1984, 40005N-1985 40005O-1995 and 40005P-1995. See also para. [504] *et seq.* above.

818 *Tobacco Products Control Act*, S.C. 1988, c. 20, s. 9(1)(*a*).

819 *Tobacco Products Control Regulations*, SOR/89-21, ss. 11(1)(*a*). See also para. [530] above.

820 *Tobacco Products Control Regulations*, SOR/89-21, ss. 4, 15(*a*) and 15(*d*).

821 See para. [540] above.

822 *Tobacco Products Control Regulations, amendment,* SOR/93-389, s. 4(1).

823 *Tobacco Act*, S.C. 1997, c. 13.

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Each of the eight warnings had to appear on 3% of the packs of each of the brands produced during a year, thereby likely ensuring a rotation of messages and dissemination deemed to be adequate.

[899] On September 21, 1995, the Supreme Court of Canada invalidated the *Tobacco Products Control Act* in part,[824] without suspending the declaration of invalidity. The new *Tobacco Act*[825] of 1997 and its Regulation entered into force only towards the end and after the end of the relevant period.[826] In the interim, the Voluntary Codes of 1995 and 1996[827] ensured the presence of warnings on packs. These warnings dealt in particular with addiction, lung diseases, cancer and mortality.[828]

[900] In short, the warnings about lung cancer appeared on October 31, 1989, and the warnings on addiction on September 12, 1994. These warnings persisted after the invalidation of the federal legislation by the Supreme Court of Canada. More “complete” warnings thus existed from September 12, 1994, until the end of the relevant period.

[901] It is thus possible that the prohibited practice of failing to mention an important fact − in this case, the risk of addiction − had ceased when the warnings on addition appeared on September 12, 1994. It is not necessary to rule on this aspect, however, since, as we will see, the misrepresentations resumed after the *Tobacco Products Control Act*[829] was invalidated by the Supreme Court of Canada in 1995.

[902] Even presuming that the warning on addiction that appeared since September 12, 1994, put an end to one type of prohibited practice, the only relevant question is whether the appellants continued to engage in prohibited practices between September 12, 1994, and the service of the claims in 1998. Based on the findings of the Court with respect to the appellant’s civil liability pursuant to the general law, the question is relevant only in regard to the imposition of punitive damages in the two matters.

[903] As the judge concluded, the appellant’s advertising practices amounted to false or misleading representations.[830] As he also concluded, the advertising campaigns ceased as of 1989, when the *Tobacco Products Control Act*[831] and its Regulation came into force, and were resumed at the time of the partial invalidation of that statute.[832] Advertisements were thus made from 1980 to 1988 and from 1995 to 1998.

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824 I.e., sections 4 (advertising), 8 (brands) and 9 (non-attributed messages related to health) and sections 5 and 6, which are inseparable. See *RJR-MacDonald Inc. v. Canada (Attorney-General)*, [1995] 3 S.C.R. 199.

825 *Tobacco Act*, S.C. 1997, c. 13.

826 *Tobacco Act*, S.C. 1997, c. 13. The law was adopted on April 25, 1997. It was amended thereafter on December 10, 1998, by the *Act Amending the Tobacco Act*, S.C. 1998, c. 38, which included several provisions that came into force after the end of the relevant period.

827 See exhibits 40005O-1995, 40005P-1995 and 40005S-1996.

828 See a sample advertisement in Exhibit 40005Q-1995; see para. [548] above.

829 *Tobacco Act*, S.C. 1997, c. 13.

830 Judgment *a quo* at para. 536.

831 *Tobacco Act*, S.C. 1997, c. 13.

832 Judgment *a quo* at para. 523.

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[904] The judge did not err in finding that prohibited practices existed until the end of the relevant period. Certainly, the frequency of the prohibited practices and their scope were affected by the federal legislation and the Voluntary Codes and are not comparable to the warnings of the 1980s. It nevertheless remains that it is sufficient to note that the appellants, after the invalidation of the law, deemed it appropriate to continue advertising a hazardous and addictive product in a misleading manner, to come to the conclusion that the judge did not err.

[905] The appellants have failed to demonstrate that the judge committed an error in concluding that prohibited practices existed during the period from 1995 to 1998. Thus, even presuming that the prohibited practices ceased on September 12, 1994, due to the addition of warnings on addiction − which has not been demonstrated and which will be addressed in further detail when assessing quantum of punitive damages − they were resumed in 1995. In fact, the appellants did not call into question the judge's factual finding that they adopted a policy of silence when, combined with their advertising campaigns and sponsorships,[833] was tantamount to the commission of two types of prohibited practices imputed to them. In accordance with section 218 C.P.A., the general impression given to an inexperienced consumer by this conjunction of omissions and acts of communication, failure to inform and sustained advertising campaigns is characterized by a laissez-faire attitude and a presentation of cigarettes that is positive, whereas a more alarmist tone would clearly have been more appropriate in the mid-1990s. This general impression is not consistent with reality.

d. Summary

[906] The judge thus correctly decided that the appellants engaged in prohibited practices as contemplated by the C.P.A. commencing on April 30, 1980. The appellants have failed to demonstrate on appeal that the prohibited practices irremediably ceased in 1989 or in 1994. More significantly, the prohibited practices did not cease during the three years preceding the filing of the class actions.

ii. Knowledge of the prohibited practices

[907] The appellants argue that the judge erred in concluding that the evidence demonstrated that the members of the Blais and Létourneau Classes had personal knowledge of the prohibited practices to a certain degree, if the Court concluded that these practices did in fact exist.

[908] According to the judge, the consumers were aware of misleading practises arising out of the "lifestyle" type advertisements. He found that, according to experts Lacoursière and Flaherty, the members came across articles denouncing the risks associated with tobacco[834] in the media. He concluded that advertisements found in the same media were probably also seen by the members.

[909] Furthermore, with respect to the failure to disclose important facts as within the meaning

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[833] Judgment *a quo* at para. 535. The judge listed certain examples of advertisements and sponsors without distinction (see exhibits 1240B and 1240C, which the judge erroneously designated as exhibits 1040B and 1040C).

[834] Judgment *a quo* at paras. 513 and 537.

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of section 228 C.P.A., the judge ruled that one cannot by definition have knowledge of something that does not exist. Thus, he considered the second criterion to be proved for the two types of prohibited business practices.

[910] The appellants' argument concerning the "omission within the omission" having been set aside, we can only conclude that the reasoning of the judge with respect to knowledge of the appellants' omissions is exempt from any reviewable error because they are inseparable from the representations made to the members, which contain insufficient information concerning the product.

[911] Furthermore, the appellants criticize the judge for having set aside the expert reports of the defence's experts Lacoursière and Flaherty, but using certain aspects of them in favour of the plaintiffs, and argue that the evidence does not allow for this because the experts did not offer opinions on the visibility of advertisements in the media that they examined. They conclude by emphasizing the fact that no member came to testify concerning his or her knowledge of advertisements and even less so about the impact of them on his or her decision to smoke.

[912] It was open to the judge, in his analysis of the evidence as a whole, to accept all or part of the expert opinions adduced into evidence.[835] The exercise of the judge's discretionary power in weighing the evidence discloses no error calling for the intervention of this Court.

iii. Contracts subsequent to the prohibited practices

[913] Both the trial judgment[836] and the appellants analyzed the third criterion set out in *Richard v. Time Inc.* for the purposes of the application of the remedy set out in section 272 C.P.A. by examining whether the conclusion of the contract *results* from the prohibited practice. This angle of analysis should be set aside, however, because it does not correspond to that retained by the Supreme Court of Canada in *Richard v. Time Inc.* and, if retained, would neutralize the effect of the absolute presumption of prejudice.

[914] This confusion comes from a discrepancy between the French version of the grounds of the Supreme Court of Canada and their translation into English.[837] In paragraph 124 of this leading case, the Supreme Court of Canada formulated the third criterion of the analysis by requiring in French that "*la formation, la modification ou l'exécution d'un contrat de consommation [soit] subséquente à [la] prise de connaissance"* of the prohibited practice. The English version, however, differently requires that "the consumer's seeing that representation resulted in the formation, amendment or performance of a consumer contract."[838] It is worth citing paragraph 124 of that case in its entirety:

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835 *Lévesque v. Hudon*, 2013 QCCA 920 at paras. 69 and 75.

836 Judgment *a quo* at para. 515 and 538.

837 In the English text of the judgment of the Supreme Court published in the Supreme Court Reports, it is specified that this is the "English version of the judgment of the Court delivered by LeBel and Cromwell JJ." The French text indicates "*Le jugement de la Cour a été rendu par les juges LeBel et Cromwell*" ([TRANSLATION] "The judgment of the Court was rendered by LeBel and Cromwell JJ." (*Richard v. Time Inc.*, 2012 SCC 8).

838 *Richard v. Time Inc.*, 2012 SCC 8 at para. 124.

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[124] This absolute presumption of prejudice presupposes a rational connection between the prohibited practice and the contractual relationship governed by the Act. It is therefore important to define the requirements that must be met for the presumption to apply in cases in which a prohibited practice has been used. In our opinion, a consumer who wishes to benefit from the presumption must prove the following: (1) that the merchant or manufacturer failed to fulfil one of the obligations imposed by Title II of the Act; (2) that the consumer saw the representation that constituted a prohibited practice; (3) that the consumer's seeing that representation resulted in the formation, amendment or performance of a consumer contract; and (4) that a sufficient nexus existed between the content of the representation and the goods or services covered by the contract. This last requirement means that the prohibited practice must be one that was capable of influencing a consumer's behaviour with respect to the formation, amendment or performance of the contract. Where these four requirements are met, the court can conclude that the prohibited practice is deemed to have had a fraudulent effect on the consumer. In such a case, the contract so formed, amended or performed constitutes, in itself, a prejudice suffered by the consumer. This presumption thus enables the consumer to demand, in the manner described above, one of the contractual remedies provided for in s. 272 *C.P.A.*

[124] L'application de la présomption absolue de préjudice présuppose qu'un lien rationnel existe entre la pratique interdite et la relation contractuelle régie par la loi. Il importe donc de préciser les conditions d'application de cette présomption dans le contexte de la commission d'une pratique interdite. À notre avis, le consommateur qui souhaite bénéficier de cette présomption doit prouver les éléments suivants : (1) la violation par le commerçant ou le fabricant d'une des obligations imposées par le titre II de la loi; (2) la prise de connaissance de la représentation constituant une pratique interdite par le consommateur; (3) la formation, la modification ou l'exécution d'un contrat de consommation subséquente à cette prise de connaissance, et (4) une proximité suffisante entre le contenu de la représentation et le bien ou le service visé par le contrat. Selon ce dernier critère, la pratique interdite doit être susceptible d'influer sur le comportement adopté par le consommateur relativement à la formation, à la modification ou à l'exécution du contrat de consommation. Lorsque ces quatre éléments sont établis, les tribunaux peuvent conclure que la pratique interdite est réputée avoir eu un effet dolosif sur le consommateur. Dans un tel cas, le contrat formé, modifié ou exécuté constitue, en soi, un préjudice subi par le consommateur. L'application de cette présomption lui permet ainsi de demander, selon les mêmes modalités que celles décrites ci-dessus, l'une des mesures de réparation contractuelles prévues à l'art. 272 *L.p.c.*

[Emphasis added.]

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[915] What impact can be attributed to the discrepancy between the judgment rendered in French and its translation into English?

[916] Several factors confirm the importance of attributing to the third criterion a temporal dimension as implied in the French version, rather than causal; In other words, requiring that the formation of the contract be subsequent to, rather than resulting from, knowledge of the prohibited practice.

[917] First, in *Richard v. Time Inc.*, the Supreme Court of Canada, applying the four criteria to the facts of the matter, clearly used the temporal dimension of the third criterion, this time both in French and in English. That complies with the meaning of the word "subsequent" used in paragraph 124 of the judgment. Indeed, paragraph 141 states:

[141] ... He then had to prove that he had seen the representation constituting a prohibited practice before the contract was formed, amended or performed	[141] [...] Il lui faut ensuite prouver qu'il a pris connaissance de la représentation constituant une pratique interdite avant la formation, la modification ou l'exécution du contrat […].

[Emphasis added.]

[918] Furthermore, if it were necessary to attribute causal significance to knowledge on the formation or amendment of the contract, not only would the fourth criterion of the test be neutralized, but the entire presumption itself would be as well. In fact, as we will see, the fourth criterion requires a rational connection between the practice and the object of the contract. To require this connection – here by a vaguely causal hypothesis – between the practice and the contract itself would render the fourth criterion useless and redundant. Furthermore, to require such a connection at this stage would negate all effects of the presumption, which in fact aims to prevent the manufacturer from arguing that the consumer was not induced into error by the prohibited practice.

[919] The third criterion thus concerns a chronological sequence of the prohibited practice and the conclusion of the contract, rather than the causal effect of the prohibited practice.[839]

[920] Contracts were entered into between each smoker who purchased a pack of cigarettes pack after April 30, 1980, and the tobacconists, convenience stores, grocery stores and, at a certain point in time, pharmacies who sold cigarettes. This observation appears obvious to us, although not all the members of the Class can make such claim, only those who smoked after

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[839] *Vidéotron c. Girard*, 2018 QCCA 767 at paras. 69 and 76, leave to appeal to SCC refused, 38225 (21 February 2019). See also Pierre-Claude Lafond, *Droit de la protection du consommateur : Théorie et pratique* (Montreal, Thomson Reuters, 2015) at para. 735; Luc Thibaudeau, "Going Back in Time" (2018) 441 *Colloque national sur l'action collective : Développements récents au Québec, au Canada et aux États-Unis* 51 at 58 and 64 [*Développements récents*].

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April 30, 1980. Since the appellants' prohibited practices continued after April 30, 1980, until 1998, it can be concluded that the vast majority of contracts are subsequent to the prohibited practices, which allows us to conclude that the third criterion set out in *Richard v. Time Inc.* has been met.

[921] It should be noted that the members who no longer smoked as of April 30, 1980, and prior to the end of the prohibited practices do not have the legal interest required to exercise the recourse under 272 C.P.A. because they cannot claim to have acquired a good related to the appellants' prohibited practises. In the same manner, the members who did not smoke 12 pack years after the prohibited practices were committed or who, *a fortiori*, did not become dependent after 1980, cannot claim medical causation and therefore seek damages for their injury.

[922] That has no impact on the admissibility of their application pursuant to the general law governing civil liability. It could nevertheless have justified a restricted definition of the Blais Class had the Court of Appeal excluded the appellants' liability under the general law for members who did not have the required interest under the C.P.A. That is not the case, however.

iv. Sufficient nexus

[923] Finally, the consumer seeking one of the recourses provided for at section 272 C.P.A. must demonstrate the existence of a "sufficient nexus ... between the content of the representation and the goods or services covered by the contract."[840] The notion of sufficient nexus does not appear in the C.P.A. In *Richard v. Time Inc.*, LeBel and Cromwell JJ. explained that this sufficient nexus has to exist between the content of the representation on the one hand, and the good that is the object of the contract, on the other. It should be pointed out that the judges then paraphrased this criterion by explaining that the "the prohibited practice must be one that was capable of influencing a consumer's behaviour with respect to the formation, amendment or performance of the contract."[841]

[924] It should be noted that the reasons in *Richard v. Time Inc.* clearly imply that the verification of the existence and this rational nexus should be the object of an objective, and not a subjective, analysis. The proximity at issue is concerned with the connection between the representation and the good. This representation must be "capable" of influencing the consumer − it is not necessary in all cases that it *did* actually in fact influence the consumer. The word "capable" as employed by the Supreme Court of Canada means something that it *can do*, not that it *did do* any action or *had* any impact.[842] It is undoubtedly a notion that is within the immediate proximity of the ability, and not the realisation of that ability.

[925] To conclude otherwise here would annihilate the practical impact of the presumption of prejudice, as we will see below. The presumption of prejudice is tantamount to a presumption that the prohibited practice had a fraudulent effect on the decision to conclude a contract or of unavailability of the defence of absence of prejudice. Requiring the consumer to prove, at the

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840 *Richard v. Time Inc.*, 2012 SCC 8 at para. 124 [emphasis added].

841 *Richard v. Time Inc.*, 2012 SCC 8 at para. 124 [emphasis added].

842 According to *Le Grand Robert de la langue française*, *supra* note 473, "*susceptible*" ([TRANSLATION] "capable" means [TRANSLATION] "that has the capacity, a latent capacity, a possibility of occasional use (for things) whereas *able* implies a permanent and acknowledged capacity."

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fourth step, that the representation actually had the effect he or she is alleging would be equivalent to requiring that he or she prove the fraudulent effect of the practice to be able to benefit from the presumption. That would then consequently amount to demanding that the consumer adduce evidence of the *effect* of the presumption he or she intends to invoke, thereby reducing the exercise of *Richard v. Time Inc.* to a vicious circle.

[926] Recently, this Court noted in *Vidéotron c. Girard*,[843] that it is the sufficient nexus between the good and the prohibited practices that must be considered. The hypothetical conduct of the consumer is not relevant in this analysis. Only the sufficient possibility that the representation influenced the conduct of the consumer in the abstract.

[927] ITL refers to the judgment of this Court in *Dion v. Compagnie de services de financement automobile Primus Canada*[844] in support of its argument that the criterion of sufficient nexus has not been met. In that case, merchants were alleged to have invoiced fees for mortgage registrations without having detailed all the components, thus constituting a prohibited practice under section 227.1 C.P.A. The trial judge concluded that no sufficient nexus was demonstrated. The Court of Appeal did not consider this an error and dismissed the appeals. The current appeals may be distinguished from the appeals in that case.[845]

[928] There is no reason to depart from the clear and succinct explanation of the fourth criterion provided by the Supreme Court of Canada in *Richard v. Time Inc.*, which clearly requires that the analysis of the fourth criterion not be carried out according to the characteristics of the individual, but solely by focusing on the rational connection between the good and the representation.[846]

[929] In this case, it was open to the judge to conclude that the appellants' unlawful representations, which were seen by the consumers, were *capable* of influencing their decision to acquire the product, because the content of these representations were inextricably related to the product sold.

[930] The judge concluded that the majority of the appellants' advertisements for their products since 1980 aimed to present their cigarettes in a favourable light.[847] He also concluded that the advertisements conveyed a positive message:

> [535] As a general rule, the ads contain a theme and sub-message of elegance, adventure, independence, romance or sport. As well, they use attractive, healthy-looking models and healthy-looking environments, as seen in the following exhibits:

[931] The advertisements listed by the judge after that excerpt from the judgment all convey a positive image unrelated to cigarettes (surfing, the transporting of wood, cycling, etc.) on which is superimposed the image of a pack of cigarettes, partially opened with several cigarettes sticking

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[843] *Vidéotron c. Girard*, 2018 QCCA 767 at paras. 70–73, leave to appeal to SCC refused, 38225 (21 February 2019).

[844] *Dion v. Compagnie de services de financement automobile Primus Canada*, 2015 QCCA 333.

[845] In *Dion v. Compagnie de services de financement automobile Primus Canada*, 2015 QCCA 333, an admission of the absence of sufficient nexus had been made; that decision, in the context does not call into question *Richard v. Time Inc.*

[846] See e.g., Thibaudeau, *Développements récents*, *supra* note 835 at 58.

[847] Judgment *a quo* at para. 533.

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out and ready to be smoked. If one considers both the false or misleading representations and the failure to mention an important fact, it is clear that the content of the representations has a sufficient nexus with the cigarettes. The judge did not err in finding that there was a sufficient nexus.

[932] Furthermore, certain statistics adduced into evidence[848] demonstrate that tobacco use decreases to the same degree that awareness of the risks of the product increase. This proof is in no way necessary to conclude that the final criterion of the approach advocated by the Supreme Court of Canada is met since the sufficient nexus must be analyzed on the objective basis of *ability* – i.e., the possibility of influence by the representation on the consumer – and not materiality – i.e., the fact that the representation did in fact have an impact on the consumer. It nevertheless remains that they confirm that the representations are capable of having an impact on the conduct of consumers and reinforces the judge's finding.

[933] Finally, it should be noted that the expert opinion of Dr. Soberman, according to which the advertising strategies of the companies and more particularly JTM did not aim to convince non-smokers to smoke but solely to convince smokers to smoke one cigarette brand rather than another was dismissed by the judge in these terms:

> [431] The Court cannot accept Dr. Soberman's view, although much of what he says, in the way he phrases it, is surely true. It is simply too unbelievable to accept that the highly-researched, professionally-produced and singularly-attractive advertising used by JTM under RJRUS, and by the other Companies, neither was intended, even secondarily, to have, nor in fact had, any effect whatsoever on non-smokers' perceptions of the desirability of smoking, of the risks of smoking or of the social acceptability of smoking. The same can be said of the effect on smokers' perceptions, including those related to the idea of quitting smoking.
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> [432] His testimony boils down to saying that, where a company finds itself in a "mature market", it loses all interest in attracting any new purchaser for its products, including people who did not use any similar product before. This flies so furiously in the face of common sense and normal business practice that, with respect, we must reject it.

[934] The appellants did not demonstrate that this conclusion contains a reviewable error.

[935] In summary, the appellants in no way demonstrated that the judge erred in finding that the conditions of application of the recourses under section 272 C.P.A. were met. On the contrary, he adopted a view of the third criterion that benefited them. It follows that the irrebuttable presumption of prejudice or fraudulent effect of the prohibited practices applies in this case. Let us now consider the consequences of this irrebuttable presumption.

C. Scope of the irrebuttable presumption of prejudice

[936] After finding that the presumption of prejudice applied, the judge concluded that the

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[848] See exhibits 987.1 at 2 and 40495.33 at 14.

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remedies under section 272 C.P.A. were available.[849] In a separate section of the judgment, he also concluded that there was a causal link between the civil faults of the appellants and the cigarette smoking of the members.[850] It is appropriate to note, once again, that the Court rejects the idea that the respondents had the burden of demonstrating the existence of "conduct causation" pursuant to the general law. It is thus appropriate to discuss, from the perspective of the C.P.A., the precise scope of the presumption of prejudice and its consequences on the issue of causation.

[937] A review of the older case law of this Court provides an account of the genesis of the absolute presumption of prejudice. It should be noted that the Court wrote as early as 1995 in *Nichols c. Toyota Drummondville (1982) inc.*, that [TRANSLATION] "contrary to what is possible if the claim is based on section 271, the merchant sued under section 272 cannot raise the defence of absence of prejudice incurred by the consumer to seek dismissal of the claim."[851] A few years later, in *Turgeon c. Germain Pelletier Ltee*[852], the Court characterized the presumption set forth at section 253 C.P.A. as a [TRANSLATION] "presumption of fraud," underlining furthermore that, in the facts of that case, the prohibited practices [TRANSLATION] "amounted to fraud." Although we do not make any finding on the presumption of section 253, it is important to observe the proximity of the concepts of prohibited practices and fraud, and the immediate parallels traced by the Court between fraud and the language used in section 253. This conceptual proximity is far from foreign to the presumption of prejudice set out in section 272 C.P.A..

[938] How is the presumption of *prejudice* to be understood?

[939] Recall that the word prejudice is not meant here as a constitutive component of the three elements of civil liability. It stands to reason that proof of the four criteria cannot be deemed proof of a prejudice that can be compensated by the award of damages.

[940] Rather, it is necessary to understand the presumption of prejudice as an irrebuttable presumption of the *prejudicial effect* of the prohibited practice on the consent of the consumer. If we wish to align this presumption with classical civil law concepts, we could identify its field of action as being, in a contractual claim, the fraudulent impact of the prohibited practice on the *consent* of the consumer, or yet again, the *error caused by the fraud* (art. 1401 C.C.Q.). In extracontractual matters, the presumption of prejudice allows for proof of the civil fault. These conceptual approximations, although of assistance in explaining, bring very little to the analysis, however.

[941] Practically speaking, it appears more appropriate to translate this absolute presumption of prejudice by the non-availability of the defence of absence of prejudice. Once the criteria are met, a merchant simply can no longer argue that the prohibited practice it has committed did not have any impact on the conclusion of the contract. In summary, it is thus an irrebuttable presumption that the prohibited practice fraudulently incited the consumer to conclude or amend a contract.

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[849] Judgment *a quo* at paras. 517 and 541.
[850] Judgment *a quo* at paras. 809 and 817.
[851] *Nichols c. Toyota Drummondville (1982) inc.*, [1995] R.J.Q. 746 (C.A.) at 749.
[852] *Turgeon c. Germain Pelletier Ltee*, 2001 R.J.Q. 291 (C.A.) at paras. 47–48.

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[942] The general concept of causation under the rules of civil liability also cannot be directly transposed into the framework of a recourse under section 272. The legislator decided to alleviate the burden of proof of the consumer who demonstrates a failure of the manufacturer or merchant with respect to its obligations. The demonstration of the second, third and fourth criteria set out in *Richard v. Time Inc.* replaces the evidence of what has been characterized in this case as "conduct causation" and allows the consumer to obtain remedial measures. Stated otherwise, once it is demonstrated that the consumer is aware of the prohibited practice, that the consumer contract is subsequent to it and that there is a sufficient nexus between the representation and the good purchased, reparation becomes possible, subject of course to establishing quantum in the case of a claim for compensatory damages.

[943] The following excerpts of the judgment of the Supreme Court of Canada in *Richard v. Time Inc.* concerning the criteria of application of section 272 support this interpretation of the presumption:[853]

> [124] ... Where these four requirements are met, the court can conclude that the prohibited practice is deemed to have had a fraudulent effect on the consumer. In such a case, the contract so formed, amended or performed constitutes, in itself, a prejudice suffered by the consumer. This presumption thus enables the consumer to demand, in the manner described above, one of the contractual remedies provided for in s. 272 C.P.A.
>
> …
>
> [127] The use by a merchant or a manufacturer of a prohibited practice can also form the basis of a claim for extracontractual compensatory damages under s. 272 *C.P.A.* A majority of the Quebec authors and judges who have considered this issue have taken the view that fraud committed during the pre-contractual phase is a civil fault that can give rise to extracontractual liability (Lluelles and Moore, at p. 321; *Kingsway Financial Services Inc. v. 118997 Canada inc.*, 1989 CanLII 13530 (Que. C.A.)). Proof of fraud thus establishes civil fault. However, because of the specific nature of the *C.P.A.* the procedure for proving fraud is different from the one under the *Civil Code of Québec*.
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> [128] This difference stems from the fact that, where the recourse provided for in s. 272 *C.P.A*. is available to a consumer, his or her burden of proof is eased because of the absolute presumption of prejudice that results from any unlawful act committed by the merchant or manufacturer. This presumption means that the consumer does not have to prove that the merchant intended to mislead, as would be required in a civil law fraud case. According to the interpretation proposed by Fish J.A. in *Turgeon*, a consumer to whom the irrebuttable presumption of prejudice applies has also succeeded in proving the fault of the merchant or manufacturer for the purposes of s. 272 *C.P.A.* The court can thus award the consumer damages to compensate for any prejudice resulting from that extracontractual fault.

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[853] *Richard v. Time Inc.*, 2012 SCC 8.

[Emphasis added.]

[944] Thus, the merchant cannot argue that its breach of the C.P.A. was of no effect on the consumer's decision to contract, and still less, require the consumer to establish such an effect.

[945] In this case, regardless of the classification and terminology under the general law governing civil liability, the scheme of section 272 C.P.A. has the effect of providing irrebuttable evidence that the appellants' practices, including their silence, caused the consumers to purchase cigarettes. In these class actions, this is tantamount to what has been identified as conduct causation. In the context of the C.P.A., the respondents are correct in pleading that there are not two types of causation. In regard to the C.P.A., conduct causation is nothing other than the fraudulent effect of the appellants' prohibited practices. Because this fraudulent effect is presumed, the appellants' argument concerning conduct causation is inadmissible under the C.P.A.[854]

[946] The judge's conclusions appear to support this interpretation of the presumption, at least in part, in particular when he stated:

> [497] It thus appears that the only practical effect of this presumption is to ease the consumer's burden of proof concerning fraud: "the consumer does not have to prove that the merchant intended to mislead, as would be required in a civil law fraud case." [*Op. cit.*, *Time*, Note 20, at paragraph 128.]

[947] It is true that this is an effect of the presumption, but it is not its sole effect. It is sufficient for the purposes of this matter to state that the judge did not err in concluding that it gave rise to the penalties provided set out in section 272. For the remainder, his omission to give full effect to the presumption of prejudice is inconsequential, because he concluded that under the general law, the faults committed by the appellants caused the tobacco use of the members. There is thus no reason to intervene on this aspect.

D. Penalties imposed on the appellants pursuant to section 272 C.P.A.

i. Availability of moral damages

[948] Section 272 *in fine* allows for the award of damages to compensate moral prejudice. Since the conditions giving rise to the action have been fulfilled, the judge could award moral damages under the C.P.A. to compensate the prejudice incurred by the members of the Blais Class pursuant to the prohibited practices of the appellants.

[949] Contrary to what ITL argues, section 272 C.P.A. applies to both contractual and extracontractual matters.[855]

[950] That being the case, an inconsequential hurdle must be raised here.

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[854] The Court has already concluded that the manufacturer's liability under the general law does not require the respondents to establish "conduct causation".

[855] *Richard v. Time Inc.*, 2012 SCC 8 at paras. 127−128.

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[951] As we have concluded, the general law allows for full compensation of the prejudice established by the trial judge. Pursuant to the principle of *restitutio in integrum*, the C.P.A. adds nothing to the scope of this liability but is superimposed thereupon without covering it entirely.

[952] Had the Court dismissed the basis for liability under the general law and the *Charter,* solely the prohibited practices committed as of April 30, 1980, could have caused the tobacco use of the members or their addiction. In this hypothesis, the appellants would solely be liable under the C.P.A. towards those members who had smoked the critical dose of 12 pack years after April 30, 1980, because the fraudulent effect of the prohibited practices could not have been presumed before the coming into force and effect of the C.P.A. In other words, it would have been necessary for each member to establish consumption of 12 pack years throughout the period of commission of the prohibited practices. A member who smoked six pack years prior to 1980 and six pack years after 1980 could no longer claim medical causation and thus the appellants' liability. *A fortiori*, it would have been necessary to prove that a member had become dependent – thus that he or she had smoked for four years, according to the terms established by the judge – following the prohibited practices, i.e., between April 30, 1980, and the end of the prohibited practices in 1998.

[953] Based on the conclusions under the law of general law, however, it is sufficient here to note that the appellants are liable for the moral damages caused to certain members of the Blais Class pursuant to the C.P.A. Due to the principle of full compensation in law for liability, this conclusion has no impact, either upwards or downwards, on the quantum that the appellants are required to pay to the members.

ii. Availability of punitive damages

[954] Section 272 *in fine* allows the consumer to seek punitive damages, and the judge did not err in this regard. The appellants' arguments questioning the suitability of ordering their payment and the assessment of their quantum are dealt with in section IV.5 of this judgment.

2.3. Summary

[955] The judge committed no reviewable error in finding the appellants liable under the C.P.A. The C.P.A. scheme, which is distinct from the general law, nevertheless overlaps with it, without, however, covering the claims of the members of the Blais Class in their entirety, given that the prohibited practices were committed solely after the coming into force of the C.P.A. This hurdle, of which the judge was aware, has no impact on these appeals since the principle of *restitutio in integrum* requires compensation of no more and no less than the prejudice of the members, and the general law is sufficient in this regard. In this sense, the judgment is not vitiated by any palpable and overriding error, nor by any error in law.

[956] The judge was correct in concluding that the criteria of the irrebuttable presumption of prejudice were met. The existence of prohibited practices, to which the consumers were exposed and that preceded the conclusion of consumer contracts, is sufficient, in the presence of a rational connection between the practices and the cigarettes, to conclude that there was a violation of the C.P.A. and a fraudulent effect on the consent of the consumers. Because the appellants' liability has been retained under the general law, the presumption has no impact in this case, except to render possible a claim in punitive damages by the members of the two class

actions.

3. *CHARTER OF HUMAN RIGHTS AND FREEDOMS*

3.1. Background

[957] The judge concluded that the appellants were also liable for the moral damages caused to the members of the Blais Class pursuant to the *Charter*, and for punitive damages in both cases.[856] He concluded that the appellants' faults constituted unlawful interference with the right to life, personal security and integrity of the members, justifying the award of compensatory damages. On the basis of *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*,[857] the judge found that the appellants, without wishing to cause the diseases of their clients, acted with full knowledge of the immediate and natural or extremely probable consequences of their acts, therefore justifying the award of punitive damages.

[958] While the judge found that there was unlawful interference with the right to life, personal security and integrity,[858] he also referred, in a separate section of the judgment *a quo*, to the violation of the right to freedom, dignity and inviolability.[859] The judge's reasons are succinct with respect to these latter violations; we will restrict ourselves to analyzing the alleged interference with the right to life, security and integrity.

[959] Beyond the arguments that overlap those that the appellants have already advanced in regard to the general law – the absence of fault and causation – and that we have already disposed of, the appellants challenge the judge's findings from four vantage points.

[960] First, ITL challenges the issue of the coming into force of the *Charter*. In its view, the judge erred by not taking into account the coming into force of this statute and its impact on liability. Furthermore, because the *Charter* came into force during the relevant period, the constitutive components of the appellants' civil liability were allegedly not proved for all of the members. JTM advances a similar argument, further to which the members who started smoking prior to the coming into force of the *Charter* were not victims of unlawful interference within the meaning of section 49 of the *Charter,* because it was their decision to start smoking that allegedly caused the prejudice.

[961] Second, ITL is of the view that the judge erred by characterizing its actions as unlawful interference. It submits that he did not consider the impact of ITL's conduct on the members, but only its conduct, which constitutes an error. Moreover, it argues that the knowledge of the risks by the members as of January 1, 1980, defeats the argument of unlawful interference. JTM adds to this last argument that no member of the Blais Class was a victim of any interference because the *Charter* came into force only after the smoking commencement date (January 1, 1976). In the Létourneau file, the Class should be substantially reduced because only the members who started smoking between June 28, 1976, and the smoking commencement date (March 12,

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856 Judgment *a quo* at paras. 476–488.

857 *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 11.

858 Judgment *a quo* at para. 484.

859 Judgment *a quo* at para. 183.

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1992) are victims of an interference.

[962] Third, ITL takes issue with the intentional nature of the interference.

[963] Fourth, JTM argues that punitive damages are not autonomous and that the judge therefore erred by ordering their payment in the Létourneau file.

[964] We will analyze these arguments by focusing on (A) the field of application of the *Charter* and its coming into force, before analyzing the issue of the (B) unlawful interference and (C) their intentional nature.

3.2. Analysis

A. Field of application and coming into force of the Charter

[965] Sections 1 and 49 of the *Charter*, which are at the heart of these appeals, do not modify the principles of the general law, and it is now established that recourse under paragraph 1 of section 49 does not establish a claim in compensatory damages, distinct from the claim under former article 1053 C.C.L.C., now governed by article 1457 C.C.Q.[860]. Sections 1 and 49 nevertheless confirm the importance of the rights set out therein as a result of their entrenchment in the *Charter*.[861]

[966] The provisions of the *Charter* at issue came into force on June 28, 1976.[862] ITL argues that the judge erred by ignoring this reality and applying the *Charter* to the entire relevant period.

[967] It is incorrect.

[968] It is clear upon reading the following excerpts from the judgment that the judge was fully aware that the *Charter* did not apply throughout the entire relevant period:

> [488] We look in detail at the criteria for assessing punitive damages in Chapter IX of the present judgment. At that time we also consider the fact that the Quebec Charter was not in force during the entire Class Period, having come into force only on June 28, 1976.
>
> [1024] Quebec law provides for punitive damages under the Quebec Charter and the CPA and we have ruled that in these files such damages are warranted under both. We recognize that neither one was in force during the entire Class Period, the Quebec Charter having been enacted on June 28, 1976 and the relevant provisions of the CPA on April 30, 1980. Consequently, the punitive damages here must be evaluated with reference to the Companies' conduct only after those

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860 *Béliveau St-Jacques v. Fédération des employées et employés*, [1996] 2 S.C.R. 345 at para. 118–124; *Bou Malhab v. Diffusion Métromédia CMR inc.*, 2011 SCC 9 at para. 23.

861 *Québec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron*, 2018 SCC 3 at para. 32.

862 *Proclamation concernant l'entrée en vigueur de certaines dispositions de la Charte des droits et libertés de la personne*, (1976) 108 G.O.Q. II 3875.

dates.

[Emphasis added.]

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[969] Like the situation that prevailed for the C.P.A., the appellants are entitled to affirm that their acts or omissions preceding June 28, 1976, cannot constitute unlawful interference within the meaning of the *Charter* and that consequently, the pack-years smoked prior to that date cannot be included in the calculation of a Member's critical dose of smoking as defined in the judgment *a quo*.

[970] In view of the findings in regard to the general law, however, the coming into force of the *Charter* has no impact on the members' legal interest or on the appellants' liability in their regard and the assessment of compensatory damages, because the general rules of civil liability applicable throughout the entire relevant period are sufficient to justify the compensation awarded by the judge.

[971] Because the judge did not commit a reviewable error in this regard, the Court also need not rule on the existence of fundamental rights prior to the coming into force of the *Charter,* which is far from being excluded.[863]

[972] Obviously, a different conclusion with respect to civil fault based on the standards of the general law in conjunction with liability retained pursuant to the *Charter* would have perhaps required a redefinition of the Blais Class, but that is not the case.

[973] This response to the appellants' arguments on the application of the *Charter* and the full reparation of the prejudice under the general law precludes JTM's argument that the members who started smoking prior to the coming into force of the *Charter* were not victims of unlawful interference.

[974] In summary, the judge correctly took into account the coming into force of the *Charter* in 1976.

B. Unlawful interference with the right to life, personal security and inviolability

[975] The first paragraph of section 1 of the *Charter* protects the rights at issue in these appeals, i.e., the right to life, personal security and inviolability.

1. Every human being has a right to life, and to personal security, inviolability and freedom.	**1.** Tout être humain a droit à la vie, ainsi qu'à la sûreté, à l'intégrité et à la liberté de sa personne.

[976] It is now widely accepted that the finding of an unlawful interference with a right or

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[863] *Béliveau St-Jacques v. Fédération des employées et employés*, [1996] 2 S.C.R. 345 at para. 118. See also Louis LeBel, "La protection des droits fondamentaux et la responsabilité civile" (2004) 49 R. de D. McGill 231 at 235–240; Albert Mayrand, *L'inviolabilité de la personne humaine* (Montreal, Wilson & Lafleur: 1975) at para. 2.

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freedom protected by the *Charter* leads, subject to proof of causation and prejudice, to the defendant's civil liability. In principle, that means that the grounds of defence recognized in civil liability are open to the defendant, including the assumption of known risks by the victim. This argument was dealt with in the section of this judgment concerning fault.

i. The right to life, personal security and inviolability

[977] The right to life guaranteed by section 1 of the *Charter* and also protected by article 3 C.C.Q., materializes most frequently at the time when its object −- the very life of the person protected −- ends. Thus, removing life is clearly an interference with this right,[864] subject to the consequences of the loss of legal personality on the compensation of the prejudice. An interference with the right to life may also consist in conduct that increases the risk of dying, for example the danger to life associated with an unreasonable and unjustified waiting time caused by a dysfunctional aspect of the health system,[865] or yet again, in certain circumstances, a prohibition against medical aid in dying.[866]

[978] The right to personal security of the person is also set out under section 1 of the *Charter*. Under Quebec law one can align the rights to life and inviolability in the sense that a factual situation that threatens a person physically in a serious manner, without necessarily threatening his or her life, may constitute an interference with his or her personal security. This Court has previously, for example, authorized the anonymous designation of a party who had been the subject of serious threats in order to protect the party's right to personal security.[867] It also upheld a decision finding that the aggressive intervention of a tactical squad constituted an interference with the right to life, personal security and inviolability of persons who were killed or wounded.[868] The case law regarding section 7 of the *Canadian Charter* also assists in defining the scope of this right. For example, the Supreme Court found that the act of indirectly prohibiting the hiring of bodyguards through a prohibition against living off the avails of prostitution,[869] or yet again the imposition of unnecessarily complex procedures prior to a therapeutic abortion constituted interference with personal security within the meaning of section 7.[870] In the same manner, an interference with personal security may result from circumstances that incite a person to reasonably fear for his or her life or that threaten his or her right not to be subject to violence, injuries or danger.

[979] Finally, the fundamental right to inviolability is guaranteed by section 1 of the *Charter*, as well as being a right of personality expressly recognized since January 1, 1994, by articles 3 and 10 C.C.Q. Inviolability was first formally recognized in private law in 1971 by the addition of

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[864] *Augustus v. Gosset*, [1996] 3 S.C.R. 268 at para. 62; *de Montigny v. Brossard (Succession)*, 2010 SCC 51 at para. 59.

[865] *Chaoulli v. Québec (Attorney General)*, 2005 SCC 35 at para. 28 and 40, in which the Court stated *inter alia*: "With regard to certain aspects of the two charters, the law is the same. For example, the wording of the right to life and liberty is identical. It is thus appropriate to consider the two together."

[866] *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para. 62−-63. It should be noted that that appeal was decided pursuant to the *Canadian Charter*.

[867] *Association pour l'accès à l'avortement, Re,* J.E. 2002-928, 2002 CanLII 63780.

[868] *Roy c. Patenaude*, [1994] R.J.Q. 2503.

[869] *Canada (Attorney General) v. Bedford*, 2013 SCC 72.

[870] *R. v. Morgentaler*, [1988] 1 S.C.R. 30 (in particular the reasons of Beetz J).

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article 19 C.C.L.C.[871] Legal commentary recognizes that integrity and inviolability are, in this context, neighbouring concepts and sometimes difficult to separate, as the first protects the right to remain whole and constitutes the [TRANSLATION] "ultimate connection that unites the person with his or her body;"[872] the second prohibits interference by third parties with the person and [TRANSLATION] "appears as a method of safeguarding his or her dignity."[873] Furthermore, the very language of section 1 of the *Charter* testifies to the close relationship between integrity and inviolability by expressing in French the right to integrity, but in English, the right to *inviolability*. We note finally that it is now clear under Quebec law that the right to integrity protects both physical and psychological integrity.[874] For a court to find an interference with the right to integrity, it is necessary for that interference to leave some sequelae.[875]

[980] As noted above, it is not necessary to rule on the existence of these fundamental rights prior to the enactment of the *Charter*, which existence is not excluded. It is sufficient to reiterate that the right to inviolability was formally recognised in 1971 with the adoption of article 19 C.C.L.C.[876]

[981] Keeping in mind the meaning to assign to the rights guaranteed by section 1 of the *Charter*, one inescapably comes to the conclusion that the judge's findings set out in paragraph 484 of his reasons are well-founded in law, and do not, contrary to the submissions of ITL, sidestep the impact of the wrongful and unlawful conduct of the appellants on the members. The judge stated:

> [484] Given the consequences of these faults on smokers' health and well-being, this constitutes an unlawful interference with the right to life, security and integrity of the Members over the time that they lasted. Compensatory damages are therefore warranted under the Quebec Charter.
>
> [Emphasis added.]

[982] ITL has not established any palpable and overriding error here. In fact, one cannot isolate this excerpt without considering the remainder of the judgment *a quo*. With respect to the Blais Class, it is sufficient, to reach this conclusion, to read the numerous paragraphs of the judgment listing the consequences of the diseases at issue upon the members, their life, their health and

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871 Article 19 C.C.L.C. (S.Q. 1971, c. 84, art. 2) stated:

19. The human person is inviolable. No one may cause harm to the person of another without his consent or without being authorized by law to do so.	**19.** La personne humaine est inviolable. Nul ne peut porter atteinte à la personne d'autrui sans son consentement ou sans y être autorisé par la loi.

872 Édith Deleury & Dominique Goubau, *Le droit des personnes physiques*, 5th ed. (Montreal: Yvon Blais, 2014) at para. 100.

873 Deleury & Goubau, *supra*, note 872.

874 See e.g., *Cinar Corporation v. Robinson*, 2013 SCC 73 at para. 115.

875 *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211 at paras. 96−97; *Godin v. City of Montreal*, 2017 QCCA 1180 at para. 31.

876 Art. 19 C.C.L.C. (S.Q. 1971, c. 84, art. 2). See also the references cited, *supra* note 859.

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their well-being.[877] For example, when addressing the impact of cancers of the larynx and pharynx, the judge stated:

> [991] Death ultimately ends the torture, but at what price? At page 8 of his report, Dr. Guertin writes that "the patients who die from a relapse of their original cancer will experience a death that is atrociously painful, unable even to swallow their saliva or to breathe" (the Court's translation).

[983] Or yet again, in the case of emphysema:

> [999] On the impact of COPD, and thus emphysema, on the quality of life a person afflicted with it, Dr. Desjardins' report (Exhibit 1382) indicates that:
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> ...
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> • A person with emphysema can expect to suffer from a persistent cough, spitting up of blood, loss of breath and swelling in the lower members (pages 26-28).
>
> …
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> [1000] Added to the above, of course, is the likelihood, or rather the near certainty, of a premature death (pages 18 and 19). The anticipation of that cannot but contribute to a loss of enjoyment of life.

[984] In the case of members of the Létourneau Class, the judge also analyzed the impact of addiction on the members.[878] He stated:

> [944] Thus, based on Dr. Negrete's second report, we hold that dependent smokers can suffer the following moral damages:
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> • The risk of a premature death is the most serious damage suffered by a person who is dependent on tobacco (Exhibit 1470.2, page 2);
>
> • The average indicator of quality of life is lower for smokers than for ex-smokers, especially with respect to mental health, emotional balance, social functionality and general vitality (page 2);
>
> • There is a direct correlation between the gravity of the tobacco dependence and a lower perception of personal well-being (page 2);
>
> • Dependence on tobacco limits a person's freedom of action, making him a slave to a habit that permeates his daily activities and restricts his freedom of choice and of decision (pages 2-3);

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[877] Judgment *a quo* at paras. 979−984, 989−991 and 999−1001.
[878] Judgment *a quo* at paras. 944−-945.

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[985] The appellants have not succeeded in demonstrating that the judge's findings of violations of the right to life, integrity and personal security are erroneous. In fact, the evidence allowed the judge to find that these rights had been violated by the appellants in that they increased the risk of death of the members and interfered with their integrity by causing lengthy and painful physical and psychological sequelae. This argument is thus destined to fail. The judge properly considered the impact on the members of the appellants' conduct, and it has not been demonstrated that there was any error in law or any palpable and overriding factual error that would justify the intervention of the Court in this regard.

[986] The finding that the appellants infringed the right to life, personal security and integrity of the members of the two Classes is unassailable.

ii. Unlawfulness of the interference

[987] Section 49 requires that an interference with the rights and freedoms protected by the *Charter* be unlawful in order to give rise to compensation for the prejudice:

49. Any unlawful interference with any right or freedom recognized by this Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.	**49.** Une atteinte illicite à un droit ou à une liberté reconnu par la présente Charte confère à la victime le droit d'obtenir la cessation de cette atteinte et la réparation du préjudice moral ou matériel qui en résulte.
In case of unlawful and intentional interference, the tribunal may, in addition, condemn the person guilty of it to punitive damages.	En cas d'atteinte illicite et intentionnelle, le tribunal peut en outre condamner son auteur à des dommages-intérêts punitifs.

[988] The notion of unlawfulness of the interference has been interpreted as meaning that the interference in question must be wrongful as contemplated by the general rules of civil liability. In *Béliveau St-Jacques v. Fédération des employées et employés*, Gonthier J. stated:[879]

> It is thus clear that the violation of a right protected by the *Charter* is equivalent to a civil fault. The *Charter* formalizes standards of conduct that apply to all individuals. The legislative recognition of these standards of conduct has to some extent exempted the courts from clarifying their content. This recognition does not, however, make it possible to distinguish in principle the standards of conduct in question from that under Art. 1053 *C.C.L.C.*, which the courts apply to the circumstances of each case. The violation of one of the guaranteed rights is therefore wrongful behaviour, which, as the Court of Appeal has recognized, breaches the general duty of good conduct (see *Association des professeurs de Lignery v. Alvetta-Comeau*, 1989 CanLII 1247 (QCCA) [1990] R.J.Q. 130). The

[879] *Béliveau St-Jacques v. Fédération des employées et employés*, [1996] 2 S.C.R. 345 at para. 120. See also *Québec (Curateur public) c. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. at para. 116.

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> fact that an interpreter of the Charter first has to clarify the scope of a protected right in light of a specific provision does not make this exercise any different from the one that involves deducing a specific application from the principle recognized in Art. 1053 *C.C.L.C.* Moreover, the first paragraph of Art 1457 of the *Civil Code of Québec*, S.Q. 1991, c. 64, now takes care to specify that rules of conduct the violation of which results in civil liability may derive from the law: ....
>
> [Emphasis added.]

[989] It is beyond doubt that the *Charter* introduced standards of conduct relevant to civil liability in Quebec law. It should also be specified that the C.C.Q. imposes on every person the duty to abide by "the rules of conduct incumbent on him, according to the circumstances, usage or law, so as not to cause injury to another / *les règles de conduite qui, suivant les circonstances, les usages ou la loi, s'imposent à elle, de manière à ne pas causer de préjudice à autrui*" (art. 1457 C.C.Q.).[880]

[990] Thus, in order to determine whether conduct is wrongful as understood in the general law, the standards laid down by the *Charter* are relevant. As indicated by Dalphond J.A. in *Genex Communications inc. c. Association québécoise de l'industrie du disque, du spectacle et de la vidéo*: [TRANSLATION] "a breach of the standards of conduct prescribed by the *Charter* constitutes a civil fault as contemplated by art. 1457 C.C.Q."[881]

[991] In summary, the requirement of an unlawful interference set out in the first paragraph of section 49 requires, first, the finding of an unjustified violation of the right protected by the *Charter*. Furthermore, the unlawful interference requires a demonstration that the interference results from wrongful conduct.

[992] The Court rejects the argument that the judge committed a reviewable error by ruling that the appellants' conduct constituted an unlawful interference within the meaning of section 49 of the *Charter*.

[993] In this case, the judge's finding[882] that each of the appellants committed unlawful interference has not been disrupted by the arguments advanced on appeal. The wrongful nature of the interference is based on the appellants' failure to comply with their duty to inform,[883] until the dates of public knowledge in each matter. Those determinations are sufficient to conclude that the appellants committed unlawful interference during the entire period from the enactment of the *Charter* until the end of the relevant period.

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[880] Also recall the preliminary provision of the C.C.Q.:

The Civil Code of Québec, in harmony with the Charter of human rights and freedoms (chapter C-12) and the general principles of law, governs persons, relations between persons, and property.	Le Code civil du Québec régit, en harmonie avec la Charte des droits et libertés de la personne (chapitre C-12) et les principes généraux du droit, les personnes, les rapports entre les personnes, ainsi que les biens.

[881] *Genex Communications inc. c. Association québécoise de l'industrie du disque, du spectacle et de la vidéo*, 2009 QCCA 2201 at para. 129.

[882] Judgment *a quo* at para. 484.

[883] Under the double aspect of the failure to inform and active disinformation.

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[994] As for the unlawfulness of the interference seen from the perspective of the violation of the standards included in the *Charter* itself, it emerges that the standard of conduct arising from section 1 of the *Charter* requires every person not to conduct himself or herself so as to offer to the public a product that is likely to cause death (right to life), that substantially increases the risk of mortality (the right to personal security), or that affects health and forces a person to undergo invasive and painful medical treatment (the right to integrity), while trivializing the mortal and addictive nature of the product. The different standards of conduct that arise from the *Charter* certainly required the appellants to refrain from engaging in advertising that represented cigarettes in a positive manner, sponsoring sporting or artistic activities, or acting in a manner that sowed confusion in the mind of the public.

[995] The trial judge's factual determinations therefore allowed him to conclude that the interference committed by the appellants was unlawful within the meaning of the first paragraph of section 49 of the *Charter* as of the date of its coming into force.

[996] Furthermore, the Court is of the view that the members' knowledge of the dangers of tobacco is not exculpatory in the determination of the unlawfulness of the interference. This is a defence available under the general law, which we have already discussed. Knowledge of the dangerousness of tobacco has the same consequence it has under the general law, i.e., depending on the circumstances, the exoneration or the sharing of liability.

[997] Furthermore, on this same topic, one can certainly question the concurrent application of the *Charter* and the C.P.A., an issue which the judge did not address. A merchant who violates its obligations towards the consumer, and in so doing, violates a right enshrined by the *Charter* commits a interference with a right that could be characterized as unlawful, because the interference arises out of conduct that does not comply with the rules of conduct incumbent upon it, in this case, pursuant to the C.P.A. In this context, presuming that it is not open to the merchant to invoke the consumer's knowledge under the C.P.A., it is also not open to the same merchant to do so in regard to the same unlawful interference under section 49 of the *Charter*.[884]

[998] It should be recognized that the fundamental rights and freedoms enshrined in the *Charter* have preponderant value in the Quebec judicial order; that the C.C.Q. governs relations between persons in harmony with the *Charter* and that the C.P.A. is a statute of public order of protection. It follows that the harmonious interaction of all these rules does not exclude that the standards of public order prescribed by the C.P.A. can constitute relevant rules of conduct in accordance with article 1457 C.C.Q. for the guarantee and implementation of rights promulgated and protected by the *Charter.*

C. Intentional interference

[999] The extraordinary nature of punitive damages in Quebec civil law requires that their award result from an express provision of law, as provided by article 1621 C.C.Q. The second

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[884] It should be noted that the respondents did not raise the argument that it would be inappropriate to apportion liability pursuant to the C.P.A. or the *Charter* for the periods following their respective coming into force.

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paragraph of section 49 of the *Charter* authorizes the award of punitive damages where the unlawful interference with rights or freedoms protected by the *Charter* is intentional.

[1000] It was settled during the hearing that the analysis of intent should focus on the consequences of the injurious misconduct and not on the conduct itself.[885] The case law requires proof (i) that the author of the interference wished to cause the consequences of the wrongful interference or (ii) that he or she was aware of the immediate and natural or extremely probable consequences of his or her misconduct.[886]

[1001] Although the autonomous nature of punitive damages was previously a somewhat controversial subject, it is now well established, contrary to what JTM argues, that punitive damages may be awarded without requiring a successful principal claim in compensatory damages. In *de Montigny v. Brossard (Succession)*, the Supreme Court ruled that except where dealing with a public indemnification scheme "there is no reason not to recognize the autonomous nature of exemplary damages" and that "[i]f the autonomy of the right to exemplary damages conferred by the *Charter* is denied ... this amounts to making the implementation of *Charter* rights and freedoms subject to the rules applicable to civil law actions."[887], which is not consistent with the principle of priority of the *Charter* in the Quebec legal system. There is no doubt that punitive damages are available in this case, even in the Létourneau action.

[1002] Furthermore, given the autonomy of the claim in punitive damages, we can question what the applicable burden of proof is, since it is not necessary to demonstrate that material or moral damages result from the unlawful and intentional interference. In a context such as the Létourneau matter, where solely punitive damages are awarded, is it necessary to establish a causal connection as is the case where compensatory damages are awarded?

[1003] At first glance, the requirement of an unlawful interference presumes that the victim of the violation has established a nexus between the wrongful actions of the defendant and the right or freedom protected by the *Charter* that was interfered with, even if such interference is neither quantified, nor quantifiable. In fact, the notion of unlawful interference refers, as we have just indicated, to the violation of a right that results from conduct infringing a standard of conduct.[888]

[1004] Characterizing the nexus between the fault and the interference with a right as "causal" gives rise to confusion. In *Montréal (Ville) v. Lonardi*,[889] in a judgment written by Gascon J., the Supreme Court has recently noted that a causal connection is not necessary *per se* in the case of an award of punitive damages: "[o]n this point, I note that, while it is true that a fault that is not causally connected to the damage in question cannot ground an obligation to make reparation for the injury, it can nonetheless form the basis for an award of punitive damages."

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885 *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211 at para. 121.

886 See e.g., *Hinse v. Canada (Attorney General)*, 2015 SCC 35 at para. 164; *Cinar Corporation v. Robinson*, 2013 SCC 73 at para. 118; *de Montigny v. Brossard (Succession)*, 2010 SCC 51 at para. 68; *Ville de Québec v. Association des pompiers professionnels de Québec inc.*, 2017 QCCA 839 at para. 105; *Agence du revenu du Québec v. Groupe Enico inc.*, 2016 QCCA 76 para. 166–167.

887 *de Montigny v. Brossard (Succession)*, 2010 SCC 51 at para. 45.

888 *Québec (Curateur public) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211 at para. 116.

889 *Montréal (City) v. Lonardi*, 2018 SCC 29 at para. 80.

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[1005] Notwithstanding the autonomy of punitive damages, it remains nevertheless necessary to establish a connection, different from a causal connection, between the conduct of the defendant and the interference with the right or freedom of the victim. Once the proof of this connection has been established, it remains only to be determined whether the unlawful interference was intentional, notwithstanding the fact that the consequences on the victim of the interference may not be quantified or quantifiable.

[1006] None of the arguments raised on appeal convinces us that the judge committed a reviewable error in his assessment of the intentional nature of the unlawful interference with the rights of the members of the two Classes.

[1007] The appellant ITL cites the following excerpt from the reasons of the trial judge in support of its claim that the judge improperly applied the criterion set out in *St-Ferdinand* case:

> [485] On the second question, we found that the Companies not only knowingly withheld critical information from their customers, but also lulled them into a sense of non-urgency about the dangers. That unacceptable behaviour does not necessarily mean that they malevolently desired that their customers fall victim to the Diseases or to tobacco dependence. They were undoubtedly just trying to maximize profits. In fact, the Companies, especially ITL, were spending significant sums trying to develop a cigarette that was less harmful to their customers.
>
> [Emphasis added.]

[1008] However, ITL was careful not to refer to the following paragraph of the judge's reasons, which refer to the remarks of L'Heureux-Dubé J. in *St- Ferdinand*:

> [486] Pending that Eureka moment, however, they remained silent about the dangers to which they knew they were exposing the public yet voluble about the scientific uncertainty of any such dangers. In doing so, each of them acted "with full knowledge of the immediate and natural or at least extremely probable consequences that (its) conduct will cause". That constitutes intentionality for the purposes of section 49 of the Quebec Charter.
>
> [Reference omitted.]

[1009] It can be understood from this excerpt from the reasons that according to the trial judge, the conduct of each of the appellants meets the criterion of subjective knowledge of the immediate and natural consequences *and* that of objective knowledge of the extremely probable consequences of its actions. Either way, a global reading of the judge's reasons on the appellants' actions after June 28, 1976, certainly supports his conclusion that each of the appellants was fully aware, at least as of the coming into force of the *Charter*, of the immediate and natural consequences, or yet again the extremely probable consequences, of its actions and omissions. There is no error here.

[1010] In fact, in our view, this case appears even more patent than several textbook cases including *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-*

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Ferdinand.[890]. For the purpose of these appeals, it is sufficient to reiterate some of the judge's findings of fact. The appellants have known since the 1950s of the dangers inherent in cigarettes,[891] but they nevertheless continued to present cigarettes positively in their advertising campaigns subsequent to the coming into force of the *Charter* on June 28, 1976, until the end of the relevant period, with the exception of certain short periods.[892] They failed to disclose the danger of contracting the diseases at issue on their cigarette packages until October 31, 1989, and of becoming addicted to tobacco until September 12, 1994.[893] They maintained what the judge properly characterized as a policy of silence and conspired within the CTMC to delay raising public awareness.[894] These findings are examples of the trial judge's findings of fact.

[1011] Several elements of evidence in the court records demonstrate both the appellants' knowledge and their concerted efforts to prevent consumer awareness of the dangers. It is sufficient to recall the reaction of the CTMC, of which the Appellants were members, to the publication of a key report on addiction by the Surgeon General of the United States in 1988. The judge stated:

> [466] Rather than embracing its findings, the industry, centralizing its attack through the [Canadian Tobacco Manufacturers' Council], chose to make every effort to undermine its impact. The May 16, 1988 memo to member companies capsulizing the CTMC's media strategy with respect to the report (Exhibit 487) merits citation in full:
>
> > It has been agreed that the CTMC ... will handle any media queries on the [Surgeon-General's] Report on Nicotine Addiction.
> >
> > The comments fall into three broad categories:
> >
> > 1- The report flies in the face of common sense -
> >
> > - Thousands of Canadians and millions of people all over the world stop smoking each year without assistance from the medical community.
> >
> > - How can you describe someone who lights up a cigarette only after dinner as an "addict"?
> >
> > - The word addiction has been overextended in the non-scientific world: some people are "addicted" to soap operas, to chocolate and to quote Saturday's Montreal Gazette, "to love".
> >
> > 2- The S-G's Report is another example of how the smoking issue has been politicized. This is another transparent attempt to make smoking socially unacceptable by warming up some old chestnuts. We don't think the S-G is adding to his credibility by trading on the public confusion between words like "habit" and "dependence" and "addiction".

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890 *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211.

891 Judgment *a quo* at paras. 70, 72, 138, 566, 567, 612 and 622.

892 Judgment *a quo* at paras. 420 and 535.

893 Judgment *a quo* at para. 110.

894 Judgment *a quo* at para. 523.

> 3- The S-G's Report also trivializes the very serious illegal drug problem in North America. It is (ir)responsible to suggest that to use tobacco is the same as to use Crack? (sic)
>
> [467] This posture was continued in the CTMC's reaction to the passage of the *Tobacco Products Control Act* later in 1988. In a letter to Health Canada in August, it vigorously opposed adding a pack warning concerning addiction, stating that "(c)alling cigarettes 'addictive' trivializes the serious drug problems faced by our society, but more importantly, the term 'addiction' lacks precise medical or scientific meaning".
>
> [Emphasis added; references omitted.]

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[1012] By jointly opposing the scientific evidence advanced by a public authority and comparing the report of the Surgeon General to an attempt to make smoking socially unacceptable “by warming up some old chesnuts,” the appellants have clearly shown the specific intent and state of mind at issue in *St- Ferdinand*. In fact, according to a factual conclusion that has not been successfully challenged, the appellants had been aware at that time for nearly forty years of the addictive properties of tobacco. This concerted decision of the CTMC is but one example of their state of mind. This conduct goes beyond mere recklessness or negligence − which, as we know since *St-Ferdinand* are not sufficient − but indicates that the appellants acted “in full knowledge of the ... at least extremely probable consequences” of their actions. The appellants can no longer feign ignorance of the scientific and statistical evidence gathered in 1988.

[1013] More specifically, these factual findings show that the appellants could not have been unaware of the extremely probable consequences of their denials on persons who would become addicted to tobacco, including all the members of the Létourneau Class as defined and on smokers who would develop one of the diseases at issue. They understood that this marketing strategy had the consequence of throwing individuals into the path of addiction, causing mortal illness or exposing them to high risks of developing such diseases. By doing so, they certainly interfered in an unlawful and intentional manner with the right to life, personal security and inviolability of the members of the two Classes. All of the evidence retained by the trial judge, including his finding on the policy of silence, sufficiently warrants this conclusion.

[1014] The judge committed no error justifying the intervention of the Court by characterizing the interference as intentional.

3.3. Summary

[1015] In the absence of a reviewable error in the judgment *a quo*, the order to pay compensatory damages to members of the Blais Class under the *Charter* does not warrant intervention on appeal. The right to life, personal security and inviolability of the members of the two Classes have been infringed by the appellants in a wrongful and unlawful manner because the standards of conduct established by the general law have been violated. As the judge indicated, the interference continued from the coming into force of the *Charter* until the end of the relevant period covered by the claims. We recall that this finding is in no way necessary to warrant full compensation of the prejudice in view of the judge’s conclusion under the general law.

[1016] The judge did not commit any reviewable error by finding that the interference was

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intentional, and, as a result, it was open to him to order the payment of punitive damages in the two matters. The assessment of their quantum will be addressed in section IV.5 of this judgment given that the C.P.A. and the *Charter* overlap in part with respect to the objectives of punitive damages and the acts that must be analyzed to establish their quantum.

4. PRESCRIPTION

4.1. Prescription of compensatory damages

A. *Background*

[1017] It should be noted at the outset that the trial judge did not award compensatory damages in the Létourneau action and that this finding was not challenged on appeal.

[1018] As for prescription of compensatory damages in the Blais action, the appellants JTM and ITL[895] mainly challenge the claims of persons who, according to the appellants, the trial judge erroneously added to the Class in his July 3, 2013, decision amending the description of the Classes.[896]

[1019] More specifically, they argue that the claims of persons diagnosed with a particular disease between the date of the authorization judgment (February 21, 2005, the appellants' implicit cut-off date for Class membership) and July 3, 2010, (three years before the judgment amending the Class) are prescribed. They also argue that persons not covered by the initial action do not benefit from any suspension or interruption of prescription

[1020] The trial judge rejected those claims, ruling instead that it is in the interests of justice that persons who acquire an interest in an ongoing class action, subsequent to the authorization judgment, be included in it rather than being forced to bring separate actions.

[1021] The judge held that the persons thus added to the class benefited from the suspension of prescription set out in article 2908 C.C.Q.[897] Relying primarily on the reasons of Gascon J., then of the Superior Court, in *Marcotte v. Fédération des caisses Desjardins du Québec*,[898] he was of the view that when the judge authorizing the action considers it advisable not to stipulate a cut-off date in the description of the class, the suspension of prescription set out in article 2908 C.C.Q. may last until such a date is required, one way or another, depending on the circumstances.

[1022] In this case, the trial judge stated that the lack of a closing date is readily explained by the long latency period of the diseases in question, making it clear that the number of diagnoses would continue to increase among those who smoked the critical dose before November 20, 1998. As a result, those persons should have the opportunity to join the class action, without

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895 RBH relied on the arguments of ITL and JTM.

896 *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2013 QCCS 4904.

897 Judgment *a quo* at paras. 857−858.

898 *Marcotte c. Fédération des caisses Desjardins du Québec*, 2009 QCCS 2743, main appeal allowed and cross- appeal dismissed by *Fédération des caisses Desjardins du Québec v. Marcotte*, 2012 QCCA 1395, appeal to the Supreme Court allowed in part by *Marcotte v. Fédération des caisses Desjardins du Québec*, 2014 SCC 57.

having to institute a new action or lose their right to claim damages.

[1023] JTM reiterates that modification of the description of the class requested after commencement of the trial cannot be authorized, because it would contravene article 1013 f.C.C.P., an argument rejected by the trial judge on the ground that, on the contrary, article 1022 f.C.C.P. allows the court to amend the class at any time.

[1024] Finally, ITL claims that, given the knowledge date fixed by the trial judge regarding the dangers related to smoking (January 1, 1980), the trial judge should have required the respondents to establish that it was impossible for them to act within the meaning of article 2904 C.C.Q. with respect to the claims related to a safety-defect and to the failure to inform.

B. *Analysis*

[1025] The following articles of the C.C.Q. set out the prescription mechanisms specific to class actions by providing for the interruption of prescription following institution of the authorized action (art. 2897) and suspension of prescription as of the authorization proceedings (art. 2908):

2897. An interruption which results from the bringing of a class action benefits all the members of the group who have not requested their exclusion from the group.	**2897.** L'interruption qui résulte de l'exercice d'une action collective profite à tous les membres du groupe qui n'ont pas demandé à en être exclus.
2908. An application for leave to bring a class action suspends prescription in favour of all the members of the group for whose benefit it is made or, as the case may be, in favour of the group described in the judgment granting the application.	**2908**. La demande pour obtenir l'autorisation d'exercer une action collective suspend la prescription en faveur de tous les membres du groupe auquel elle profite ou, le cas échéant, en faveur du groupe que décrit le jugement qui fait droit à la demande.
The suspension lasts until the application for leave is dismissed, the judgment granting the application for leave is set aside or the authorization granted by the judgment is declared lapsed; however, a member requesting to be excluded from the action or who is excluded therefrom by the description of the group made by the judgment on the application for leave, a judgment in the course of the proceeding or the judgment on the action ceases to benefit from the	Cette suspension dure tant que la demande d'autorisation n'est pas rejetée, que le jugement qui y fait droit n'est pas annulé ou que l'autorisation qui est l'objet du jugement n'est pas déclarée caduque; par contre, le membre qui demande à être exclu de l'action, ou qui en est exclu par la description que fait du groupe le jugement qui autorise l'action, un jugement rendu en cours d'instance ou le jugement qui dispose de l'action, cesse de profiter de la suspension de la prescription.

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suspension of prescription.

In the case of a judgment, however, prescription runs again only when the judgment is no longer susceptible of appeal.	Toutefois, s'il s'agit d'un jugement, la prescription ne recommence à courir qu'au moment où le jugement n'est plus susceptible d'appel.

[Emphasis added.]

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[1026] It is clear from article 2908 C.C.Q. that the suspension initially benefits persons who fall within the description of the class as it appears in the conclusions of the application for authorization of the class action. Persons excluded as a result of a more restrictive description of the class in the authorization judgment will cease to benefit from the suspension of prescription as of that judgment.

[1027] It should be noted that the legislator does not provide for what happens if the description expands the class. This may seem self-evident given the *ultra petita* rule, but the significant powers of the authorizing judge, whose role also includes protection of the members, allow him or her to describe a broader class than the one defined in the conclusions of the application for authorization.[899]

[1028] It could be argued in this case that the suspension of prescription extends to "new" members only as of the authorization judgment. They cannot argue that they refrained from bringing an individual action because they believed they benefited from the class action being authorized.

[1029] In any event, the wording of article 2908 C.C.Q. indicates, at least implicitly, that the suspension continues until the judgment ruling on the class action, and also provides that a judgment rendered in the course of the proceedings or the final judgment could amend the description of the class to exclude members previously covered by the action.

[1030] Finally, section 27 of the T.D.R.A. establishes a rule that derogates from the general law in regard to the prescription period applicable to class actions seeking damages for tobacco-related injury:

27. An action, including a class action, to recover tobacco-related health care costs or damages for tobacco-related injury may not be dismissed on the ground that the right of recovery is prescribed, if it is in progress on 19 June 2009 or brought within three years following that date.	**27.** Aucune action, y compris une action collective, prise pour le recouvrement du coût de soins de santé liés au tabac ou de dommages-intérêts pour la réparation d'un préjudice lié au tabac ne peut, si elle est en cours le 19 juin 2009 ou intentée dans les trois ans qui suivent cette date, être rejetée pour le motif que le droit de recouvrement est prescrit.
Actions dismissed on that ground before 19 June 2009 may be revived within three years following that date.	Les actions qui, antérieurement au 19 juin 2009, ont été rejetées pour ce motif peuvent être reprises, pourvu seulement qu'elles le soient dans les trois ans qui suivent cette date.

[1031] This provision, found to be constitutionally valid,[900] shows the legislator's clear intention to

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899 *Société des loteries du Québec (Loto-Québec) c. Brochu*, 2007 QCCA 1392 at para 6.

900 *Imperial Tobacco Canada Ltd. v. Québec (Procureure générale)*, 2015 QCCA 1554, leave to appeal to

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avoid dismissal of the actions described therein for any reason related to the passage of time, provided that the actions were commenced before June 19, 2012, without having to demonstrate an inability to act within the meaning of article 2904 C.C.Q. As will be seen below, claims arising between the 2005 authorization judgment and the March 2012 cut-off date are included in the class action initiated in 1998. As such, they benefit from both the rules of section 27 T.R.D.A. and the general law providing for the suspension of prescription in a class action.

[1032] In this case, an initial observation is in order: the description of the Blais Class in the application for authorization to institute the class action served on November 20, 1998, does not set any specific timeframe guidelines. The description is as follows:

> [TRANSLATION]
>
> All persons who are or have been victims of cancer of the lungs, larynx or throat or who suffer from emphysema after having inhaled cigarette smoke for a prolonged period of time;
>
> And the successors and heirs of deceased persons who otherwise would have been part of the class.

[1033] It should be noted that the use of the expression “are or have been victims” is, at the very least, ambiguous and does not preclude the description from being prospective in scope.

[1034] The judgment authorizing the action,[901] handed down on February 21, 2005, by Jasmin J. notes that the proposed description is [TRANSLATION] “much too vague,” which compromises the exercise of the right to be excluded from the Class. After that finding, Jasmin J. reformulated the description of the Blais Class as follows:

> [TRANSLATION]
>
> All persons residing in Quebec who had lung, larynx or throat cancer or emphysema <u>when the motion was served</u> or who have developed lung, larynx or throat cancer or emphysema <u>since the motion was served</u> after directly inhaling cigarette smoke and smoking a minimum of 15 cigarettes per 24-hour period over a prolonged and uninterrupted period of at least five years, as well as the successors of any person who met the above-mentioned requirements and who has died since the motion was served.
>
> [Emphasis added.]

[1035] Aside from the particulars regarding the required level of smoking, the new description did not eliminate the temporal ambiguity. On the contrary, by specifying that the Class includes not only persons affected by one of the diseases stipulated when the request for authorization to institute the action was served, but also those who had since then been diagnosed with the disease, if there is no a cut-off date, any smoker who meets the smoking criteria and who

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SCC refused, 36741 (5 May 2016).

[901] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, J.E. 2005-589, 2005 CanLII 4070 (Sup. Ct.).

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develops such a disease after the authorization judgment may consider himself included in the action.

[1036] On April 4, 2013, the respondents filed a motion to amend the description of the Blais and Létourneau Classes in response to the evidence adduced by the plaintiffs. In addition to the critical dose of smoking, which the respondents wished to specify, the motion alleged the need to limit the eligibility period for the Blais Class by specifying a cut-off date.

[1037] On July 3, 2013, the trial judge amended the description of the Blais Class.[902] He established the critical dose of smoking at five pack/years and stated that this condition had to be satisfied before November 20, 1998, the date of service of the application for authorization.

[1038] The trial judge also agreed to set the cut-off date for joining the class as the first day of the trial, namely March 12, 2012, as requested by the respondents. He did not accept the appellants' position that the date of the authorization judgment, February 21, 2005, was the cut-off date for Class membership and could not be exceeded. It should be borne in mind that, according to the trial judge, there is nothing to prevent the addition to the Class of persons who are in a similar situation to the initial members, but whose interest arose after the authorization judgment. In the trial judge's view, such an amendment promotes access to justice, while avoiding the multiplication of long and costly actions based on the same facts.

[1039] The description of the Class was therefore amended on July 3, 2013,[903] to read as follows:

> [TRANSLATION]
>
> The class is composed of all persons residing in Quebec who satisfy the following criteria:
>
> 1) To have smoked, before November 20, 1998, a minimum of 5 pack/years of cigarettes made by the defendants ....
>
> 2) To have been diagnosed before March 12, 2012, with:
>
> 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.
>
> The class also includes the heirs of the persons deceased after November 20, 1998, who satisfied the criteria mentioned herein.

[1040] The description of the Class remains the same in the judgment *a quo* (with a few linguistic nuances), the only difference being that the smoking dose is increased to 12 pack/years.

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902 *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp*., 2013 QCCS 4904.

903 *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp*., 2013 QCCS 4904 at para. 83

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[1041] This brief overview of the changes in the description of the Blais Class shows that any time until the July 3, 2013, judgment, a person who met the smoking condition and developed one of the diseases in question could reasonably believe that he or she belonged to the Blais Class and did not have to institute an individual action to avoid losing his or her rights because of the passage of time.

[1042] Thus, the apparent logic of the appellants' argument that the right of action of smokers diagnosed with a specified disease after the February 21, 2005, authorization judgment is prescribed goes against the spirit of the legislative provisions in question. It should be reiterated that they provide for the suspension and interruption of prescription for class actions (arts. 2908 and 2897 C.C.Q.), for the publication of the description of the class and any amendments thereto during the proceedings (arts. 1005, 1006, 1022 and 1045 f.C.C.P.). The legislator's intention to protect the rights of class members, as described in the authorization judgment and in any subsequent decision amending the composition of the class, is clear. In addition, publicity surrounding the composition of the class gives the persons concerned the opportunity to verify if they are included in the action, with the corollary right to be excluded.

[1043] In this context, the description of the Blais Class in the February 21, 2005, authorization judgment, published in accordance with the law, did not include any temporal restriction suggesting that a smoker diagnosed with one of the diseases in question after that date should sue the appellants individually. On the contrary, as soon as the disease was diagnosed, he or she could legitimately consider himself or herself part of the class.

[1044] The judge was correct in applying the principle stated by Gascon J. in *Marcotte c. Fédération des caisses Desjardins du Québec*.[904] Gascon J. explained that absent a cut-off date in the initial description of the class, there was no basis for concluding that the action was prescribed:

> [TRANSLATION]
>
> [427] As for the new members who would henceforth be added as a result of transactions made and invoiced after the date of the authorization judgment, the Court is of the view that Desjardins' argument should not be accepted. The description of the class included in the authorization judgment and the wording of the notices to subsequent members defeat it.
>
> [428] In either case, the description of the class did not include a specific cut-off date with regard to the end of the period in question. However, in accordance with article 2908 C.C.Q., the suspension of the prescription period applies in favour of the class described by the judgment authorizing the application. Furthermore, according to article 2897 C.C.Q., the interruption resulting from the institution of a class action benefits the class members who have not asked to be excluded from the action.

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[904] *Marcotte c. Fédération des caisses Desjardins du Québec*, 2009 QCCS 2743, main appeal allowed and cross-appeal dismissed by *Fédération des caisses Desjardins du Québec v. Marcotte*, 2012 QCCA 1395, appeal to the Supreme Court allowed in part by *Marcotte v. Fédération des caisses Desjardins du Québec*, 2014 SCC 57. In our view, the principle stated by Gascon J. in the Superior Court reflects the state of the law.

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> [429] As the Court pointed out in its March 14, 2008, decision, and as the Court of Appeal recommended in *Société des loteries du Québec c. Brochu*, it is true that the need to include a cut-off date in the description of a class is obvious. However, its absence in the authorization judgment or in the notices to members may not be interpreted in such a way as to adversely affect the members who are the subject of it.
>
> [430] If this description was incorrect or incomplete, it was the responsibility of the parties, primarily Desjardins, to ensure that it was clarified to avoid any ambiguity. This clarification occurred only in March 2008, after Mr. Marcotte's application to amend.
>
> [431] In the meantime, the description of the class in the authorization judgment and the notices to members indicated that it would be open from April 17, 2000, with no specific cut-off date.
>
> [432] According to the Court, any doubt in this regard must operate in favour of the class members. This is particularly necessary regarding the content of the notice to members, approved by the authorization judgment, which is the method of communication chosen to inform members.
>
> [433] In matters of the prescription and extinction of a right, the party invoking it, i.e., Desjardins, has the burden of proof. In this case, the ambiguity resulting from the absence of a cut-off date in the initial description of the class does not support the conclusion that there is preponderant evidence supporting Desjardins' position.
>
> [434] There is no reason to conclude that there are rights of action in this case that are prescribed due to a "presumed" July 5, 2004, cut-off date for the description of the class, where neither the authorization judgment nor the notices to members specify it.

[1045] The above comments may be transposed to this case. The ambiguity resulting from the absence of a cut-off date in the description of the Blais Class does not support the conclusion that the claims of persons diagnosed with a specified disease since the service of the application for authorization became prescribed on February 21, 2005.

[1046] Furthermore, as this Court noted in *Société des loteries du Québec (Loto-Québec) c. Brochu*, this approach is consistent with the public interest objectives of class action proceedings, and with the role of the court in protecting the rights of absent persons:[905]

> [TRANSLATION]
>
> [6] Once the class action is authorized, the new philosophy embodied in civil procedure as a result of the 2003 reform has increased the extent of intervention of the judge responsible for managing the case so that he or she can get to the essential phase of inquiry and hearing on the merits. The trial judge specially

[905] *Société des loteries du Québec (Loto-Québec) c. Brochu*, 2007 QCCA 1392.

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> assigned for this purpose is best placed to decide questions concerning the action's termination date and the composition of the class. The Code also entrusts that judge with the role of protecting absent persons and consequently grants him or her a significant measure of discretion.
>
> ...
>
> [8] In this case, the appellant failed to demonstrate that the trial judge exercised this
> discretion inappropriately. The solution he applied respects the twofold objective of promoting access to justice and avoiding the multiplicity of remedies. By amending the description of the class, he did not alter the purpose of the class action, which is to determine whether users of video lottery terminals have become pathological gamblers because the appellant made available to them devices that could cause this disorder without proper warning. He simply added to the initial action the claim of those who had the same problems at a later time, thus avoiding the institution of a new class action for the sole purpose of covering the period of more than five years since the action was authorized.
>
> [9] The reasoning proposed by the appellant would have the effect of requiring persons who have the same interest as the original class, but respecting a later time, to institute other class actions, thereby wasting judicial resources, sterilizing the institution and weakening its social vocation.
>
> [Emphasis added; References omitted.]

[1047] In addition to the fact that the above passage recognizes that the trial judge may expand the group, the Court reaffirms the importance of avoiding a multiplicity of actions and promoting access to justice.

[1048] The argument to the effect that members whose right of action has not arisen cannot be included in the class covered by the authorization judgment specifically disregards the description of the class and the initial temporal ambiguity. It would also be unfair to deprive people of their rights on the grounds that the description in the authorization judgment was incorrect, as Gascon J. pointed out. It was up to the appellants to raise this issue promptly if they perceived it as a difficulty. They did not do so.

[1049] In short, it was not until July 3, 2013, that members of the Blais Class were excluded on the grounds that their illness was diagnosed after March 12, 2012, and that they would lose the benefit of the suspension and potential interruption of prescription under articles 2908 and 2897 C.C.Q. Until judgment amending the description of the Class to specify a cut-off date, the definition of the Class included all smokers who had developed one of the specified diseases, without any temporal restriction. As Gascon J. noted, any doubt in that regard must operate in favour of the class members.

[1050] JTM's argument based on article 1013 f.C.C.P., can be rejected summarily. The trial judge rightly held that article 1022 f.C.C.P. allows the court to amend the class at any time, even on its own initiative. This conclusion is in keeping with the principles established in *Société des*

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loteries du Québec (Loto-Québec) c. Brochu,[906] in which the Court proposed a broad interpretation of the third paragraph of article 1022 f.C.C.P. and advocated a flexible approach to amending the description of a class. Such an approach, which may be transposed to this case, is consistent with the principles and objectives underlying the very existence of the class action: access to justice and the sound management of judicial resources.

[1051] Lastly, ITL's argument based on the inability to act must also be summarily rejected, as it is incompatible with section 27 T.R.D.A., as interpreted above.[907]

4.2. Prescription of punitive damages

A. Background

[1052] The trial judge held that the T.R.D.A. does not apply to the prescription of punitive damages, and he applied the three-year prescription period (art. 2925 C.C.Q.).[908] In the Blais action, he held that claims that occurred before November 20, 1995, three years before service, are prescribed.[909] In the Létourneau action, he held that none of the claims are prescribed, because the members were not aware of their cause of action before the addiction knowledge date (March 1, 1996), which was when prescription started to run. As the action was served on September 30, 1998, none of those claims are prescribed.[910]

[1053] The appellants frame the argument on appeal primarily by challenging the accuracy of the addiction knowledge date, arguing that prescription had run with respect to almost all the punitive damages in both actions.

[1054] In the Blais action, JTM asserts that all the causes of action are prescribed. In regard to the C.P.A., it argues that no prohibited practice could have been committed after the harmful nature of the product became known (January 1, 1980) and that the causes of action arose when a member started smoking. As regards the *Charter*, it argues that only the claims of members who satisfy the following three conditions are not prescribed: (1) the member was unaware of the harmful nature of tobacco, (2) the member became addicted to it before 1980 and (3) the member was diagnosed with one of the diseases in question after November 20, 1995. According to ITL, it was up to the respondents to prove that it was impossible for them to act between the knowledge date (January 1, 1980) and the three years before service (November 20, 1995).

[1055] In the Létourneau action, JTM and ITL challenge the knowledge date (March 1, 1996). They are of the view that the date is incorrect because of the addiction warnings printed on cigarette packages as of September 12, 1994. They claim that the trial judge erred in postponing

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906 *Société des loteries du Québec (Loto-Québec) c. Brochu*, 2007 QCCA 1392.

907 See para. [1031] above.

908 Judgment *a quo* at para. 897.

909 Judgment *a quo* at para 900.

910 Judgment *a quo* at paras 887−890. The judge nevertheless noted the respondents' admission to the effect that the claims for punitive damages that arose before September 30, 1995, are prescribed. Strictly speaking, however, this is of no consequence because the trial judge held that all the causes of action arose after September 30, 1995.

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the knowledge date by 18 months so that the warnings would have time to have full effect on awareness of the addiction. The prescription starting point would therefore be September 12, 1994, − the date of the mandatory publication of warnings on cigarette packages that cigarettes are addictive. The class members should therefore be deemed to be aware of the product's safety defect described in the warnings as of that date.

[1056] JTM further claims that using the knowledge date as the date the cause of action arose is an error of law, because a cause of action arises the same time as the violation of the legislation that makes punitive damages available. It therefore follows that, in the case of the C.P.A., the cause of action would have arisen when a member started smoking, whereas in the case of the *Charter*, it would have arisen when the members became addicted to tobacco. It would therefore be up to the members to establish that their cause of action is not prescribed by proving that it was impossible for them to act. Alternatively, the trial judge acknowledged that well before September 1994, large segments of the population knew that cigarettes create dependency, which would negate the members' purported inability to act before the knowledge date.

[1057] Lastly, and more generally, it is argued that claims arising between 2005 and 2010 due to the redefinition of the Classes are prescribed. This argument was rejected for the reasons set out in section IV.4.1 dealing with compensatory damages, and the same reasoning applies to punitive damages. As for the argument that the trial judge took into account acts committed by the appellants during the prescribed period to establish the quantum of punitive damages, the Court will address this in the assessment of the quantum (section IV.5).

B. Analysis

[1058] These actions, insofar as they concern punitive damages, are prescribed by three years (art. 2925 C.C.Q.). The T.R.D.A. does not apply to punitive damages since they are not compensatory and are therefore not "damages for tobacco-related injury / dommages-intérêts pour la réparation d'un préjudice."[911] Section 1 T.R.D.A. also confirms that the scope of that statute is limited to damages for injury. This reading of the T.R.D.A. has not been contested here.

[1059] Article 2925 C.C.Q. therefore applies to the claims for punitive damages, as the judge held, since the part of the action involving punitive damages can be likened to an action to enforce a personal right:

2925. An action to enforce a personal right or movable real right is prescribed by three years, if the prescriptive period is not otherwise determined.	**2925.** L'action qui tend à faire valoir un droit personnel ou un droit réel mobilier et dont le délai de prescription n'est pas autrement fixé se prescrit par trois ans.

[1060] With respect to the C.P.A., it should be noted that section 273 applied until December 13, 2006. Since repealed, it also prescribed a three-year prescription period, which began to run as of the formation of the contract in question.

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[911] Section 27 T.R.D.A. [emphasis added]. The idea of reparation, explicit in the French text, is implicit in the English text.

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[1061] Extinctive prescription of a right of action runs as of the day that right of action arose (art. 2880, para. 2 C.C.Q.). In an extracontractual action for compensatory damages, a right of action arises as of the day the holder had reasonably sufficient knowledge of the elements constituting his or her right of action.[912] In the context of a claim for punitive damages, knowledge of the elements which constitute the right of action also marks the starting point for prescription. In the more specific case of section 273 C.P.A., which stipulated that an action based on the C.P.A. is prescribed "by three years reckoning from the making of the contract," it has also been held that prescription does not begin to run as of the making of the contract if the consumer is unaware of the elements on which his action is based.[913] In this sense, section 273 called for the same approach as the general law.

[1062] The difficulty of these appeals lies rather in the duality of the legislative provisions that justify the order for punitive damages − the C.P.A. and the *Charter* − as well as in the identification of the facts generating liability, which differ based on the legislative provisions and the files, and which extend over a long period of time.

i. Blais file

[1063] In the Blais file, the judge held that the claims for punitive damages that arose as of November 20, 1995, i.e., three years before service,[914] were not prescribed. This conclusion will be analyzed under the *Charter* and then under the *C.P.A.*

a. Charter

[1064] Analysed under the *Charter*, the issue of prescription for punitive damages does not pose a significant problem. It is well known that a right of action arises [TRANSLATION] "the first day the holder of the right could have taken action to assert it."[915] The unlawful and intentional interference with the right to life, personal security and inviolability of the Blais Class materialized when any of the diseases in question was diagnosed. At that time and thereafter is when their right to life was in jeopardy and that the members suffered from several cases of interference with their inviolability or personal safety. Before their diagnosis, the members did not have sufficient knowledge of the unlawful and intentional interference committed by the appellants to take an action for punitive damages pursuant to the second paragraph of section 49 of the *Charter*.

[1065] The data used to determine the number of members of the Blais Class come from Dr. Siemiatycki and are broken down to indicate the number of class members per year based on the disease each one contracted. Those figures were accepted by the judge, and he did not commit any reviewable error in ruling that prescription was not a bar to the claim for punitive damages.

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912 *ICQ Algérie c. Duquette*, 2018 QCCA 160 at para. 7; *Rosenberg c. Canada (Procureur général)*, 2014 QCCA 2041 at para. 8; *Dufour c. Havrankova*, 2013 QCCA 486 at para. 3; Céline Gervais, *La prescription* (Cowansville, Qc.: Yvon Blais, 2009) at 106−107.

913 *Service aux marchands détaillants ltée (Household Finance) v. Option Consommateurs*, 2006 QCCA 1319 at paras. 13−16 and 21.

914 Judgment *a quo* at paras. 900−-901.

915 *Gouin Huot v. Équipements de ferme Jamesway inc.*, 2018 QCCA 449 at para. 6.

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[1066] Three details warrant the Court's attention.

[1067] First, it is true that the description of the Blais Class includes persons who were diagnosed before 1995 and whose claims for punitive damages would be prescribed. However, Dr. Siemiatycki's data did not account for those persons in the total number of members of the Blais Class. Moreover, that is of no importance since those members − no more than any other member of the Blais Class − were not accounted for in the calculation of the quantum of punitive damages. As we will see, the determination of the quantum of punitive damages is not directly based on the exact number of members, although the impact of the infringement on large segments of the population may form part of the analysis.

[1068] Secondly, this reasoning also applies to members who received their diagnosis between January 1, 1995, and November 19, 1995, inclusively. Although Dr. Siemiatycki's data about the number of diagnoses for the year 1995[916] are not broken down by day or month, it is clear that the majority of the members of the Blais Class have a claim for punitive damages that arose after November 20, 1995.

[1069] Thirdly, the Court must reject JTM's argument according to which only members who meet the following three conditions have claims that are not prescribed: (1) the member was unaware of the dangers of smoking, (2) the member became addicted before 1980 and (3) the member developed one of the diseases in question after November 20, 1995. On the contrary, prescription runs as of the time the unlawful and intentional interference, i.e., the diagnosis, crystalized, which necessarily occurred after 1995.

[1070] In short, the judge did not commit a reviewable error in ruling that prescription is not a bar to an action for punitive damages based on the *Charter*.

b. C.P.A.

[1071] Under the C.P.A., punitive damages may be awarded when all the criteria of the irrebuttable presumption of harm in section 272 are met and the member has sufficient knowledge, for example, of the fraudulent or misleading nature of the representations or that a material fact has been omitted. A Member's right of action arising assumes that he or she was aware of the elements comprising the appellants' liability. It is therefore wrong to claim, as JTM does, that prescription began to run when a member started smoking by purchasing his or her first pack of cigarettes following a false or misleading or incomplete representation. On the contrary, *each* pack of cigarettes purchased by a member as of the coming into force of the C.P.A. constitutes a potential pending cause of action.

[1072] There is a major obstacle here to the appellants' claims.

[1073] It must be noted that the *Charter* clearly allows the appellants to be ordered to pay the total amount of $90,000 to punish the unlawful and intentional interference. Even assuming the judge committed an error relating to the prescription of punitive damages granted under the C.P.A., it is therefore not decisive. The *Charter* is sufficient to set aside this ground of appeal.

[1074] But there is more.

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[916] See Exhibit 1426.7, tables D1.2 and D3.1 at 2−5.

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[1075] Prescription is a defence,[917] and the burden of proof is on the appellants. According to the judge, they proved that the members knew of the dangers of smoking as of January 1, 1980. Even if we accept that date,[918] it would be appropriate to ask if that is sufficient. Under the C.P.A., they had to show that the causes of action arose before November 20, 1995. The appellants' position is based on the hypothesis that the knowledge date coincides with sufficient knowledge of *all* the elements constituting the cause of action, including that of the misleading and incomplete nature of the representations. The demonstration of that coincidence has not been made. Although it may be relevant to the quantification of the punitive damages, it is not established that knowledge of the danger is the only element that marks when the cause of action arose. Some would say that, if that were the case, it would be a blank check to mislead consumers by questioning their knowledge of information, thereby encouraging the commission of prohibited practices.

[1076] Regardless, the Court reiterates that the analysis of prescription based on the *Charter* is more than enough to dismiss this ground of appeal. Similarly, the contracts entered into during the three years preceding the summons constitute causes of action that are not prescribed under section 273 C.P.A. and which certainly allow, alone or in conjunction with the *Charter*, an order to pay $90,000 in punitive damages. Again, assuming the judge committed an error, it is therefore not decisive.

[1077] To summarize, the judge did not propose a different analysis for the prescription of punitive damages based on the elements triggering liability depending on whether the *Charter*, the C.P.A. or both apply. Nonetheless, the fact remains that the conclusion he draws in paragraph 900 on the prescription of punitive damages is free of any reviewable error insofar as the claims under the *Charter* are more than enough to grant the symbolic sum of $90,000.

ii. Létourneau file

[1078] According to the judge, none of the claims for punitive damages is prescribed in the Létourneau file because all the causes of action arose on March 1, 1996, when it became known that smoking was addictive.[919]

[1079] The Court has concluded that the judge did not commit a reviewable error in ruling that knowledge of the addiction caused by smoking occurred on March 1, 1996. That is sufficient to reject this ground of appeal.

[1080] The evidence adduced in the file allowed the judge to conclude that, after more than four decades of sustained disinformation about various aspects of smoking, the 1994 warning did not put an immediate and irreversible end to public uncertainty regarding addiction. Moreover, as the judge noted, the evidence[920] indicates that the appellants did not completely cease their

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[917] *Montréal (Service de police de la Ville de) (SPVM)*, 2016 QCCA 430 at para. 44.

[918] Recall that the Court finds that the date the judge should have identified is that of March 1, 1996.

[919] Judgment *a quo* at para. 888.

[920] It is inevitable that, in a judgement disposing of actions such as those before us where the evidence is disproportionate to files that are generally before the courts, a judge will make a selection and refer only to certain exhibits that are representative of the file. In doing so, the judge referred to several exhibits concomitant or subsequent to September 30, 1995. See the Judgment *a quo* at para. 265 (note 149, Exhibit 20063.10 at 154), para. 535 (Exhibits 1240B and 1240C, erroneously identified as

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disinformation practices after 1994, which is an obstacle to the idea that public knowledge was acquired instantaneously when the warnings appeared on September 12, 1994. Much more than a harmless habit, addiction is a serious health disorder that is at the opposite end of the spectrum from the image projected in the appellants' ads and sponsorships. The decision to set the knowledge date at March 1, 1996, is supported by the evidence, and the Court must defer to it. Accordingly, the judge's conclusion that the Létourneau action is not prescribed is unassailable.

[1081] The following should be noted, however. Both the appellants and the respondents argued that knowledge of addiction constitutes the starting point for the prescription period applicable to punitive damages in the Létourneau file. In so doing, however, the parties seem to have forgotten that mere knowledge of information does not necessarily constitute proof of all aspects of a right of action. Even assuming that date is incorrect, we therefore consider that this ground of appeal should be rejected, for the following reasons.

a. C.P.A.

[1082] Analysed based on the C.P.A., the right of action seeking punitive damages in the Létourneau file arises every time the criteria of *Richard v. Time Inc.*[921] are satisfied. Contrary to what the appellants claim, when the first cigarette was smoked or when a member became addicted to smoking is of no importance since the member did not necessarily have sufficient knowledge at the time of all the elements constituting his or her right of action, including the misleading nature of the representations. It is incorrect to claim that the members of the Létourneau Class should have brought their action against the appellants as soon as a contract was made, while the appellants were bending over backwards to maintain their ignorance.

[1083] To prevail with respect to the prescription of punitive damages, the appellants had the burden of proving not the knowledge of addiction, but the fact that the members of the Létourneau Class could exercise their action under the C.P.A. more than three years before they did so. There is no issue here of the members' inability to act, which it was up to them to prove, or of a *fin de non recevoir*, an argument the judge dismissed, but a clear case of the appellants not having proved that the members could have taken their action earlier.

[1084] Incidentally, we note that, despite the foregoing, the definition of the Létourneau Class requires that each member be addicted to smoking and therefore smoked daily during the four years preceding the action. As a corollary, it is admitted that the conditions of *Richard v. Time*

Exhibits 1040B and 1040C) and para. 1078 (note 476; Exhibit 20063.10 at 154).
He could also have referred to other exhibits that support the hypothesis of the continuation of the campaign of disinformation, and its relative success, after September 12, 1994. See Exhibits 61 (at 3), 401 (at 3), 569, 569A, 569B, 1230-2m, 1337-2m and 21316.184. As described in the judgment authorizing the action (*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, J.E. 2005-589, 2005 CanLII 4070 at para. 58 (Sup. Ct.)), more than ten years after all the Members allegedly had knowledge, the appellants were *still* denying that smoking was addictive.
Lastly, the judge could have referred to other ads and sponsorships subsequent to 1995. See Exhibits 1240A, 1381.51, 1381.52, 1501.5, 1501.6, 1501.7, 1501.8, 1501.9, 1501.10, 1501.12, 1501.13, 1501.14, 1506.3, 1509.2, 1509.4, 1510.1, 1511.5 and 1513.6.

[917] *Richard v. Time Inc.*, 2012 SCC 8.

Inc.[922] are satisfied for each member during the three-year period preceding service. Each pack of cigarettes smoked during those three years thus constitutes a potential cause of action that is not prescribed.

b. Charter

[1085] The prescription applicable to punitive damages awarded under the *Charter* follows a similar logic. In the event the judge's conclusion regarding the knowledge date is erroneous, the appellants have not met their burden of proving that the members knew, before September 30, 1995, of the existence of an unlawful and intentional interference with their right to life, personal security and inviolability. The appellants have not proven, for example, when it became known that they intentionally worked to delay as much as possible the time the addictive nature would become known. That shortfall is fatal.

[1086] The judge was certainly not proposing a different analysis of prescription depending on whether the C.P.A., the *Charter* or both apply. However, his conclusion that none of the claims of the members of the Létourneau Class is prescribed is free of error.

4.3. Summary

A. Claims for compensatory damages

[1087] Section 27 T.R.D.A. neutralizes the effect of prescription such that none of the claims for compensatory damages of members of the Blais Class is prescribed. The claims of members of the Blais Class who were diagnosed between 2005 and 2010 are not prescribed either because they benefited from the combination of the suspension and interruption of prescription provided by articles 2908 and 2897 C.C.Q. respectively.

B. Claims for punitive damages

[1088] In the Blais file, the true cause of action in terms of punitive damages could not have arisen before each member was diagnosed. That was when the unlawful and intentional interference with the Member's fundamental rights materialized, and he or she could bring an action against the appellants for punitive damages under the *Charter*.

[1089] Regarding the punitive damages granted under the C.P.A., the appellants did not succeed in showing that there was a decisive error in the trial judgment. But even assuming the judge was mistaken on this point − which has not been established − an error in the application of the C.P.A. would not have any effect insofar as his conclusion under the *Charter* is more than sufficient for the order to pay $90,000.

[1090] In the Létourneau file, the judge also did not commit a reviewable error in ruling that no

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922 *Richard v. Time Inc.*, 2012 SCC 8.

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claim was prescribed. The appellants did not show that there was a reviewable error relating to the March 1, 1996, knowledge date. It was up to them to prove when the members of the Létourneau Class had sufficient knowledge of the elements constituting their cause of action under the *Charter* and the C.P.A., and they did not do so.

5. ALLOCATION AND QUANTUM OF PUNITIVE DAMAGES

5.1. Main Appeal

A. Background

[1091] Considering that punitive damages are awarded under both the *Charter* and the C.P.A., the judge evaluated their quantum.[923] He established the amount jointly for both cases, being of the opinion that they deal with the same acts. He allocates 90% and 10% of the total amount of punitive damages respectively to the Blais and Létourneau Classes to account for the impact of the faults on the rights of the members. To determine the quantum, the judge used the appellants' average annual pre-tax profits and adjusted them according to various criteria, resulting in amounts of $725,000,000 for ITL, $460,000,000 for RBH and $125,000,000 for JTM.

[1092] In the Blais file, the judge reduced the amounts established, given that he had already ordered the appellants to pay nearly $7 billion in compensatory damages. He therefore ordered each of them to pay $30,000, or one dollar for each tobacco-related death in Canada per year.

[1093] In the Létourneau file, in the absence of an order for compensatory damages, the judge maintained the amount of punitive damages he established. He noted ITL's leadership throughout the relevant period by fuelling scientific controversy until the 1990s, destroying documents that could be used in litigation, and being aware of consumer ignorance while doing nothing to remedy it. He therefore established the amount at 150% of average annual profits ($725,000,000) and ordered ITL to pay 10% ($72,500,000). In the case of RBH, the judge considered that there was no justification for going beyond the established annual average of its income ($460,000,000) and ordered it to pay 10% ($46,000,000). With regard to JTM, the judge pointed out that the company artificially reduced its profits through a corporate reorganization, which was an attempt to avoid its obligations. He therefore set its putative annual income at $103,000,000, imposed punitive damages equivalent to approximately 125% of this income ($125,000,000) and also ordered it to pay 10% ($12,500,000).

[1094] The appellants' criticisms of this aspect of the judgment can be grouped under two headings: the absence of justification for the award of punitive damages and the alleged errors in the assessment of quantum.

[1095] In regard to the award of punitive damages, ITL claims that it is of no use to order it to pay them at this time, since all promotional activity is banned in the tobacco industry and it is no longer necessary as a deterrent for any behaviour whatsoever. ITL adds that the judge, in the Létourneau case, used a "back door" approach by ordering the appellants to pay punitive damages. Indeed, in so far as causation and injury have not been established, they claim that no order for punitive damages is be possible. For its part, JTM argues that its conduct does not

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[923] Judgment *a quo* at paras. 1017−1112.

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justify an award of punitive damages because it does not meet the analytical criteria set out in *Richard v. Time Inc.,*[924] which analysis the judge also neglected to perform and which the Court should perform *de novo.*

[1096] As for quantum, ITL claims that the judge erred in determining the amount of punitive damages for both cases jointly. In addition, it argues that the total amount is not rationally related to the objectives of punitive damages and is incorrectly established based on the number of class members in the actions. It adds, supported by JTM, that the judge considered elements prior to the coming into force of the *Charter* and the C.P.A. to establish the quantum. Finally, JTM alleges that the judge committed an error of fact and law by imputing income to it and ignoring the effect of intercorporate contracts in its financial statements.

B. Analysis

[1097] The principles of punitive damages are well known. Any order to pay punitive damages must have a basis in law (art. 1621 C.C.Q.), and their award is the exception rather than the rule.[925]

[1098] In addressing the issue of unlawful violations of the rights of class members in the actions under section IV.4 of the *Charter*, it was determined that the judge did not err in concluding that the violations were intentional, which gives rise to the award of punitive damages under the second paragraph of s. 49 of the *Charter*.

[1099] Since the C.P.A. is silent on the criteria to be considered, "the criteria for awarding punitive damages must be established by taking account of the general objectives of punitive damages and those of the legislation in question."[926] On this point, Justices LeBel and Cromwell stated in *Richard v. Time Inc.*:

> [158] Under s. 272 *C.P.A.*, punitive damages can be sought only if it is proved that an obligation resulting from the Act has not been fulfilled. However, s. 272 establishes no criteria or rules for awarding such damages. It is thus necessary to refer to art. 1621 *C.C.Q.* and determine what criteria for awarding punitive damages would suffice to enable s. 272 *C.P.A.* to fulfil its function.
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> [159] The objectives of the Act must therefore be identified to ensure that punitive damages will indeed meet the objectives of art. 1621 *C.C.Q.*

[1100] In the case of the C.P.A., more specifically, the legislator's objectives include rebalancing contractual relations and information inequalities between merchants and consumers, as well as eliminating unfair and deceptive practices.[927]

[1101] For a court to sentence a merchant to pay punitive damages, it must be established that

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[924] *Richard v. Time Inc.*, 2012 SCC 8.
[925] *Richard v. Time Inc.* 2012 SCC 8 at para. 150; *de Montigny v. Brossard (Succession)*, 2010 SCC 51 at para. 48.
[926] *Richard v. Time Inc.* 2012 SCC 8 at para. 154.
[927] *Richard v. Time Inc.*, 2012 SCC 8 at paras. 160−161.

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the obligations imposed by the C.P.A. were not fulfilled.[928] Thereafter, it the objective of prevention must be considered, and it must be determined whether the violations were "intentional, malicious or vexatious" and whether the "conduct [of the merchant] display[s] ignorance, carelessness or serious negligence with respect to [its] obligations and consumers' rights".[929] Although evidence of antisocial behaviour is relevant, it is not strictly speaking, necessary.[930]

[1102] The criteria for determining the quantum are set out in art. 1621 C.C.Q. This article first of all confirms the principle of moderation,[931] meaning that it is essential to avoid awarding an amount that exceeds what is necessary to ensure the preventive function of punitive damages. Among the criteria set out in the second paragraph, which are not exhaustive, the Court must consider i) the seriousness of the fault, by far the most important aspect, which is analyzed according to the wrongful conduct and the impact of that conduct on the victim,[932] ii) the payer's financial situation and iii) the compensation it is already required to pay.

[1103] In addition to the criteria set out in article 1621, the Supreme Court has recognized that the greed of a legal person engaged in anti-social behaviour can be considered,[933] although it is not necessary for the award of punitive damages. It is also possible to take into account the profits gained through the faults, in a case where "compensatory damages would amount to nothing more than an expense paid to earn greater profits while flouting the law".[934] A court may also take account of any sanctions already imposed by other authorities, including criminal or administrative penalties.[935]

[1104] An appellate court may not intervene without reason in this highly discretionary exercise.[936] The Court may intervene in a trial judge's assessment of punitive damages only if there is an error of law or the absence of a rational connection between the amount established and the purposes of punitive damages, namely prevention, deterrence (specific and general) and denunciation.[937]

[1105] The Court will now consider how these principles were applied in this case by the judge.

i. Blais file

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928 *Richard v. Time Inc.,* 2012 SCC 8 at para. 158.

929 *Richard v. Time Inc.*, 2012 SCC 8 at para. 180. See also *Vidéotron c. Girard,* 2018 QCCA 767 at paras. 106–107, leave to appeal to SCC refused, 38225 (21 February 2019).

930 *Bank of Montreal v. Marcotte,* 2014 SCC 55 at paras. 91, 100, 101, 108 and 109.

931 J.-L. Baudouin, P. Deslauriers & B. Moore, *La responsabilité civile*, vol. 1, *supra* note 265 at 444, para. 1-394.

932 See, for example, *Richard v. Time* Inc., 2012 SCC 8 at para. 200; *Vidéotron c. Girard*, 2018 QCCA 767 at para. 106, leave to appeal to SCC refused, 38225 (21 February 2019).

933 *Richard v. Time Inc.*, 2012 SCC 8 at para. 205.

934 *Richard v. Time Inc.*, 2012 SCC 8 at para. 206.

935 *Richard v. Time Inc.*, 2012 SCC 8 at para. 207–208.

936 *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211 at para. 122; *Vidéotron c. Girard,* 2018 QCCA 767 at para. 90, leave to appeal to SCC refused, 38225 (21 February 2019).

937 *Cinar Corporation v. Robinson*, 2013 SCC 73 at para. 134.

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[1106] Although the appellants do not concede the amount of $90,000 awarded as punitive damages in the Blais file, they do not make any specific argument against this conclusion, relying instead, in essence, on the arguments put forward in the Létourneau file to challenge the award of punitive damages. The judge substantially reduced the amount he would otherwise have imposed on them in this regard, because of the (approximately) $7 billion in compensatory damages he ordered to be paid. In doing so, he scrupulously respected the principle that any amount otherwise payable by them must be taken into account. The appellants do not put forward any arguments specific to the Blais file that would justify the Court's intervention on this point.

ii. Létourneau file

a. Arguments relating to the award of punitive damages

[1107] As to the desirability of ordering the appellants to pay punitive damages, ITL argues that deterrence from any conduct whatsoever is no longer necessary, since promotional activities are now prohibited in the tobacco industry.

[1108] This argument must be dismissed.

[1109] It is by no means established that the prohibition of advertising campaigns and sponsorships since the 1990s and 2000s renders any need for specific deterrence obsolete. As an illustration, the respondents, at the hearing before the Court, relied on an excerpt from an interview held in 2008, in which a JTM officer replied as follows, when asked whether certain cancers in the anatomical region of the throat are caused by smoking: "I don't know for a fact if there is any cancer caused by smoking."[938] Thus, 28 years after the knowledge date chosen by the judge in the Blais file, this JTM officer denied the causal link between smoking and any form of cancer. Although this example is drawn from the issues specific to the Blais file, it is nevertheless relevant in establishing the quantum in the Létourneau file. Indeed, it should be recalled that the quantum of punitive damages was established jointly for both cases, before being distributed, based on the impact of the appellants' faults on the members, between the two Classes.

[1110] For its part, ITL reportedly recognized for the first time that smoking was addictive in 1998, after all residents of Quebec were or had become aware of it by March 1, 1996. Its first public use of the word "cause" in relation to tobacco and health apparently occurred in 2000,[939] i.e., twenty years after the knowledge date chosen by the judge in the Blais file. These examples show that specific deterrence is still relevant.

[1111] In this regard, despite the lapse of time between the addiction knowledge date (March 1, 1996) and the hearing on the merits (2012–2014), the appellants argued before the trial judge that nicotine was no more addictive than chocolate, coffee or shopping.[940] And despite this long interlude, the appellants are still reluctant to use clear language with respect to the issues of dependency in the case under appeal, which coloured their arguments before the Court. The

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[938] Exhibit 1721-080626, Examination on discovery of Michel Poirier, June 26, 2018, at 233 [Emphasis added.].

[939] See document entitled *ITL's Position on Causation Admission* at 206417 (J.S.).

[940] Judgment *a quo* at para. 151.

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Court eventually felt compelled to intervene to clarify the semantics used by a lawyer in the courtroom, who finally reluctantly admitted that he would not object to the use of the term "addiction" to describe the harm referred to in the Létourneau file, not without pointing out, via a detour through the *Diagnostic and Statistical Manual of Mental Disorders*,[941] the lack of relevance of the concept of addiction according to him. At trial and on appeal, it therefore seems all the more paradoxical, even contradictory, to argue that knowledge of addiction took root immediately on September 12, 1994. The appellants have failed to demonstrate the absence of any need for specific deterrence.

[1112] Moreover, ITL forgets here that the objectives of punitive damages are not limited to the deterrence of specific conduct, but also extend to denunciation, prevention and general or societal deterrence, that is, the deterrence of industries that would, as the judge pointed out, face a moral dilemma of the same nature. The judge ordered the payment of punitive damages on the basis of all these objectives[942] and explained his decision in a completely understandable way. He stressed that it was necessary to denounce the conduct of the appellants, who had amassed billions of dollars at the expense of the consumers of their cigarettes.[943] His decision is unassailable.

[1113] Next, ITL claims that the judge used the indirect route of punitive damages to compensate for the lack of compensatory damages in the Létourneau file. It alleges that injury and causation were not proven for all members.

[1114] A brief summary of the judge's conclusions is required here. It is wrong to claim that the judge concluded that there was no injury and no causal link in the Létourneau file.[944] In fact, he concluded precisely the opposite:

> [950] Despite the presence of fault, damages and causality, the Court must nevertheless conclude that the Létourneau Plaintiffs fail to meet the conditions of article 1031 for collective recovery of compensatory damages. Notwithstanding our railing in a later section against the overly rigid application of rules tending to frustrate the class action process, we see no alternative. The inevitable and significant differences among the hundreds of thousands of Létourneau Class Members with respect to the nature and degree of the moral damages claimed make it impossible to establish with sufficient accuracy the total amount of the claims of the Class. That part of the Létourneau action must be dismissed.
>
> [Emphasis added.]

[1115] It should be added that it has been established, since the recognition of the autonomy of punitive damages, that it is not necessary to prove fault, causation and prejudice in order to obtain punitive damages; rather, the criteria specific to the attributive provision for this type of damages must be met. The Supreme Court reiterated this in *Montréal (Ville) v. Lonardi*, where Gascon J., for the majority, pointed out that "while it is true that a fault that is not causally connected to the damage in question cannot ground an obligation to make reparation for the

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941 See also *supra* note 175.
942 Judgment *a quo* at para. 1038.
943 Judgment *a quo* at para. 1037.
944 See the judgment *a quo* at paras. 788 and 944.

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injury, it can nonetheless form the basis for an award of punitive damages."[945] The passage from *Montigny v. Brossard (Succession)* cited by the appellant ITL in support of its claim that it is necessary to prove fault, injury and causation is confusing. In that excerpt,[946] the Supreme Court was seeking solely to summarize the statements made fourteen years earlier in the case law. This is by no means a presentation of the law in force.

[1116] This ground of appeal is therefore unfounded.

[1117] Finally, JTM argues that its actions do not meet the applicable criteria for awarding punitive damages set out in *Richard v. Time Inc.*[947] and that the judge failed to analyze them appropriately. They ask the Court to perform the analysis that the judge should have done.

[1118] JTM is wrong. There is no doubt that the judge performed this analysis in writing the following:

> [1020] Specifically under the CPA, the Supreme Court in *Time* examines the criteria to be applied, including the type of conduct that such damages are designed to sanction:
>
> > [180] In the context of a claim for punitive damages under s. 272 C.P.A., this analytical approach applies as follows:
> >
> > • The punitive damages provided for in s. 272 C.P.A. must be awarded in accordance with art. 1621 C.C.Q. and must have a preventive objective, that is, to discourage the repetition of undesirable conduct;
> >
> > • Having regard to this objective and the objectives of the C.P.A., violations by merchants or manufacturers that are intentional, malicious or vexatious, and conduct on their part in which they display ignorance, carelessness or serious negligence with respect to their obligations and consumers' rights under the C.P.A. may result in awards of punitive damages. However, before awarding such damages, the court must consider the whole of the merchant's conduct at the time of and after the violation.
>
> [1021] The faults committed by each Company conform to those criteria. The question that remains is to determine the amount to be awarded in each file for each Company and the structure to administer them, should that be the case.
>
> [Emphasis added.]

[1119] It is not sufficient to allege before the Court of Appeal that the judge did not carry out an analysis that he should have, which in fact, albeit succinctly, he did. In any event, there is ample evidence to support the conclusion that JTM's conduct is characterized by malicious and vexatious intent that goes well beyond mere ignorance, recklessness or negligence. In truth, if concertedly concealing information about the harmful nature of tobacco use for nearly two decades to delay public awareness of a key public health issue does not constitute, in

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945 *Montreal (City) v. Lonardi,* 2018 SCC 29 at para. 80.
946 *Montigny v. Brossard (Succession)*, 2010 SCC 51 at para. 40.
947 *Richard v. Time Inc.*, 2012 SCC 8.

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accordance with the legislative objectives specific to the C.P.A., conduct that should be most firmly deterred and denounced, it is hard to see what behaviour would justify the award of punitive damages.

b. Arguments relating to the determination of quantum

[1120] ITL claims that the amount it was ordered to pay does not have the requisite rational connection with the objectives of punitive damages. The amount of $72,500,000 does not, in its view, respect the principle of restraint that guides orders for punitive damages.

[1121] It is true that the total amount that the three appellants were ordered to pay ($131,000,000) far exceeds the amounts generally awarded by the courts for punitive damages. We need only consider *Cinar*[948] ($500,000), *Enico*[949] ($1,000,000), *Markarian*[950] ($1,500,000), *Pearl*[951] ($1,856,250) and even *Biondi*[952] ($2,000,000) to be convinced of this. However, in this case, the seriousness and the impact of the infringing conduct and the prohibited practices are not commensurate with the cases generally considered by the courts and are in a completely different register.

[1122] The notion of a rational connection between the amount of the award and the objectives of punitive damages was explained in *Whiten v. Pilot Insurance Co.*,[953] where Justice Binnie wrote:

> 74 Eighth, the governing rule for quantum is *proportionality*. The overall award, that is to say compensatory damages plus punitive damages plus any other punishment related to the same misconduct, should be rationally related to the objectives for which the punitive damages are awarded (retribution, deterrence and denunciation). Thus there is broad support for the "if, but only if" test formulated, as mentioned, in *Rookes*, *supra*, and affirmed here in *Hill*, *supra*.

[1123] Given the extreme gravity of the appellants' faults, their duration, their persistence, the need to prevent and denounce the occurrence of similar behaviour in the future, the advisability of depriving a legal person of profits acquired while flouting the law[954] and the wealth of the appellants, the amounts granted in this case have a genuine rational connection to the objectives of exemplarity, deterrence and denunciation. Stripping the appellants of a small portion of their annual pre-tax profits, particularly since, as the judge pointed out, compensatory damages and costs could be subject to tax deductions,[955] is an acceptable approach in the Létourneau case. Given the discretionary nature of this determination, the judge's finding deserves deference on appeal. The judge took into consideration relevant factors in determining the quantum by judicial means, and the Court should not intervene in his conclusion.

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948 *Cinar Corporation v. Robinson*, 2013 SCC 73.
949 *Agence du revenu du Québec v. Groupe Enico inc.*, 2016 QCCA 76.
950 *Markarian v. Marchés mondiaux CIBC inc.,* 2006 QCCS 3314.
951 *Pearl c. Investissements Contempra ltée*, [1995] R.J.Q. 2697 (Sup. Ct.).
952 *Biondi v. Syndicat des cols bleus regroupés de Montréal (SCFP-301),* 2016 QCCS 83.
953 *Whiten v. Pilot Insurance Co.*, 2002 SCC 18.
954 *Richard v. Time Inc.*, 2012 SCC 8 at para. 206.
955 Judgment *a quo* at para. 1067.

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[1124] ITL also states that the judge based the amount of the punitive damages award on the number of class members, an approach that is prohibited.

[1125] It is true that this approach to determining the amount of punitive damages may, as the Court recently pointed out, be a [TRANSLATION] "distorting, sometimes reducing, sometimes amplifying lens."[956] This is because the establishment of an amount solely on the basis of the number of members does not make it possible to take into account all the criteria of article 1621 C.C.Q., the cardinal principle of which prohibits exceeding the amount that is sufficient to meet the objectives of punitive damages. This approach is generally not appropriate because punitive damages are not intended to compensate members.

[1126] However, when we read the judgment, we see that this is not the approach taken by the judge. While the judge did indicate, for illustrative purposes, what the sentence he ordered on an approximate individual basis amounted to, the totality of the reasons on the quantification of punitive damages shows that this is not the analytical approach he took. He stated this in the following terms: "True, we do not assess punitive damages on the basis of an amount "per member", but viewing them from this perspective does provide a sobering sense of proportionality."[957]

[1127] ITL has not convinced us that a reviewable error has been made in this regard.

[1128] ITL and JTM also claim that the judge took into account events prior to the coming into force of the *Charter* and the C.P.A. to establish the share of punitive damages.

[1129] The judge was aware that he could not use conduct prior to the coming into force of the provisions to determine the amount of damages. He stated:

> [1043] Strictly speaking, we cannot condemn a party to damages for the breach of a statute that did not exist at the time of the party's actions. That said, this is not an absolute bar to taking earlier conduct into account in evaluating, for example, the defendant's general attitude, state of awareness or possible remorse.
>
> [Reference omitted.]

[1130] When analyzing ITL's conduct,[958] the judge did in fact list, in paragraph 1077 of his judgment, some of the company's wrongful acts before the *Charter* came into force, but these are limited to no more than two or three elements prior to 1976: Mr. Wood's initiatives in developing the Declaration of Principles in 1962 and Mr. Paré's defence of cigarettes on behalf of ITL and the CTMC. Some other events reported by the judge occurred just before or after the *Charter* came into force, including ITL's handling of Dr. Green the whistleblower or the use of surveys to probe public awareness, which continued after 1976.

[1131] That being said, the majority of the reprehensible conduct referred to by the judge occurred after the coming into force of the *Charter* and the C.P.A., such as ITL's profound

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956 *Vidéotron c. Girard*, 2018 QCCA 767 at para. 99, leave to appeal to SCC refused, 38225 (21 February 2019).

957 Judgment *a quo* at para. 1081; see also para. 1058.

958 Judgment *a quo* at paras. 1076−1078.

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knowledge of its consumers, its lack of effort to warn them of the dangers of tobacco, the steps it took to have documents destroyed by lawyers and the perpetuation of scientific controversy until the 1990s.

[1132] The judge was free to refer to the previous period as an indication of the appellants' state of mind when the *Charter* and the C.P.A. came into force, a state of mind that has not really changed since then. Even if this cannot, as such, justify the award of punitive damages, it is not a reviewable error.

[1133] Moreover, even if the judge had limited his choice to examples subsequent to the coming into force of the two statutes, this is of no consequence, because the evidence on which he relied is largely sufficient to support his conclusions and the record is full of examples that occurred during the relevant period that constitute unlawful and intentional interference with the members' fundamental rights or prohibited and vexatious business practices. In addition to the evidence on which he explicitly relied, additional examples can be cited from the extensive evidence.

[1134] In the case of ITL, the judge noted that the company mandated a law firm in the early 1990s to first store documents and then supervise their destruction in the summer of 1992. This episode is discussed in more detail in section IV.10 of this judgment. The documents consisted of about 100 research reports in its possession that were written by various scientists over time, many of which were from England and Germany. It was agreed that after their destruction, ITL's parent company, BAT, would fax the reports if ITL scientists wanted to consult them. The lawyer appointed by ITL at the time wrote the following on June 5, 1992, to BAT:[959]

> It may be of interest to you to know that Imperial Tobacco Limited, in compliance with its document retention policy, proposes to destroy several documents including the following which you will no longer be able to obtain from Imperial Tobacco Limited, which considers them of no further use to it, though it may at some later date request your assistance in finding copies of them:
>
> ...
>
> RD1789
>
> …

[1135] Exhibit 58.4, a report numbered "RD1789,", is a research report dated March 25, 1981, written by someone named S.R. Massey. The summary of the report indicates:[960]

> Dr. G.B. Gori, formerly of the U.S. National Cancer Institute, introduced the idea of 'critical levels' for smokers daily exposure to six constituents of cigarette smoke. It was argued, on the basis of epidemiological evidence relating to typical pre-1960 U.S. cigarettes, that if certain 'critical levels' were not exceeded, then smokers would show no greater risk of disease or mortality than non-smoker. <u>These 'critical levels' can be used as a basis for calculating the number of</u>

[959] Exhibit 58 at 2 and 3.
[960] Exhibit 58.4 at 1.

> cigarettes-day, for any given existing commercial brand, which could be smoked without increased risk over that of a non-smoker.
>
> [Emphasis added.]

[1136] A few years later, on September 15, 1998, in a press release issued by ITL's Director of Public Affairs Michel Descôteaux, it was stated:[961]

> [TRANSLATION]
>
> Imperial Tobacco firmly stated today that it did not destroy the original documents relating to scientific studies on the health effects of tobacco use.
>
> The facts surrounding the destruction of the documents reveal a story infinitely simpler, according to the company, than the allegations made with panache. Like any other company, ITL conducts regular reviews of document records it no longer needs. All the studies referred to in the documents filed by the anti-tobacco groups were mere copies of B.A.T. documents. The originals are still in their possession. In addition, in most cases, it is possible to obtain copies easily.
>
> [Emphasis in original.]

[1137] Assuming that this statement is true, it raises the question of why a company must use outside counsel to destroy a simple copy of a research report as part of the "regular review of document records it no longer needs," as it stated in its press release. More generally, this episode, retained by the trial judge, shows the eminently vexatious nature of the appellant ITL's conduct with regard to anticipated litigation. The judge did not err in retaining this episode to increase the punitive damages award against ITL. [962]

[1138] The judge also considered that ITL had played an important role in the CTMC, an organization which, it should be recalled, brought the appellants together in their then corporate form. In considering the role of this organization, it appears that it was involved in public misinformation until the 1990s.

[1139] The CTMC's records also show its strategy of delaying tobacco regulation as much as possible. In the minutes of a meeting held on February 24, 1988, it stated:[963]

> There is a genuine interest on the constitutional issue and there is a possibility for bi-partisan support for "clean up amendments" that would send the Bill back to the Commons. This would fit in with a delay strategy.

[1140] In addition, at the same time, the CTMC controlled the Smokers Freedom Society ("SFS"), an organization aimed, as its name suggests, at promoting the individual freedom of smokers. The minutes of a meeting of the CTMC Board of Directors held on December 10, 1991, specify the content of the funding that the CTMC provided to the SFS.[964] The minutes of a meeting held

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961 Exhibit 57A.
962 See the judgment *a quo* at paras. 361−362, where the judge relates this episode in great detail.
963 Exhibit 333 at 2.
964 Exhibit 433B at 4.

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on March 13, 1990, show that the CTMC exercised power that was more direct than strictly financial.[965]

[1141] In December 1994, when all residents of Quebec were, according to the appellants, deemed to have known about the danger of smoking for 14 years − and some 30 years after the Surgeon General of the United States issued its own conclusions on the dangers of smoking − ITL continued to play the scientific controversy card in its newsletter, *The Leaflet*, a publication intended for its own employees.[966]

[1142] Finally, it should be recalled that ITL pleaded guilty to the criminal offence of assisting individuals between 1989 and 1994 to sell and possess tobacco manufactured in Canada without being packaged and bearing the tobacco stamp required by law, contrary to the *Excise Act.*[967] Criminal history, as noted above, may be a criterion considered under article 1621 C.C.Q.

[1143] In the case of RBH, the judge referred to the efforts of Rothmans, its predecessor, to counter the revelation made in 1958 by Mr. O'Neill-Dunne, but specified that this element was typical of the appellants' conduct and did not justify greater punitive damages.[968] This conclusion, relating to an event prior to the coming into force of the *Charter* and the C.P.A. therefore had no impact on increasing the amount of punitive damages. The judge's error in this respect is therefore not decisive.

[1144] RBH was a member of the CTMC.[969] Moreover, traces of the scientific controversy fuelled by RBH can still be found as late as 1995 in a fax from John McDonald (RBH) to Robert Parker (CTMC) dated April 12, 1995:[970]

> • We should always be in a position to "take on the antis" and be prepared to immediately point out to all concerned any inconsistencies, inaccuracies, falsehoods, etc., made by them!. As I indicated earlier it is in our best interest to effectively prepare rebuttals against the antis' claims, but they must be done rapidly and effectively in the form of letters to the editor or newspaper articles, etc. This, in my mind, should be one of the key mandates and foundation for the communications activities of the CTMC. From this, communication programs and strategies can be developed and enlarged. Should we decide to focus in on one particular issue we will be well versed on all issues and be able to develop into a

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965 Exhibit 433H at 26205 (J.S.).

966 Exhibit 20065.11790: "The facts are that researchers have been studying the effects of tobacco on health for more than 40 years now, but are still unable to provide undisputed scientific proof that smoking causes lung cancer, lung disease and heart disease. The studies that have claimed that smokers have a higher risk than non-smokers of developing some diseases are statistical studies. ... However, many studies suggest no association between the trends in smoking and the trends in lung cancer. For instance, in several countries where the number of cases of lung cancer are still increasing, the increase seems to be in non-smokers, and there is no change or a decline in the number of cases of lung cancer in smokers."

967 *Excise Act,* R.S.C. 1985, c. E-14, s. 240(1)(*a*); see Exhibit 521.

968 Judgment *a quo* at para. 1090.

969 Although it left at some point, its participation in the organization is not disputed (see the judgment *a quo* at para. 475, note 252), and the examples given above on the role of the CTMC apply equally to RBH and the other appellants

970 Exhibit 61 at 3

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full-fledged campaign if deemed appropriate. This, in my opinion, is essential.

[1145] According to that document, even in 1995, a few months after the date on which all Quebec residents were − according to the appellants − deemed to know that cigarettes were addictive, the official position of the CTMC was "adequately reflected"[971] in a report written by David Warburton,[972] which was highly critical of the Royal Society of Canada's 1989 report on addiction.

[1146] In the case of JTM, it should be noted that the judge did not refer to pre-1976 exhibits in the assessment of punitive damages. JTM was also involved in the CTMC.

[1147] In 2008, as previously mentioned, a JTM executive replied, in an examination on discovery, that he was not sure that smoking caused even one type of cancer,[973] which in itself shows the need for specific deterrence.

[1148] In 2010, JTM was also paying a fine of several tens of millions of dollars in connection with a smuggling case to settle a dispute with the Ministère du Revenu du Québec.[974] This criminal history may be taken into account, as we have seen, in the assessment of punitive damages.

[1149] The judge therefore correctly concluded that the three appellants engaged in malicious and vexatious commercial conduct and violated the members' fundamental rights in a wrongful, unlawful and intentional manner. The evidence strongly supports this conclusion. In regard more particularly to vexatious business conduct, let us recall the countless advertisements and sponsorships, of which the judge invoked only a tiny portion, and which are referred to in paragraph [854] of these reasons.[975]

[1150] The amounts awarded in the Létourneau file therefore have a highly significant rational connection with the various objectives of punitive damages, and there is no reason to intervene in this regard.

[1151] On another point, ITL is of the view that the judge erred in first determining the overall quantum of punitive damages on the combined basis of the two Classes and then awarding 90% to the Blais Class and 10% to the Létourneau Class.

[1152] In determining the amount of punitive damages jointly in the two cases, the judge complied with the principles of quantification of punitive damages set out in article 1621 C.C.Q. Indeed, in this matter, the cardinal criterion to be observed is certainly the gravity of the debtor's fault − i.e., the gravity of the prohibited business practices or unlawful and intentional interference

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971 Exhibit 61 at 3.

972 Exhibit 430

973 See paragraph [1109]. It should also be noted that as late as 2012, JTM admitted on its website, with all the caution that characterizes the appellants' admissions over time, that cigarettes are addictive: "Given the way in which many people - including smokers - use the term 'addiction' smoking is addictive" (exhibit 568). See *supra* note 625.

974 The evidence in support of this event was produced under seal. Consequently, it will not be discussed in further detail.

975 See in particular the additional examples, *supra* note 789.

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with the members' fundamental rights. However, as the judge pointed out, these faults are practically the same in both cases; it would have been unfair to punish the appellants twice and would have violated the principle of moderation according to which the minimum amount necessary to ensure the preventive function of punitive damages should not be exceeded (art. 1621 para. 1 C.C.Q.). Moreover, the judge noted that the Létourneau Class could have been a Sub-Class of the Blais file.[976] The Court finds no error in this highly discretionary exercise of quantifying punitive damages, and this ground of appeal must therefore be dismissed.

[1153] The distribution of the overall amount of punitive damages in the two files, i.e., 90% for the Blais Class and 10% for the Létourneau Class, is also a highly discretionary exercise, which is also consistent with the equally important principle that the impact of the misconduct on members' rights must be taken into account. The judge was well aware of this when he wrote:

> [1040] It is also relevant to note that we refuse moral damages in the Létourneau File, whereas in Blais we grant nearly seven billion dollars of them, plus interest. Thus, the reparation for which the Companies are already liable is quite different in each and a separate assessment of punitive damages must be done for each file, as discussed further below.
>
> …
>
> [1083] As between the Classes, the circumstances in Blais justify a much larger portion for its Members. In spite of the fact that there are about nine times more Members in Létourneau than in Blais, the seriousness of the infringement of the Members' rights is immeasurably greater in the latter. Reflecting that, the $100,000 of moral damages for lung and throat cancer in Blais is 50 times greater than what we would have awarded in Létourneau.
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> [Emphasis added; reference omitted.]

[1154] The judge properly exercised his discretion by considering the seriousness of the impact of the appellants' faults on the rights of the members and by establishing this proportion between the two files. His review of the symptoms and impact of disease and addiction on the lives of members earlier in the judgment[977] provides an adequate basis for his finding on the impact of the appellants' faults and strongly supports the allocation between the cases.

[1155] The appellants have not established a reviewable error in this regard, and this ground of appeal must be dismissed.

[1156] The judge attributed to JTM an annual notional profit of $103,000,000 to take into account the various contractual mechanisms it established in the late 1990s. He considered that this was a way for JTM to protect itself from its creditors, which can be analyzed to establish the quantum of punitive damages, insofar as it is relevant to the criteria set out in article 1621 C.C.Q.

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[976] Judgment *a quo* at para. 1028.
[977] Judgment *a quo* at paras. 940−944, 979−984, 989−991 and 999−1001.

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[1157] This debate has two dimensions.

[1158] The first is whether the judge could consider the contracts entered into by JTM with third parties to determine its actual financial situation. There is no doubt that a judge may, when establishing the patrimonial situation of a debtor under article 1621 C.C.Q., examine a corporate reorganization with a view to uncovering the debtor's actual patrimonial situation. The principle that the debtor's patrimonial situation must be considered is intrinsically linked to the need to sentence the debtor to an amount that could have a dissuasive impact on its conduct. If we could rely only on a mathematical analysis of a company's available annual profits, the very usefulness of punitive damages would be undermined. The mere fact that the contracts between JTM and other entities may be legal or valid for tax purposes, which is not for this Court to decide, does not lead to the conclusion that the Court cannot take them into account when assessing the company's actual assets. The legislator preferred the expression "patrimonial situation / *situation patrimoniale*" to more technical concepts such as assets and liabilities or financial statements.

[1159] That decision in no way contradicts the Superior Court's 2013 decision on the respondents' motion for a safeguard order[978] with respect to payments made by JTM to a related company. The decision constitutes, with respect to punitive damages, at most an *obiter dictum*. However, it is recognized that the doctrine of *res judicata* extends to the grounds of a decision only to the extent that they are essential and intrinsically linked to its operative part,[979] which they are not in that decision.

[1160] The second dimension is whether the judge was entitled to consider this corporate planning in establishing the amount of punitive damages for which JTM is liable at 125% of its putative annual income. In other words, it is necessary to determine whether a judge may consider an attempt by the debtor to evade enforcement of a possible judgment in determining the amount of punitive damages. It should be recalled that the list of criteria set out in article 1621 C.C.Q. is not exhaustive and that the expression "all the appropriate circumstances / *toutes les circonstances appropriées*" can certainly include more general considerations, including the conduct of a potential debtor who seeks to avoid a condemnation.

[1161] The judge accepted the testimony of Mr. Poirier, who unequivocally admitted that the transactions in question were intended to protect JTM from its creditors:[980]

> [1097] Our analysis of this matter leads us to agree with Mr. Poirier who, when reviewing some of the planning behind the Interco Contracts, was asked if "that sounds like creditor proofing to you". He candidly replied: "Yes".

[1162] Therefore, the judge did not err in taking into account JTM's corporate planning. After reviewing the judge's reasons and the evidence in support thereof, which is subject to a confidentiality and sealing order, the Court finds that the judgment *a quo* contains no factual errors on this issue.

[1163] In short, the appellants have not established any flaws in the judgment *a quo* that would

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978 *Quebec Council on Tobacco and Health v. JTI-MacDonald Corp.* 2013 QCCS 6085 at para. 84.

979 *Al Arbash International Real Estate Company c. 9230-5929 Quebec inc.*, 2016 QCCA 2092 at paras. 91−95.

980 Judgment *a quo* at para. 1097.

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justify overturning the punitive damages award or altering its quantum. Therefore, their arguments in this respect must be dismissed.

5.2 Cross-Appeal

[1164] In their cross-appeal, the respondents asked the Court to increase the quantum of punitive damages in the Blais file in the event that the award of moral damages was decreased. In view of the conclusions drawn on the appellants' liability for compensatory damages, this cross-appeal has become moot.

5.3 Summary

[1165] In summary, the appellants have not established any error that would justify the Court's intervention on the award and quantum of punitive damages. The judge's decision in the highly discretionary exercise of determining the amount of punitive damages deserves deference. He complied with the provisions of article 1621 C.C.Q. and the provisions of the *Charter* and the C.P.A. relating to punitive damages. His assessment of the rational connection between the amounts granted and the objectives of deterrence, prevention and denunciation does not warrant intervention.

6. INTEREST AND ADDITIONAL INDEMNITY

[1166] The appellants complain that the judge erred in determining the starting point for calculating the interest and additional indemnity applicable to the amount of compensatory damages he awarded to the members of the Blais Class. The appellant ITL expresses this complaint as follows, at paragraphs 489 and 490 of its argument:

> [The Trial Judge] calculates interest on the moral damages award in the Blais Action from the date of service of the Motion for Authorization. However, he does so in the context of a Class Proceeding where diagnosis of Disease (and thus crystallization of a claim) can occur at any point up to March 12, 2012.
>
> Accordingly, the Trial Judge imposed interest on ITCAN as of 1998 in respect of all claims, notwithstanding the fact that at least a portion of the Class did not even have a claim against ITCAN until some point after this date. This calculation is in error.
>
> [Emphasis in original; references omitted.]

[1167] The appellant JTM raises an identical ground at paragraphs 395 to 397 of its argument, which the appellant RBH shares in paragraph 9 of its argument.

[1168] The respondents concede the point and, recognizing the merits of this complaint, explain its origin in these terms:[981]

> [TRANSLATION]

[981] Respondents' Arguments at paras. 398–399.

> The appellants argue that interest and the additional indemnity cannot accrue from that date for Members whose illness had not yet been diagnosed.
>
> On the issue of interest, however, Judge Riordan corrected in his judgment, at the respondents' request, a clerical error that was the source of an inconsistency. The respondents admit that they inadvertently misled the judge on that occasion. The appellants are indeed correct in asserting that, for Members whose illness was diagnosed after November 20, 1998, interest and the additional indemnity should accrue only from the date of diagnosis. However, the judge did not err for Members diagnosed between 1995 and 1998.

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[1169] To remedy this error, the respondents suggest that Exhibit 1426.7 be used and that the same methodology be followed as that used by the judge to determine the size of the Blais Class and the amount of compensatory damages to be paid to its members. Exhibit 1426.7 contains several tables compiled by the epidemiologist Siemiatycki, an expert retained by the respondents. Based on data from the *Registre des cancers du Québec* and the number of diagnoses listed for each of the diseases in question from 1995 to 2011, the respondents calculated the number of people with lung cancer, throat cancer or emphysema in Quebec for that period and who had smoked at least 12 pack years before the diagnosis. From this number of people, they established capital tranches for each of the years, considering that interest and the additional indemnity must incur from December 31 following the date of diagnosis, as a way to compensate for the lack of evidence on the exact date of each diagnosis.

[1170] The solution proposed by the respondents is appropriate. It follows the methodology by which the judge set the amount of compensatory damages he awarded to the Blais Class at $6,858,864,000. This approach has the advantage of sharing the characteristics of the epidemiological studies mentioned in article 15 T.R.D.A. This gives this assessment sufficient rigour to conclude as the trial judge did.

[1171] Thus, the capital tranches resulting from diagnoses received before January 1, 1998, will bear interest and the additional indemnity from the service of the motion for authorization of the class actions, i.e., from November 20, 1998. For the capital tranches resulting from diagnoses received on or after January 1, 1998, interest and the additional indemnity will be calculated as of December 31, following each diagnosis. For example, the compensatory damages for diagnoses received in 2001 will all bear interest and the additional indemnity as of December 31, 2001.

[1172] Schedule II of these reasons details the amounts determined by the methodology used by the judge in paragraphs 986, 992 and 1004 of the judgment *a quo*, for each of the diseases in question. Once completed and consolidated, the calculation of these amounts gives the following figures, which should be set out in the conclusions of the judgment:

Year of diagnosis	**Capital to be paid**	**Starting date for the calculation of interest and the additional indemnity**
1995	$353,485,440	November 20, 1998
1996	$356,231,040	November 20, 1998
1997	$360,103,040	November 20, 1998

1998	$373,338,240	December 31, 1998
1999	$381,575,040	December 31, 1999
2000	$382,279,040	December 31,2000
2001	$398,541,440	December 31,2001
2002	$402,554,240	December 31,2002
2003	$405,863,040	December 31,2003
2004	$414,240,640	December 31,2004
2005	$416,634,240	December 31,2005
2006	$420,154,240	December 31,2006
2007	$431,629,440	December 31,2007
2008	$447,821,440	December 31,2008
2009	$443,597,440	December 31,2009
2010	$431,207,040	December 31,2010
2011	$438,599,040	December 31,2011
Total :	$6,857,854,080	

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7. APPROPRIATE METHOD OF RECOVERY

[1173] Having concluded that he would grant the respondents' claims in part, the trial judge was required to determine the recovery method that would be appropriate under the circumstances. He did this in paragraphs 911 to 929 of his reasons, noting from the outset that he had elsewhere addressed some of the arguments raised by the appellants' against collective recovery, which will be discussed in this decision.

[1174] It can be seen from the conclusions of the judgment that the trial judge opted for collective recovery in the Blais and Létourneau files. In the Blais file, in addition to punitive damages, he ordered the appellants solidarily to pay a total amount as moral damages, to be paid according to the scale he established for the members of the three Sub-Classes he defined. In the Létourneau file, he ordered each appellant to pay a separate amount as punitive damages, refused to distribute those amounts to the class members, and postponed to a later hearing the determination of the procedure for distributing the total amount of punitive damages.

[1175] To determine the method of compensation (collective recovery or individual claims), the trial judge had to consider, first and foremost, the scope of art. 1031 f.C.C.P., which reads as follows:

> **1031.** The court orders collective recovery if the evidence produced enables the establishment with sufficient accuracy of the total amount of the claims of the members; it then determines the amount owed by the debtor even if the identity of each of the members or the exact amount of their claims is
>
> **1031.** Le tribunal ordonne le recouvrement collectif si la preuve permet d'établir d'une façon suffisamment exacte le montant total des réclamations des membres; il détermine alors le montant dû par le débiteur même si l'identité de chacun des membres ou le montant exact de

not established.

leur réclamation n'est pas établi.

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[1176] The criterion of "total amount of the claims" established "with sufficient accuracy" by the evidence is decisive here.

[1177] The appellants' arguments can be summarized as follows: (a) the number of members in each Class is not known, (b) the nature and severity of individual injury has not been established, (c) it is impossible to determine, with sufficient accuracy, the total amount of the claims against them, since their liability is established on the basis of the knowledge dates, which results in liability shared with an unknown number of members (i.e., 20% for the members and 80% for the appellants), and (d) the respondents failed to establish an amount of damages having a logical connection with the harm suffered and the personal profile of the M embers.

[1178] Arguments (b) and (d) specifically concern the assessment of the harm suffered by the members, an issue that comes up elsewhere in this judgment and that the trial judge considered in detail in paragraphs 957 to 1004 of his reasons. The trial judge further noted that eligibility for the Blais Class is conditional on proof of a medical diagnosis that the potential member is afflicted with one of the diseases in question with the result that the health condition of each member must therefore be submitted into evidence in a timely manner.

[1179] Argument (a) is refuted in paragraphs 974, 978, 987, 988 and 998, in which the evidence presented by Dr. Siemiatycki on new cases identified between 1995 and 2001 in Quebec (82,271 cases of lung cancer, 8,231[982] cases of cancer of the larynx, the oropharynx or the hypopharynx, and 23,086 cases of emphysema) is deemed convincing.

[1180] Argument (c) is addressed in paragraphs 927 and 928, in which the amount to be initially deposited by the appellants is reduced to 80% of the total amount of compensatory damages established – on condition, however, that new deposits may be ordered if this initial amount proves insufficient to meet all the claims found to be valid according to the terms of the judgment.

[1181] Under these conditions, was it appropriate to order collective recovery?

[1182] First, let us review some basic rules regarding the use of this type of recovery.

[1183] Collective recovery means that the court orders all or part of the compensation to be paid to the court clerk or a financial institution and then, if applicable, to be distributed or paid out on individual claims in accordance with the conditions set in the judgment or, under the terms

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[982] Because the judge seems to have made a clerical error, this number should be reduced to 8,223, which represents a difference of $800,000 in capital. The error in question was one of the components of that number, namely the number of cases of larynx cancer, reported as 5,369 by Riordan, J. but as 5,360 or 5,361 by Dr. Siemiatycki (Exhibit 1426.7, Tables D1.2 and D3.1). The difference of one case is attributable to what seems to be another clerical error in totalling the annual numbers for women in Table D1.2. It seems appropriate here to use 5,361 for the number of larynx cancers, which would reduce the number of "throat" cancers from 8,231 to 8,223.

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thereof, by the clerk or the institution in question.[983] If the individual claims method is applied rather than collective recovery, the debtor is not obliged to compensate a class member until that member makes an individual claim. It is worth remembering here that *St. Lawrence Cement Inc. v. Barrette*[984] confirmed, in regard to such damages, that when circumstances allow, the trial judge may fix their quantum on the basis of sub-classes and by using an average for each sub-class, as the trial judge did in this case.

[1184] According to the first paragraph of article 1033 f.C.C.P., if the judgment ordering collective recovery provides for individual liquidation of claims or distribution of a specific amount to each member, articles 1037 to 1040 f.C.C.P. regarding individual claims apply to this second step of collective recovery.

[1185] Recent case law has shed useful light on the principles that must guide the court in matters of collective recovery. In *Marcotte c. Banque de Montréal*, Gascon, J, then of the Superior Court of Quebec, stated the following to say on the subject:[985]

> [TRANSLATION]
>
> [1114] Although collective recovery is effective in terms of ensuring payment of compensation to members and is therefore the rule, while individual recovery remains the exception, the legislator has nonetheless imposed requirements.
>
> [1115] Before ordering collective recovery, the Court must be convinced that the evidence has established, with sufficient accuracy, the total amount of the members' claims. This assessment is based on the evidence submitted. The plaintiff has the burden of proof.
>
> [1116] In that regard, article 1031 C.C.P. does not require that the exact number of members be known or that the value of their individual claims be determined in advance.
>
> [1117] Similarly, given that the article refers to a flexible criterion, namely an amount determined with "sufficient accuracy," the amount need not be known with certainty, and the calculation method need not be perfect. It is enough for the total amount to be reasonably accurate with respect to all the evidence. Therefore, nothing prevents the use of averages, statistics and even balancing.
>
> [Reference omitted]

[1186] The judgment in that case allowed a class action against nine defendants. In each of the nine cases, it ordered collective recovery for some Sub-Classes and individual claims for others. When the defendants appealed, the Court of Appeal reversed the judgment in part and, for grounds beyond the issues examined here, exonerated five of the nine defendants; however, it

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983 Shaun E. Finn, *L'action collective au Québec* (Cowansville, Qc., Yvon Blais: 2016) at 65–66; Pierre-Claude Lafond, *Le recours collectif, le rôle du juge et sa conception de la justice : impact et évolution* (Cowansville, Qc., Yvon Blais: 2006) at 193.

984 *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64 at paras 111–112 and 114–116.

985 *Marcotte* c. *Banque de Montréal*, 2009 QCCS 2764.

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confirmed the order of collective recovery for the four remaining defendants, against whom it also upheld the initial condemnation, but in part only.[986] Their appeal to the Supreme Court of Canada was subsequently dismissed, and the collective recovery order therefore remained intact.[987]

[1187] The above observations by Gascon, J were repeated in the decision he rendered in *Marcotte c. Fédération des caisses Desjardins du Québec*[988] and are similar to those he made around the same time in *Adams v. Amex Bank of Canada.*[989]

[1188] Clearly, there is a difference between "accuracy" and "sufficient accuracy,"[990] because the expression "with sufficient accuracy" leaves the trial judge some margin of appreciation, and the way it is worded in article 1031 f.C.C.P., seems less satisfactory than the expression that replaced it in article 595 n.C.C.P., namely, "sufficiently precise."[991] Similarly, it is certain that the "total amount" in question in these provisions suggests an assessment of the sum of the members' individual injuries and, as pointed out by the Supreme Court of Canada in *St. Lawrence Cement Inc. v. Barrette*, "the trial judge has considerable discretion in making this assessment in the context of a class action."[992]

[1189] A review of the case law in other actions and class actions shows similarities with a specific case worth examining. In *Curateur public c. Syndicat national des employés de l'hôpital Saint-Ferdinand (C.S.N.),*[993] Robert Lesage J. of the Superior Court was called upon to decide a class action claim for damages brought by the Public Curator following an illegal strike in a hospital. As the curator ex officio, under the *Public Curatorship Act*,[994] of one of the hospital's patients described by the trial judge as "severely mentally deficient," the Public Curator had been given the status of representative of the hospital patients, the great majority of whom were chronically ill and severely handicapped. The alleged harm to the patients resulted from being deprived of care and services due to work stoppages totaling 33 days of inactivity, followed by the discomfort and insecurity this inflicted on the patients.

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986 *Bank of Montreal v. Marcotte*, 2012 QCCA 1396. In this unanimous decision written by Dalphond, J., the Court noted in para. 150: "Further, with respect to the recovery method, the judge has committed no reviewable error by choosing collective recovery, or abused his discretion in this respect (article 1031 *C.C.P.*) (*Saint Lawrence Cement. v. Barrette*, [2008] 3 S.C.R. 392, 2008 SCC 64, paragraphs 112, 113 and 116)."

987 *Bank of Montreal v. Marcotte*, 2014 SCC 55.

988 *Marcotte c. Fédération des caisses Desjardins du Québec*, 2009 QCCS 2743, confirmed on this point by the Supreme Court of Canada in *Marcotte v. Fédération des caisses Desjardins du Québec*, 2014 SCC 57 at paras. 9 and 32.

989 *Adams c. Amex Bank of Canada*, 2009 QCCS 2695, rev'd in part for other reasons by *Amex Bank of Canada v. Adams*, 2012 QCCA 1394, appeal dismissed by *Amex Bank of Canada v. Adams*, 2014 SCC 56.

990 For example, see *Fédération des médecins spécialistes du Québec c. Conseil pour la protection des malades*, 2014 QCCA 459 at para. 69–70.

991 According to the comments of the Minister of Justice regarding new article 595, there does not seem to have been any intention to alter the state of previous law regarding the criterion of "sufficient accuracy" or "sufficiently precise". (Ministère de la justice & SOQUIJ, *Commentaires de la ministre de la Justice, Code de procédure civile, chapitre C-25.01* (Montreal, Wilson & Lafleur: 2015) at 432).

992 *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64 at para 112.

993 *Curateur public c. Syndicat national des employés de l'hôpital Saint-Ferdinand (C.S.N.)*, [1990] R.J.Q. 359 (Sup. Ct.).

994 *Public Curatorship Act*, R.S.Q., c. C-80.

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[1190] Regarding the difficulty of assessing the compensatory damages[995] sustained by the victims, Lesage J. made the following comments, which remain relevant today:[996]

> [TRANSLATION]
>
> Honorine Abel [for whom the Public Curator was the curator ex officio] belongs to the largest group, namely the severely mentally deficient, with no physical handicap or psychiatric disorder. The physically handicapped and the bedridden, due to their lack of autonomy, suffered more serious inconvenience. On the other hand, it may be assumed that the residents of unit 32, which is mixed psychogeriatric, were able to adapt more easily.
>
> Nonetheless, the harm suffered is of the same nature and must be addressed through a monetary assessment. Any inaccuracies in this assessment cannot, at this point, be significant enough to justify subdividing the class. The greater harm suffered by some patients due to lack of personal care can be compared to the harm suffered by others due to limiting their activities. In other words, those who suffered less physical discomfort probably suffered more frustration, i.e., psychological distress.
>
> Collective recovery shares a feature of the predominant economic and social relations in today's world. Decisions affect the masses. Rights are subject to computerized and standardized forms; exercising those rights often depends on a grid, with no regard for the specifics of a case.
>
> The legislator wanted the interests of a group of people with affinities to be dealt with collectively by the courts. This collective justice counterbalances the impossibility of obtaining compensation through individual proceedings, either because of the complexity or fluidity of the law or because the interests of the class members become diluted. This form of action gives the judiciary a new role in defining a justice system that is accessible, realistic, uniform and curative, in areas where the law exists but its sanction would otherwise be virtually illusory.

[1191] The comments of Lesage J. on the difficulty of assessing compensatory damages of this type – that is, moral damages – were echoed a few years later in a judgment of the Supreme Court that basically confirmed the trial judgment. In the unanimous reasons of the Court, L'Heureux-Dubé J. stated:[997]

> Contrary to the appellants' arguments, the subjective nature of moral prejudice does not in itself constitute grounds for intervening. This Court has in fact pointed this out on several occasions (see the trilogy [*Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 R.C.S. 229; *Arnold v. Teno*, [1978] 2 R.C.S. 287; and *Thornton v. Board of School Trustees of School District No. 57 (Prince George)*, [1978] 2

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995 The expression "moral damages" is not used in the Superior Court judgment.

996 *Curateur public c. Syndicat national des employés de l'hôpital Saint-Ferdinand (C.S.N.)*, [1990] R.J.Q. 359, p. 396 (Sup. Ct.).

997 *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211 at para. 85.

> R.C.S. 267] and *Snyder v. Montreal Gazette Ltd.*, *supra*) and, as I mentioned earlier, because of the nature of the prejudice, the quantum of moral damages cannot be determined exactly.

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[1192] In light of these facts, Lesage J. ordered collective recovery and instructed the defendants to deposit with the clerk the amount of $1,135,750, i.e., individual compensation of $1,750 for each of the 649 victims comprising the class represented by the Public Curator, the composition of which was reviewed by Lesage J. Then, establishing the conditions of the individual claims, he listed the information they had to contain and authorized the prothonotary of the Superior Court to accept or reject the claims, subject to his review, with it being further understood that the prothonotary had to refer certain types of claims, including contested claims, to him.

[1193] The Court of Appeal unanimously dismissed the appeal filed by the union and the Fédération des affaires sociales.[998] The Public Curator's cross appeal on the claim for exemplary damages, which had bend dismissed by Lesage J., was allowed in the amount of $200,000. The Court ordered collective recovery through the deposit of the full amount with the court clerk, to be remitted to the Public Curator [TRANSLATION] "to be used [by the Public Curator] for the benefit of all patients." Nichols and Fish JJ. formed the majority, with Tourigny J. dissenting. In addition, Nichols J. would have allowed the claim of $1750 for each of the forty-odd patients of the medical-surgical and transitional units that Lesage J. had excluded from the class, but Tourigny and Fish JJ. did not share his opinion and dismissed that part of the cross-appeal.

[1194] It was this last judgment that the Supreme Court confirmed in all respects a few years later.[999]

[1195] Conceptually and legally, all the components underlying the implementation of collective recovery in the judgment *a quo* are already present and were fully approved by the Supreme Court of Canada in *St-Ferdinand*: class-wide assessment of the moral prejudice suffered by each class member (or sub-class member as in *St. Lawrence Cement*[1000]), collective recovery and the actual or anticipated (as in the present case) implementation of an individual claim mechanism. If only the legal aspects are considered and not the facts, the difference between the present case and *St-Ferdinand* seems negligible. Of course, the quantum of the damages awarded is of a different magnitude, but that does not change anything in terms of the advisability of ordering collective recovery.

[1196] There is therefore no cause for this Court to intervene, as the trial judge did not commit a reviewable error in preferring to order collective recovery rather than individual claims.

8. INTERLOCUTORY JUDGMENTS AND EVIDENCE

8.1 Background

[1197] The judge rendered several interlocutory judgments concerning the admissibility of

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998 *Syndicat national des employés de l'hôpital Saint-Ferdinand c. Québec (Curateur public)*, [1994] R.J.Q. 2761 (C.A.).

999 *Québec (Public Curator) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211.

1000 *St. Lawrence Cement Inc. v. Barrette*, 2008 SCC 64.

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evidence, which the appellants challenge on appeal. Before the hearing of the appeals, however, they limited their claims to certain categories of judgments that can be described as follows: (i) those that permitted the introduction into evidence of exhibits by way of a notice under article 403 f.C.C.P., subject to an objection rejected in the judgment *a quo*, which admitted the introduction of exhibits qualified as "2m," i.e., admitted by virtue of the principle of the May 2, 2012, judgment,[1001] and, (ii) decisions or conclusions relating to other exhibits whose admissibility is still contested on grounds of parliamentary privilege or solicitor-client privilege.

[1198] When reduced to its simplest expression, the debate on appeal concerns only the following exhibits: (i) Exhibit 2, *The Leaflet* of June 1969; (ii) Exhibit 25A, a radio interview with Mr. Paul Paré, then President of ITL; (iii) Exhibits 28A and 125A, an eight- page document entitled *Smoking and Health: the Position of Imperial Tobacco*; (iv) Exhibits 154 and 154B-2m, the Policy Statement and its appendices; (v) Exhibit 13372m, a document entitled *Canadians' Attitudes Toward Issues Related to Tobacco Use and Control*; (vi) Exhibits 1395 and 1398, exhibits relating to BAT; and (vii) Exhibit 1702, the so-called Colucci letter.

8.2 Analysis

A. Mootness of the ground of appeal

[1199] Before going any further, it should be noted that the appellants did not even attempt to demonstrate in their arguments that, if the Court were to admit their grounds of appeal in this regard, it would have the effect of reversing the operative part of the judgment *a quo* or reducing the scope of the award for damages. This ground of appeal is therefore moot, and usually the Court must refrain from considering it. There is, however, an exception recognized by the jurisprudence of the Supreme Court and the Court of Appeal that allows the Court, at its discretion, to consider a question that has become moot.

[1200] The landmark decision on the mootness of an appeal is *Borowski v. Canada (Attorney General)*,[1002] rendered by the Supreme Court in 1989. In that case, the appellant challenged the validity of subsections 251(4), (5) and (6) Cr. C., then in effect in regard to abortion. The Supreme Court dismissed the appeal because, prior to the hearing, it had already declared section 251 Cr. C. to be
inoperative in *R. v. Morgentaler*.[1003] It based its dismissal on the concept of the mootness of the appeal, as well as the loss of the appellant's standing, since the circumstances on which the dispute was based had disappeared.

[1201] The Supreme Court described as moot the question whose answer will have no practical effect on the rights of the parties in dispute and called upon the courts, in such a case, to decline to decide the case. To conclude that a question is moot, the Court used the criterion of live controversy. The Supreme Court concluded that the appellant's appeal did not meet this criterion because "[n]one of the relief claimed in the statement of claim is relevant."[1004] It dictated a two-

[1001] See paragraphs [73] to [75] above.
[1002] *Borowski v. Canada (Attorney general),* [1989] 1 S.C.R. 342.
[1003] *R. v. Morgentaler*, [1988] 1 S.C.R. 30.
[1004] *Borowski v. Canada (Attorney general),* [1989] 1 S.C.R. 342 at 357.

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step analysis when mootness is at stake:[1005]

> The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case.

[1202] When the court concludes that a case is moot, however, it may still decide to hear it at its discretion. To this end, the Supreme Court set out the guidelines for this exercise by specifying the three underlying rationales of the mootness doctrine: (i) the adversary system; (ii) the concern for judicial economy; and (iii) the court's role in the law-making process.[1006]

[1203] With regard to the adversary system, the Supreme Court stated that it is a fundamental tenet of the Canadian legal system and helps guarantee that issues are well and fully argued by parties who have a stake in the outcome.[1007] It adds that this requirement may be satisfied despite the cessation of a live controversy, if adversarial relationships prevail, for example, as to the collateral consequences of the outcome.[1008]

[1204] With regard to the concern for judicial economy, the Supreme Court stated that there is a need to "ration"[1009] judicial resources among claimants. It noted that the concern for conserving judicial resources will be answered in cases that have become moot if the Court's decision "will have some practical effect on the rights of the parties" notwithstanding that it will not have the effect of determining the controversy which gave rise to the action."[1010] It added that "an expenditure of judicial resources is considered warranted in cases which although moot are of a recurring nature but brief duration," but that it is usually preferable to wait and determine the point in a genuine adversarial context.[1011] Finally, the Supreme Court stated that it is warranted to deploy judicial resources to settle a moot issue of national importance, provided there is a social cost in leaving the matter undecided.[1012]

[1205] With regard to the court's role, the Supreme Court called upon the courts to proceed with caution and not depart from the traditional role of resolving disputes and contribute to law-making without intruding into the roles of the executive or legislative branches.[1013] Moreover, the Supreme Court took care to point out that a court should take into account each of the three rationales of the mootness doctrine and that "the presence of one or two of the factors may be overborne by the absence of the third, and vice versa."[1014]

[1206] Since *Borowski v. Canada (Attorney General),* several decisions have been rendered by

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[1005] *Borowski v. Canada (Attorney general),* [1989] 1 S.C.R. 342 at 353.
[1006] *Borowski v. Canada (Attorney general)*, [1989] 1 S.C.R. 342 at 358–363.
[1007] *Borowski v. Canada (Attorney general)*, [1989] 1 S.C.R. 342 at 358–359.
[1008] *Borowski v. Canada (Attorney general)*, [1989] 1 S.C.R. 342 at 359.
[1009] *Borowski v. Canada (Attorney general)*, [1989] 1 S.C.R. 342 at 360.
[1010] *Borowski v. Canada (Attorney general)*, [1989] 1 S.C.R. 342 at 360 [Emphasis added.].
[1011] *Borowski v. Canada (Attorney general)*, [1989] 1 S.C.R. 342 at 360–361.
[1012] *Borowski v. Canada (Attorney general)*, [1989] 1 S.C.R. 342 at 361–362.
[1013] *Borowski v. Canada (Attorney general)*, [1989] 1 S.C.R. 342 at 362–363.
[1014] *Borowski v. Canada (Attorney general)*, [1989] 1 S.C.R. 342 at 363.

the Supreme Court[1015] and by the country's various appellate courts, including this Court,[1016] in accordance with the mootness doctrine. Without reviewing them all, the principles of *Borowski v. Canada (Attorney General)* remain applicable.[1017]

[1207] The true nature of the two issues in dispute here, formulated in legal terms and ignoring the facts underlying them, warrants this analysis despite their mootness.

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B. Parliamentary Privilege

[1208] First, there is the question of the applicability of parliamentary privilege to the 1969 testimony of Mr. Paul Paré before a parliamentary committee,[1018] as chair of the Ad Hoc Committee, and to the publication of an account of his testimony in an internal ITL publication entitled *The Leaflet: Special Report on Smoking and Health*. This publication states that, in their brief before the House of Commons Standing Committee, the companies that were members of the Ad Hoc Committee stated that they "have been and continue to be responsible corporate citizens of Canada" or that "results indicate that tobacco, and especially the cigarette, has been unfairly made a scapegoat in recent times for nearly every ill that man is heir to." Mr. Paré stated that government action would likely have negative effects by limiting the freedom of citizens.[1019]

[1209] This part of *The Leaflet* or document thus contains a form of "report" on the statements made before the parliamentary committee and an analysis of their content. In addition, the document addresses topics that highlight ITL's views on topics that are closely related to its own interests, i.e., the "[b]eneficial effects of smoking recognized by many authorities" and the fact that "[s]cientists challenge "very dogmatic attitude" of anti-cigarette claims."[1020]

[1210] In short, ITL claims that the judge should have made his own account of Mr. Paré's comments subject to parliamentary immunity because his statements were made before a parliamentary committee.

[1211] The judge took the document into account when considering whether ITL had trivialized the risks of tobacco product consumption. He also mentioned that Mr. Paré's testimony was given on behalf of the Canadian tobacco industry. The judge concluded, based partially on this exhibit, that the industry had not complied with its obligation to disclose the risks associated with

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[1015] See for example *R. v. Oland,* 2017 SCC 17; *R. v. McNeil,* 2009 SCC 3; *R. v. Smith,* 2004 SCC 14; *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46.

[1016] See *Société de l'assurance automobile du Québec c. Propriété Provigo ltée*, 2013 QCCA 1509 (St-Pierre J.A.); *Québec (Procureur général) v. B.S.*, 2007 QCCA 1756; *Velasquez Guzman v. Canada (Citizenship and Immigration)*, 2007 FCA 358; *Gagliano v. Canada (Attorney general)*, 2006 FCA 86; *R. v. Ho*, 2003 BCCA 663; *Mpega c. Université de Moncton*, 2001 NBCA 78; *R. v. Thanabalsignham*, 2018 QCCA 197, leave to appeal to S.C.C., 37984.

[1017] *R. v. Oland*, 2017 SCC 17 at para. 17.

[1018] Then President of ITL.

[1019] Exhibit 2 at 4.

[1020] Exhibit 2 at 2–3.

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the consumption of tobacco products.

[1212] In so doing, did the judge violate parliamentary privilege? The answer is no. The appellants did not even attempt to demonstrate how parliamentary privilege was at stake in the circumstances of this case when ITL voluntarily published Mr. Paré's statements at the same time as a few comments related to his testimony. This omission constitutes a *fin de non-recevoir*.

[1213] The method of analysis established by the Supreme Court in 2005 in *Canada (House of Commons) v. Vaid* requires the court to "ascertain whether the existence and scope of the claimed privilege have been authoritatively established in relation to our own Parliament or to the House of Commons at Westminster"[1021]. If the privilege has not been authoritatively established, the court must go on to the second step.[1022] The court will have to verify whether the claimed privilege meets the necessity test by following a "purposive approach," which consists in determining whether the privilege is necessary for the exercise of a legislative function.[1023] The party who seeks to rely on the privilege has the onus of establishing its existence and scope.[1024]

[1214] In this regard, witnesses before parliamentary committees, like Mr. Paré, are also protected by parliamentary immunities in relation to their testimony.[1025] Among other things, they cannot be sued for damages for the content of their testimony before a parliamentary committee. But in the case at hand, ITL intentionally reproduced extracts from the testimony before the parliamentary committee and commented on them in its internal publication, only to complain afterwards that the judge took them into account.

[1215] It is also necessary to distinguish the impossibility of initiating civil and defamatory libel proceedings against someone who has testified before a parliamentary committee, on the one hand, from, on the other hand, using the account of a company president's testimony in order to establish the company's point of view on the topics addressed.

[1216] In *Ouellet v. R.*,[1026] Associate Chief Justice Hugessen of the Superior Court charged a member of parliament with criminal *ex facie curiae* contempt of court for derogatory comments made outside, but in the foyer of, the House of Commons while the vote call bells were ringing for the members of parliament. The comments concerned an acquittal verdict in connection with a criminal prosecution under the *Combines Investigation Act*.[1027]

[1217] To the same effect, in *Pankiw v. Canada (Human Rights Commission)*,[1028] Justice Lemieux of the Federal Court confirmed the jurisdiction of the Human Rights Tribunal to hear

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[1021] *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at para. 39 [Emphasis added.].

[1022] See, in general, Peter W. Hogg, *Constitutional Law of Canada*, vol. 1, 5th ed. (Toronto, Thomson Reuters, 2007) looseleaf, update No. 2018-1 at. 1-13; see also Henri Brun, Guy Tremblay & Eugénie Brouillet, *Droit constitutionnel*, 6th ed. (Cowansville, Yvon Blais: 2014) at 329–336; *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at 687, para. 40; *Lavigne v. Ontario (Attorney General)*, 91 O.R. (3d) 750, 2008 CanLII 89825 (ONSC) at para. 48.

[1023] *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at para. 41–46.

[1024] *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at para. 29.

[1025] J.P. Joseph Maingot, *Parliamentary Immunity in Canada* (Toronto, LexisNexis: 2016) at 17, 31, 36–38.

[1026] *Ouellet c. R.*, [1976] C.S. 503.

[1027] *Combines Investigation Act*, R.S.C. 1970, c. C-23.

[1028] *Pankiw v. Canada (Human Rights Commission)*, 2006 FC 1544.

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nine complaints against a member of parliament alleging that the member of parliament had made discriminatory comments about Aboriginal peoples in a brochure known as a householder. The brochure in question was printed and distributed under the auspices and at the expense of the House of Commons. The Speaker of the House of Commons intervened in the dispute and claimed, unsuccessfully, that the Tribunal had no legal or constitutional jurisdiction to hear complaints in connection with the activities of a member of parliament.

[1218] Given these two examples from the case law indicating a restrictive interpretation of parliamentary privilege, it is inconceivable that this privilege would extend to the point of applying in any way to Mr. Paré's comments, which ITL chose to reproduce in *The Leaflet,* with, moreover, what appears to be its own interpretation of Mr. Paré's claims before the committee. It is quite clear that the privilege that ITL claims is in no way necessary for the work of Parliament.

[1219] However, but for this publication by ITL, the fate of its claims might have been different, as demonstrated by the judgment of Justice Conway of the Superior Court of Justice in *Ontario v. Rothmans*.[1029]

[1220] In that case, a lawsuit was filed by the Province of Ontario to recover the costs of tobacco-related health care for Ontario residents. Justice Conway struck from the statement of claim the paragraphs in which the Attorney General alleged, among the repeated false statements of the tobacco companies, their statements before parliamentary committees on the risks associated with smoking. The *ratio decidendi* of his judgment can be found in the following passage:

> [32] Once a person attends and participates in a parliamentary committee proceeding, the absolute privilege applies to his statements made in the course of that proceeding, with the result that the statements cannot be used in a civil action against him. The surrounding circumstances are simply not relevant. In this case, the Crown had pleaded that the defendants made the Presentations to various House of Commons standing committees and federal legislative committees. That is sufficient to invoke the privilege.

[1221] That being said, the judge nevertheless erred when he attributed Mr. Paré's comments published in *The Leaflet* to the other two appellants. There was no evidence that the other two appellants were involved in any way in the dissemination of Mr. Paré's comments in the ITL publication. However, this error is not determinative in regard to their own liability. The record contains numerous pieces of evidence that establish that the three appellants failed to meet their obligation to disclose information known to them by trivializing the harmfulness and other dangers associated with their products.

C. Authenticity and preparation of exhibits

[1222] As for the second question, article 264 n.C.C.P. corresponds to article 403 f.C.C.P. and essentially has the same effect. This judgment, subject to the usual reservations, could therefore be useful in interpreting this article in a fairly specific case.

[1223] In a judgment rendered on May 2, 2012, the judge ruled that the appellants' notice of denial was improper and acknowledged the authenticity of the documents in question. He also

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[1029] *Ontario v. Rothmans et al*, 2014 ONSC 3382.

suggested that ITL had knowledge of their authenticity.[1030]

[1224] Article 403 f.C.C.P. is aimed at speeding up the inquiry so that it focuses only on documents that are genuinely disputed. It provides the following:

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403. After the filing of the defence, a party may, by notice in writing, call upon the opposite party to admit the genuineness or correctness of an exhibit. A copy of the exhibit must be attached to the notice, except where the exhibit has already been communicated or in the case of real evidence; in the case of real evidence, the exhibit shall be put at the disposal of the opposite party.	**403.** Après production de la défense, une partie peut, par avis écrit, mettre la partie adverse en demeure de reconnaître la véracité ou l'exactitude d'une pièce qu'elle indique. L'avis doit être accompagné d'une copie de la pièce, sauf si cette dernière a déjà été communiquée ou s'il s'agit d'un élément matériel de preuve, auquel cas celui-ci doit être rendu accessible à la partie adverse.
The genuineness or correctness of the exhibit is deemed admitted unless, within 10 days or such time as the judge may fix, the party called upon to admit its genuineness or correctness serves on the other party a sworn statement denying that the exhibit is genuine or correct, or specifying the reasons why he cannot so admit. However, if the ends of justice so require, the court may, before judgment is rendered, relieve the party of his default.	La véracité ou l'exactitude de la pièce est réputée admise si, dans les dix jours ou dans tel autre délai fixé par le juge, la partie mise en demeure n'a pas signifié à l'autre une déclaration sous serment niant que la pièce soit vraie ou exacte, ou précisant les raisons pour lesquelles elle ne peut l'admettre. Cependant, le tribunal peut la relever de son défaut avant que jugement ne soit rendu, si les fins de la justice le requièrent.
The unjustified refusal to admit the genuineness or correctness of an exhibit may result in a condemnation to the costs resulting therefrom.	Le refus injustifié de reconnaître la véracité ou l'exactitude d'une pièce peut entraîner condamnation aux dépens qu'il occasionne.

[1030] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 1870, paragr. 26-28.

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[1225] The Court specified that this article cannot be used to prove the genuineness of the content of an exhibit.[1031] It can, however, be used to prove the authenticity of its preparation.[1032] Thus, if the party responds to the formal notice by acknowledging the genuineness of the exhibit, or if it fails to respond to it, the content of the exhibit in question is not necessarily admitted.

[1226] In addition, a comparison with article 264 n.C.C.P. confirms this position. That article provides:

264. A party may give another party a formal notice to admit the origin of a document or the integrity of the information it contains.	**264.** Une partie peut mettre une autre partie en demeure de reconnaître l'origine d'un document ou l'intégrité de l'information qu'il porte.
The formal notice must be notified at least 30 days before the trial. If the document or other evidence has not already been disclosed, a suitable representation of it or, in the absence of such a representation, particulars on how to access it must be attached.	La mise en demeure doit être notifiée au moins 30 jours avant l'instruction; elle est accompagnée d'une représentation adéquate du document ou de l'élément de preuve s'il n'a pas déjà été communiqué ou, en l'absence de telle représentation, d'une indication permettant d'y avoir accès.
The party having been given the formal notice admits or denies the origin or integrity of the evidence in an affidavit giving reasons, and notifies the affidavit to the other party within 10 days.	La partie mise en demeure admet ou nie l'origine ou l'intégrité de l'élément de preuve dans une déclaration sous serment dans laquelle elle précise ses motifs; elle notifie cette déclaration à l'autre partie dans un délai de 10 jours.
Failure to respond to the formal notice is deemed an admission of the origin and integrity of the evidence, but not of the truth of its contents.	Le silence de la partie en demeure vaut reconnaissance de l'origine et de l'intégrité de l'élément de preuve, mais non de la véracité de son contenu.

[Emphasis added.]

[1031] *Vincent c. Joubert*, J.E. 81-890, AZ-81011160 (C.A.).
[1032] *Vincent c. Joubert*, J.E. 81-890, AZ-81011160 (C.A.).

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[1227] Moreover, the Minister's comments on this article confirm that the changes made to the wording are intended to clarify that what is recognized is the preparation or authenticity of the exhibit, but not the truth of its content:[1033]

> [TRANSLATION]
>
> This article reproduces the previous rules in part, but rephrases them to take into account the new procedural context, among other things. The article no longer insists on the concepts of correctness and genuineness of the document but rather refers to the concepts of origin, i.e., its source and integrity. The latter concept, narrowed down by article 2839 of the *Civil Code*, pertains to the fact that the information must not be altered, must be maintained in its entirety and that the medium on which the document is stored provides the required stability and perennity.
>
> Contrary to the previous rule, it is specified that failure to respond to the formal notice is deemed an admission only of the origin and integrity of the document. It seems excessive that it should be deemed an admission of the truth of the information contained in the document. In such a case, it seems appropriate to leave it to the party intending to use the document to prove the value of its content. The court may, when deciding on legal costs, sanction any inappropriate conduct.

[1228] In short, the effect of article 403 f.C.C.P. is therefore limited to proving the authenticity of the preparation of a document[1034] and not the genuineness or correctness of its content. Finally, it is important to point out that there is a case where the Superior Court decided that where it is clear, on a balance of probabilities, that the documents listed in a notice under article 403 f.C.C.P. come from a party and that this party refuses to acknowledge their authenticity, the denial can be struck out.[1035] What is the situation in this case?

[1229] Although the sanction for an unjustified denial is provided for in the third paragraph of article 403 f.C.C.P. − a condemnation to the resulting costs −, a notice of denial remains a procedural act and may as such be dismissed or annulled by the court by virtue of its inherent power to sanction procedural impropriety,[1036] codified in articles 54.1 and following f.C.C.P.*:*

[1033] Ministère de la Justice, *Commentaires de la ministre de la Justice : Code de procédure civile. Chapitre C- 25.01* (Montreal, Wilson & Lafleur: 2015) at 214, art. 264.

[1034] *Lacasse c. Lefrançois*, 2007 QCCA 1015 at para. 64.

[1035] *Schwartz Levitsky Feldman, l.l.p. v. Werbin*, 2011 QCCS 6863.

[1036] *Aliments Breton (Canada) inc. c. Bal Global Finance Canada Corporation*, 2010 QCCA 1369 at para. 36. See also *Fabrikant c. Swamy*, 2010 QCCA 330.

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54.1. A court may, at any time, on request or even on its own initiative after having heard the parties on the point, declare an action or other pleading improper and impose a sanction on the party concerned.	**54.1.** Les tribunaux peuvent à tout moment, sur demande et même d'office après avoir entendu les parties sur le point, déclarer qu'une demande en justice ou un autre acte de procédure est abusif et prononcer une sanction contre la partie qui agit de manière abusive.
The procedural impropriety may consist in a claim or pleading that is clearly unfounded, frivolous or dilatory or in conduct that is vexatious or quarrelsome. It may also consist in bad faith, in a use of procedure that is excessive or unreasonable or causes prejudice to another person, or in an attempt to defeat the ends of justice, in particular if it restricts freedom of expression in public debate.	L'abus peut résulter d'une demande en justice ou d'un acte de procédure manifestement mal fondé, frivole ou dilatoire, ou d'un comportement vexatoire ou quérulent. Il peut aussi résulter de la mauvaise foi, de l'utilisation de la procédure de manière excessive ou déraisonnable ou de manière à nuire à autrui ou encore du détournement des fins de la justice, notamment si cela a pour effet de limiter la liberté d'expression d'autrui dans le contexte de débats publics.
54.2. If the court notes an improper use of procedure, it may dismiss the action or other pleading, strike out a submission or require that it be amended, terminate or refuse to allow an examination, or annul a writ of summons served on a witness.	**54.3.** Le tribunal peut, dans un cas d'abus, rejeter la demande en justice ou l'acte de procédure, supprimer une conclusion ou en exiger la modification, refuser un interrogatoire ou y mettre fin ou annuler le bref d'assignation d'un témoin.
...	[…]

[Emphasis added.]

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[1230] Articles 54.1 to 54.6 f.C.C.P. were enacted in 2009 under *An Act to amend the Code of Civil Procedure to prevent improper use of the courts and promote freedom of expression and citizen participation in public debate*.[1037] The explanatory notes preceding the preamble of the Act state that the Act allows the courts to "promptly dismiss a proceeding that is improper."

[1231] From the foregoing, it follows that it was open to the judge to annul the appellants' notices of denial provided they were improper. However, were they really?

[1232] The first exhibit that the appellants contest the admissibility of is Exhibit 1337-2m. It is cited by the judge in paragraph 131[1038] of the judgment *a quo* and is a survey conducted in February and March 1996 by Environics Research Group Limited on behalf of the coalition founded by the Heart and Stroke Foundation of Canada, the Canadian Cancer Society and the Canadian Lung Association. In that paragraph, the judge says that since the survey was cited in an expert report of the appellants, that of Professor Duch, its authenticity and genuineness are acknowledged.[1039]

[1233] The appellants claim that the judge erred in acknowledging the genuineness of the content of this survey and relying on it to set the knowledge date in the Létourneau file.[1040] The respondents reply that Professor Duch was supposed to produce the studies referred to in his expert report, but that he failed to do so.[1041] The respondents therefore filed them independently, hence the suffix 2m.[1042]

[1234] The judge did not commit a palpable and overriding error by withdrawing this suffix in paragraph 131 of the judgment *a quo*. The exhibit was properly produced on the basis of the May 2, 2012, judgment,[1043] which allowed documents to be produced for which a notice pursuant to article 403 f.C.C.P. had been sent to the appellants, who improperly refused to acknowledge their genuineness. Moreover, the judge did not err by referring to this survey, among other evidence, to determine the knowledge date of the Létourneau file, since its content was used in Professor Duch's report, and Professor Duch was to produce it, but failed to do so. Finally, it is not the only evidence the judge relied on to determine this date.

[1235] Exhibit 154 is the Statement of Principle that was prepared by ITL in 1962 and signed by the other appellants at the time. According to the appellants, the judge drew a conclusion of

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[1037] *An Act to amend the Code of Civil Procedure to prevent improper use of the courts and promote freedom of expression and citizen participation in public debate*, SQ 2009, c. 12.
[1038] Judgment *a quo* at para. 131.
[1039] Judgment *a quo* at para. 131.
[1040] Response of Mtre François Grondin to Mtre Bertrand Gervais, October 3, 2016 (consulted in the Court of Appeal record).
[1041] Respondents' arguments at para. 419.
[1042] Respondents' arguments at para. 419.
[1043] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 1870.

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collusion from this Statement of Principle.[1044] They argue that he erred in admitting this exhibit as evidence without giving it the suffix 2m. In addition, they claim that the judge erred when he concluded there was collusion on the basis of the content of this exhibit and its cover letter and appendix, Exhibits 154A and 154B-2m.

[1236] The respondents reply that Exhibit 154 was produced without any suffix or reservation by the appellant JTM itself under the identification number 40005A-1962.[1045]

[1237] Here again, the appellants are wrong. In fact, Exhibit 154B-2m and Exhibits 154A and 154 (i.e., the complete Policy Statement) were used by the judge to conclude that there was collusion, without verifying whether the content of these exhibits is genuine or whether there were any subsequent developments. Moreover, the judge did not make an overriding and palpable error in the conclusion he reached based on Exhibit 154, as it was produced by the appellant JTM itself. He did not commit an overriding and palpable error when he concluded that collusion had occurred based on Exhibits 154, 154A and 154B-2m, as he did not need to verify the genuineness or correctness of their content. He based himself only on the fact that these exhibits had been acknowledged as authentic. Again, it should be noted that these are not the only exhibits the judge used to conclude that there was collusion. There is ample evidence, particularly on the role of the CTMC, to support this conclusion.

D. Solicitor-client privilege

[1238] The appellants also argue that Exhibit 1702, a letter made public as part of a U.S. judgment ordering it to be made public on the Legacy Tobacco Documents Library website, should not have been considered by the judge, as it remains protected by solicitor-client privilege. The judge rightly concluded that solicitor-client privilege no longer applied because of the public nature of this letter in accordance with the U.S. judgment and owing to its availability on the Internet.[1046] The letter and its content were indeed readily available to all and could not, therefore, be protected by solicitor-client privilege.

8.3 Summary

[1239] Despite the mootness of this ground of appeal, the Court exercises its discretion to analyze the scope of the issues raised. The judge did not err in admitting and drawing conclusions of fact from an internal publication that ITL claimed to be protected by parliamentary privilege. Nor did he err in referring to exhibits which, in some cases, had been admitted under the principle of the May 2, 2012, judgment. Finally, he did not err in accepting the production of the Colucci Letter, which was not protected by solicitor-client privilege.

[1044] Response of Mtre François Grondin to Mtre Bertrand Gervais, October 3, 2016 (consulted in the Court of Appeal record).

[1045] Respondents' arguments at para. 417.

[1046] Judgment *a quo* at paras. 1137−1138.

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9. TRANSFER OF THE OBLIGATIONS OF MTI

9.1. Background

[1240] The judge briefly described JTM's claims that it is not the legal successor of its corporate predecessors in the following paragraphs of the judgment *a quo*:

> [545] JTM was acquired by Japan Tobacco Inc. of Tokyo from R.J. Reynolds Tobacco Inc. of Winston-Salem, North Carolina ("RJRUS") in 1999. RJRUS had owned the company since 1974, when it purchased it from the Stewart family of Montreal. The company, then known as Macdonald Tobacco Inc., had been in business in Quebec for many years prior to the opening of the Class Period.
>
> ...
>
> [1105] Before closing on JTM, the Court will deal with its argument that it never succeeded to the obligations of MTI … .
>
> [1106] Summarily, it argues that, in light of the contracts signed when the RJRUS group acquired it in 1978 and of the dissolution of MTI in 1983, the provisions of the Quebec Companies Act and the applicable case law dictate that "Plaintiffs' right of action, assuming they have any, can only be directed at MTI's directors and not its successor". This applies in its view to "any alleged wrongdoing that could have been committed on or before (October 27, 1978) by MTI".
>
> [Reference omitted.]

[1241] The judge rejected these claims.

[1242] Firstly, in the 1978 Agreement,[1047], R.J. Reynolds Tobacco Company "covenants and agrees to assume and discharge all liabilities and obligations now owing by MTI," including "all claims, rights of actions and causes of action, pending or available to anyone against MTI." The judge stated that he interprets "now owing" in a manner consistent with the detailed evidence that MTI officers had known for a long time that their customers "were being poisoned by its products."[1048] He therefore concluded that future claims that were "available to anyone against MTI" included potential lawsuits, as was already the case elsewhere in the world.

[1243] Finally, the judge found that MTI's legal advisers knew that its dissolution entailed the liability of the directors of a dissolved company. The judge was convinced that these directors had no intention of personally assuming liability for monetary awards resulting from fully foreseeable future lawsuits.

[1047] Exhibit 40596 at 4.
[1048] Judgment *a quo* at para. 1109.

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[1244] JTM claims on appeal that the judge erred in his interpretation of the 1978 Agreement, essentially for three reasons.

[1245] It cites clause 10, which provides that "nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies under or by reason of this Agreement."[1049]

[1246] It also argues that it is impossible to include actions based on retroactive provisions of the T.R.D.A., which would have revived otherwise prescribed remedies among those "now owing" in 1978.

[1247] Finally, JTM is of the opinion that the judge's interpretation is incompatible with the intention of the parties and the unambiguous text of the 1978 Agreement.

[1248] As for the respondents, they note the absence of witnesses to support JTM's proposed interpretation of the Agreement and argue that this interpretation is incompatible with the text of the Agreement. In this regard, they also cite a clause of the 1978 Agreement that demonstrates R.J. Reynolds Tobacco Company's intention to assume "(a) all liabilities whether accrued, absolute, contingent or otherwise ...; [and] (e) all claims, rights of action and causes of action, pending or available to anyone against MTI."[1050]

9.2. Analysis

[1249] Before analyzing this ground of appeal, the standard of review for contractual interpretation must be identified. This standard is the one recently described by the Court in *Administration portuaire de Québec c. Fortin*[1051]:

> [TRANSLATION]
>
> [12] The interpretation of a contract is a question of mixed fact and law when it is based on the search for the common and genuine intention of the parties. Thus, it is a question that, on appeal, is subject to a standard of palpable and overriding error unless the trial judge made some extricable error in principle or law. The Court recently reiterated this principle in *Corbeil Électrique inc. c. Groupe Opex inc. (Ashley Meubles Homestore)*, relying in particular on the Supreme Court of Canada's judgment in *Sattva Capital Corp. v. Creston Moly Corp.*
>
> [Reference omitted.]

[1250] The most important factual element retained by the judge in his analysis is that the

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[1049] Exhibit 40596 at 7.
[1050] Exhibit 40596 at 4 [Emphasis added].
[1051] *Administration portuaire de Québec c. Fortin*, 2017 QCCA 315.

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detailed evidence shows that R.J. Reynolds Tobacco Company and MTI had knowledge in 1978 of the fact that MTI's customers had already been "poisoned" by MTI's products, and that there were therefore reasons to anticipate lawsuits in Canada against tobacco product manufacturers.

[1251] This factual determination is far from being a palpable and overriding error. On the contrary, the judge referred to abundant and uncontradicted evidence heard in support of his conclusion. It follows that the judge made no reviewable error in his interpretation of the 1978 Agreement when he concluded that this action against JTM was foreseen in that Agreement. Nor was there any error of law, "extricable" from the questions of fact, which could have resulted in the application of the standard of correctness to the decision.

[1252] This ground of appeal is therefore dismissed.

10. DESTRUCTION OF DOCUMENTS BY ITL

10.1. Background

[1253] In the context of its discussion of the issue of whether ITL adopted or applied a systematic policy of denial or non-disclosure of the risks and dangers of smoking, the judge took account of certain facts involving its in-house (Mtre Roger Ackman) and outside (Mtre Lyndon Barnes and Mtre Simon Potter) counsel.[1052] He described those circumstances as follows at the end of paragraph 1077 of the judgment:

> • ITL's bad-faith efforts to block court discovery of research reports by storing them with outside counsel, and eventually having those lawyers destroy the documents.

[1254] According to the judge, the questions to be resolved on that front were the following:[1053]

> • Was it ITL's intention to use the destruction of the documents as a means to avoid filing them in trials?
>
> • Was it ITL's intention in engaging outside counsel for that exercise to use that as a means to object to filing the documents based on professional secrecy?
>
> [Reference omitted]

[1255] More specifically, the judge analyzed the role of ITL's counsel at the beginning of the 1990s in the transfer to its sole shareholder in England, BAT, of scientific research documents held by ITL in Canada. At that time, J.K. Wells, in-house counsel of Brown & Williamson (the

[1052] Judgment *a quo* at paras. 357−378.
[1053] Judgment *a quo* at para. 367.

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sole shareholder of which was also BAT), expressed the opinion that the content of those documents would be difficult to explain before Canadian courts.

[1256] Despite the reticence of its research director, ITL nonetheless agreed to their destruction, it being understood that BAT would fax any research document ITL's scientists wanted to see. In this context, during the summer of 1992, at the request of Mtre Ackman, Mtre. Potter and other attorneys from his firm supervised the destruction of about one hundred research documents held by ITL.[1054] At trial, Mtre Ackman was unable to provide a plausible explanation for that destruction or why he involved outside counsel in the process.

[1257] Before the trial in this case, it seems that there were three cases in Canada involving at least one of the Appellants in which the production of documents repatriated to England or destroyed had taken place or might have taken place.

[1258] First, in the context of the constitutional challenge to certain sections of the *Tobacco Products Control Act*[1055] limiting the advertising of tobacco products taken by two tobacco companies against the Attorney General of Canada,[1056] Chabot J. of the Superior Court allowed an objection by ITL to the production of those documents, which they said they were no longer in possession of. ITL's attorney did not tell Chabot J. that ITL could have obtained them according to the agreement with BAT mentioned above. In a letter from Mtre Ackman sent to, among others, the executives of ITL and BAT as well as to Mtre Potter, the judgment allowing the objection was described as "a major victory" for ITL.[1057]

[1259] That said, counsel for the Attorney General of Canada did not consider it necessary to ask for leave to appeal the judgment allowing the objection (art. 29, para. 1(2) f.C.C.P.). It is also true that the absence of those documents before Chabot J. did not affect the final outcome of the constitutional challenge.

[1260] In this regard, the reasons of the majority and dissenting Supreme Court judges recognized, to use the words of LaForest J., that Chabot J. had before him "[a] copious body of evidence ... demonstrating convincingly, and this was not disputed by the appellants,[1058] that tobacco consumption is widespread in Canadian society and that it poses serious risks to the health of a great number of Canadians."[1059] The harmful effects of tobacco

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[1054] The documents in question were nonetheless filed in the Superior Court record. The plaintiffs were also successful in obtaining them in other actions against the tobacco companies, and they were filed in the public archives created by an order of a U.S. court. The list of documents appears in Exhibit 58.

[1055] *Tobacco Products Control Act*, S.C. 1988, c. 20.

[1056] See *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199; *Canada (Procureur général)c. R.J.R. - MacDonald inc.*, [1993] R.J.Q. 375 (C.A.); *Imperial Tobacco Ltd. c. Canada (Procureur général)*, [1991] R.J.Q. 2260 (Sup. Ct.).

[1057] Exhibit 68 at 1.

[1058] That is, the appellants JTM and ITL in their corporate form at the time.

[1059] *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199 at para. 30.

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products have never been questioned, which no doubt explains the Attorney General of Canada's decision not to pursue the debate about obtaining ITL's research documents before the Court of Appeal.

[1261] The judgment *a quo* then refers to the testimony of Mtre Barnes, who acknowledged that ITL filed an affidavit in order to avoid producing the documents in the Ontario case *Spasic Estate v. Imperial Tobacco Ltd.*[1060] That claim was instituted in May 1997 by Mirjana Spasic for damages related to her addition to products manufactured by two cigarette companies, which she claimed was the source of her lung cancer. Since Ms. Spasic was deceased, her estate took over the case.

[1262] In an amended statement of claim, the estate alleged that the tobacco companies had committed the delict of destruction of evidence.[1061] Writing for the Ontario Court of Appeal, Borins J. summarized the elements of that claim in an interlocutory judgment:[1062]

> It is pleaded that since the1950s, the defendants knew that cigarettes were hazardous and "inherently defective" and that they "engaged in various schemes to conceal, destroy and alter evidence that established their knowledge". The schemes alleged included contrived document retention and destruction policies and plans. It is further pleaded that "as a result of the defendants' participation in such schemes, the plaintiff has been deprived of the opportunity to properly and fully investigate and proved the facts upon which her causes of action are based".

[1263] No judgment on the merits was rendered in that case. According to the information available today, the file was administratively struck from the roll of cases ready to proceed due to the plaintiff's attorneys' failure to comply with the applicable requirements regarding the determination of hearing dates. However, it is still possible for the attorneys to file a motion to be re-inscribed on the roll.

[1264] Lastly, the testimony at trial of Mtre Barnes pointed out the existence of a third case in which he signed an affidavit of production of documents: *Caputo v. Imperial Tobacco Ltd.*[1063] That was an application for authorization to bring a class action in damages against the three appellants in this case, dismissed by Winkler J. (then trial judge and subsequently Chief Justice of Ontario), on the ground that the proposed action did not meet all the criteria in force in that province for the exercise of such an action. Accordingly, the issue of the destruction of documents was never addressed.

[1060] *Spasic Estate v. Imperial Tobacco Ltd.*, 2003 CanLII 32909 (Ont. Sup. Ct. J.).
[1061] In common law, "tort of spoliation".
[1062] *Spasic Estate v. Imperial Tobacco Ltd.*, 49 OR (3d) 699 at para. 4.
[1063] *Caputo v. Imperial Tobacco Ltd.*, 236 DLR (4th) 348 (Ont. Sup. Ct. J).

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10.2. Analysis

[1265] ITL's main argument is that the proof of its conduct in other cases in Quebec and Ontario is irrelevant in the examination of this case. It also argues that the judge failed to take account of the fact that it filed the destroyed documents in 1992 in the Superior Court file in this matter as well as the affidavit of production of documents in *Spasic* in Ontario. What is more, it asserts that there is no proof of a causal connection between the destruction of the documents and a lack of knowledge on the part of the respondents.

[1266] As for the respondents, they argue that ITL was aware, when the documents were destroyed, of the likelihood of disputes alleging its civil liability toward consumers of its products. Accordingly, ITL should have taken the necessary steps to ensure the preservation of the research documents, particularly because, according to the judge:[1064]

> • The documents will be difficult for company witnesses to explain and could allow plaintiffs to argue that scientists in the company accepted causation and addiction;

[1267] The respondents assert, as the judge noted, that the destroyed documents were specifically of the type that the appellants had a duty to make public, particularly to their customers, as part of their obligation to provide information.

[1268] In first instance and on appeal, ITL did not attempt to justify its conduct, an exercise doomed to failure.

[1269] Its defence is based on the lack of relevance and the lack of any effect of its actions on the respondents' ability to prove that they are liable. In this regard, it is partly right: that proof was in the record, and its absence would not have changed the judge's conclusion regarding its civil liability toward the respondents, at least with respect to compensatory damages.

[1270] In addition, their absence did not have any impact on the outcome of two of the three cases in which they could have been introduced.[1065] With regard to the third case, in which the plaintiffs claim the delict of destruction of evidence,[1066] they seem to have failed to do what is required to set a trial date, so no judgment on the merits has been rendered.

[1271] But is the absence of a causal connection between the destruction of research documents and the respondents' ability to make their proof sufficient to conclude that the Court should not take it into account in awarding part of the punitive damages that the judge ordered ITL to pay?

[1272] The answer to that question is no.

[1064] Judgment *a quo* at para. 361.
[1065] See *supra* notes 1052 and 1058.
[1066] See *supra* note 1055.

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[1273] First, the relevance of that evidence must be analyzed based on the preventive objective of punitive damages, namely deterrence, punishment and denunciation,[1067] which differs from the objective of an order to pay compensatory damages.

[1274] Cory J. clearly described this objective on behalf of the Supreme Court in *Hill v. Church of Scientology*,[1068] stating that "where the defendant's misconduct is so malicious, oppressive and high-handed that it offends the court's sense of decency", the aim of punitive damages is "not to compensate the plaintiff, but rather to punish the defendant ... [and they] are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner."[1069]

[1275] Before granting punitive damages taking into account these objectives, there must be a rational connection between the facts retained by the court and the granting of such damages. In the case at bar, such a relationship exists: to dissuade similar conduct of the destruction of documents that ITL knew were potentially highly relevant in the anticipated litigation, and a lack of candour before the courts by objecting to proof based on a half-truth, the judge was quite right to conclude that the situation warranted an order to pay punitive damages and that ITL's reprehensible conduct could form part of the analysis of the quantum. The impact of this event on the quantum is dealt with in section IV.5 of these reasons.

[1276] As for the role of this Court, the case law of the Supreme Court is clear: an appellate court may only interfere with the granting or assessment of punitive damages if it finds that there has been an error of law, a palpable and overriding error in the assessment of the evidence, or a serious error in the assessment of the amount.[1070] ITL was unable to demonstrate such errors.

V. CONCLUSION

[1277] On appeal, the appellants failed to demonstrate any errors of law or palpable and overriding errors in the Superior Court judgment, other than on certain minor points. Accordingly, their appeals should be allowed for the sole purpose of correcting a few inaccuracies in the judgment *a quo*, but that judgment should be confirmed in all other respects.

[1278] The Court's intervention covers the starting point for calculating interest on the compensatory damages, which should be revised based on the dates of the members' diagnoses (section IV.6). It also covers a minor detail in the definition of the Blais Class,

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[1067] *Richard v. Time Inc.*, 2012 SCC 8 at para. 188.

[1068] *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130 at para. 196, recently cited with approval by this Court in *Ville de Sainte-Marthe-sur-le-Lac c. Expert-conseils RB inc.*, 2017 QCCA 381 at para. 79.

[1069] See also J.-L. Baudouin & P.-G. Jobin, *supra* note 210 at para. 803.

[1070] See *Cinar Corporation v. Robinson*, 2013 SCC 73 at para. 134; *Richard v. Time Inc.*, 2012 SCC 8 at paras. 188−190; *Québec (Curateur public) v. Syndicat national des employés de l'hôpital St-Ferdinand*, [1996] 3 S.C.R. 211 at paras. 122, 125−126 and 129.

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including a linguistic impropriety that must be corrected, and to which the date the Class Period began must be added. Lastly, it covers the correction of an error in the calculation of the number of diagnoses that affected the exact total amount of compensatory damages granted in the Blais file, which drops from $6,858,864,000 to $6,857,854,080 due to the calculations illustrated in section IV.6.[1071]

[1279] With respect to legal costs on appeal, given the very mitigated success of the appeals, it is appropriate to order that legal costs on appeal be granted entirely in favour of the respondents in connection with the main appeal. In view of the fact that the cross-appeal is now moot and the respondents' success on appeal, the cross-appeal will be dismissed without costs.

FOR THE AFOREMENTIONED REASONS, THE COURT, UNANIMOUSLY:

[1280] **ALLOWS** the appeals in part in files n^{os} 500-09-025385-154, 500-09-025386-152 and 500-09-025387-150;

[1281] **REVERSES** the judgment of the Superior Court in part;

[1282] **STRIKES** paragraphs 1208 to 1213 of the judgment and **REPLACES** them with the following paragraphs :

> [1208] **AMENDS** the class description as follows:
>
> | | |
> |---|---|
> | All persons residing in Quebec who satisfy the following criteria: | Toutes les personnes résidant au Québec qui satisfont aux critères suivants : |
> | 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 to or greater than 87,600 cigarettes). | 1) Avoir fumé, **entre le 1er janvier 1950** et le 20 novembre 1998, au minimum 12 paquets-année de cigarettes fabriquées par les défenderesses (soit l'équivalent d'un minimum de 87 600 cigarettes, c'est-à-dire toute combinaison du nombre de cigarettes fumées dans une journée multiplié par le nombre de jours de consommation dans la mesure où le total est égal ou supérieur à 87 600 cigarettes). |
> | For example, 12 pack/years equals : | Par exemple, 12 paquets/année égale : |
> | 20 cigarettes a day for 12 years (20 X 365 X 12 = 87,600) or | 20 cigarettes par jour pendant 12 ans (20 X 365 X 12 = 87 600) ou |
> | 30 cigarettes a day for 8 years (30 X 365 X | |

[1071] See also, *supra* note 978.

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8 = 87,600) or 10 cigarettes a day for 24 years (10 X 365 X 24 = 87,600); 2) To have been diagnosed before March 12, 2012 with : 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. The group also includes the heirs of the persons deceased after November 20, 1998 who satisfied the criteria mentioned herein.	30 cigarettes par jour pendant 8 ans (30 X 365 X 8 = 87 600) ou 10 cigarettes par jour pendant 24 ans (10 X 365 X 24 = 36 500); 2) Avoir **reçu un diagnostic d'une de ces maladies** avant le 12 mars 2012 : a) ~~un~~ cancer du poumon ou b) ~~un~~ cancer (carcinome épidermoïde) de la gorge, à savoir du larynx, de l'oropharynx ou de l'hypopharynx ou c) ~~de~~ l'emphysème. Le groupe comprend également les héritiers des personnes décédées après le 20 novembre 1998 qui satisfont aux critères décrits ci-haut.

[1209] **CONDEMNS** the Defendants solidarily to pay as moral damages an amount of **$6,857,854,080** plus interest and the additional indemnity **from the dates specified in the following table for each increment of the condemnation:**

Year of diagnosis	Amount in capital	Date from which interests and the additional indemnity are to be calculated
1995	$353,485,440	November 20, 1998
1996	$356,231,040	November 20, 1998
1997	$360,103,040	November 20, 1998
1998	$373,338,240	December 31, 1998
1999	$381,575,040	December 31, 1999
2000	$382,279,040	December 31, 2000
2001	$398,541,440	December 31, 2001
2002	$402,554,240	December 31, 2002
2003	$405,863,040	December 31, 2003
2004	$414,240,640	December 31, 2004
2005	$416,634,240	December 31, 2005
2006	$420,154,240	December 31, 2006
2007	$431,629,440	December 31, 2007
2008	$447,821,440	December 31, 2008

2009	$443,597,440	December 31, 2009
2010	$431,207,040	December 31, 2010
2011	$438,599,040	December 31, 2011
Total :	$6,857,854,080	

[1210] **CONDEMNS** the Defendants solidarily to pay the amount of $100,000 as moral damages to each class member diagnosed with **lung cancer, cancer of the larynx, cancer of the oropharynx or cancer of the hypopharynx** who started to smoke before January 1, 1976, plus interest and the additional indemnity **calculated from the date of service of the Motion for Authorization to Institute the Class Action if the member's disease was diagnosed before January 1, 1998, or from December 31 of the year of the member's diagnosis if the member's disease was diagnosed on or after January 1, 1998**;

[1211] **CONDEMNS** the Defendants solidarily to pay the amount of $80,000 as moral damages to each class member diagnosed with **lung cancer, cancer of the larynx, cancer of the oropharynx or cancer of the hypopharynx** who started to smoke as of January 1, 1976, plus interest and the additional indemnity **calculated from the date of service of the Motion for Authorization to Institute the Class Action if the member's disease was diagnosed before January 1, 1998, or from December 31 of the year of the member's diagnosis if the member's disease was diagnosed on or after January 1, 1998**;

[1212] **CONDEMNS** the Defendants solidarily to pay the amount of $30,000 as moral damages to each member diagnosed with emphysema who started to smoke before January 1, 1976, plus interest and the additional indemnity **calculated from the date of service of the Motion for Authorization to Institute the Class Action if the member's disease was diagnosed before January 1, 1998, or from December 31 of the year of the member's diagnosis if the member's disease was diagnosed on or after January 1, 1998;**

[1213] **CONDEMNS** the Defendants solidarily to pay the amount of $24,000 as moral damages to each member diagnosed with emphysema who started to smoke as of January 1, 1976, plus interest and the additional indemnity **calculated from the date of service of the Motion for Authorization to Institute the Class Action if the member's disease was**

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diagnosed before January 1, 1998, or from December 31 of the year of the member's diagnosis if the member's disease was diagnosed on or after January 1, 1998;

[1283] **CONFIRMS** the judgment of the Superior Court in every other respect;

[1284] **THE WHOLE** with legal costs in favour of the respondents; and

[1285] **DISMISSES** the cross-appeal, without legal costs.

YVES-MARIE MORISSETTE, J.A.

ALLAN R. HILTON, J.A.

MARIE-FRANCE BICH, J.A.

NICHOLAS KASIRER, J.A.

ÉTIENNE PARENT, J.A.

Mtre Deborah Glendinning
Mtre Thomas Craig Lockwood
Mtre Mahmud Jamal
Mtre Alexandre Fallon
OSLER, HOSKIN & HARCOURT
For Imperial Tobacco Canada Ltd.

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Mtre André Lespérance
Mtre Philippe Hubert Trudel
Mtre Bruce Johnston
Mtre Gabrielle Gagné
TRUDEL, JOHNSTON & LESPÉRANCE
Mtre Marc Beauchemin
DE GRANDPRÉ CHAIT
Mtre Gordon Kugler
Mtre Pierre Boivin
KUGLER KANDESTIN
For Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau

Mtre Guy Pratte
Mtre François Grondin
Mtre Patrick Plante
Mtre Kevin Lee LaRoche
BORDEN LADNER GERVAIS
Mtre Catherine Elizabeth McKenzie
IRVING MITCHELL KALICHMAN
For JTI-Macdonald Corp.

Mtre Simon V. Potter
Mtre Michael Feder
Mtre Pierre-Jérôme Bouchard
McCARTHY TÉTRAULT
For Rothmans, Benson & Hedges Inc.

Hearing dates: November 21, 22, 23, 24, 25 and 30, 2016

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SCHEDULES

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SCHEDULE I: Abbreviations and acronyms used

Abbreviation or acronym	**Meaning**
A.I.R.C.C.	*An Act respecting the implementation of the reform of the Civil Code,* CQLR, c. CCQ-1992.
Ad Hoc Committee	Ad Hoc Committee of the Canadian Tobacco Industry
B&H	Benson & Hedges Canada Inc.
BAT	British American Tobacco Inc.
Blais Class	The members of class action 500-06-000076-980, as defined from time to time
C.C.L.C.	*Civil Code of Lower Canada*
C.C.Q.	*Civil Code of Québec*
C.P.A.	*Consumer Protection Act,* CQLR c. P-40.1.
Charter	*Charter of human rights and freedoms,* CQLR, c. C-12.
Class Period	1950-1998
COPD	Chronic obstructive pulmonary disease
“critical dose” of smoking	Dose at which the risk of contracting one of the Diseases exceeds a certain probability threshold.
CTMC	Canadian Tobacco Manufacturers Council (called the Ad Hoc Committee before 1971)
Diseases	Lung cancer, squamous cell carcinoma of the larynx, the oropharynx or the hypopharynx and emphysema.
f.C.C.P.	former *Code of Civil Procedure,* CQLR, c. C-25.
Judgment *a quo*	*Létourneau v. JTI-MacDonald Corp.,* 2015 QCCS 2382.
ITL	Imperial Tobacco Canada Limited (Appellant)
J.S.	joint schedules of the parties (Vol. 1-688)
JTM	JTI-Macdonald Corp. (Appellant)
Knowledge dates (as determined by the judge)	January 1, 1980 (Blais) March 1, 1996 (Létourneau)
LaMarsh Conference	The conference on smoking and health held by Health and Welfare Canada in 1963 and chaired by Judy LaMarsh
Létourneau Class	The members of class action 500-06-000070-983, as defined from time to time
MTI	Macdonald Tobacco Inc.
n.C.C.P.	new *Code of Civil Procedure,* CQLR, c. 25.01.
Pack year	Unit for measuring cigarette consumption; the equivalent of smoking 7,300 cigarettes.
Policy Statement	*Policy Statement by Canadian Tobacco Manufacturers on the Question of Tar, Nicotine and Other Tobacco Constituents That May Have Similar Connotations,* Exhibit 154.
RBH	Rothmans, Benson & Hedges Inc. (Appellant)
RJRM	RJR-Macdonald Corp.
RPMC	Rothmans of Pall Mall Canada Inc.
SFS	Smokers Freedom Society

Abbreviation or acronym	**Meaning**
Smoking dates (as determined by the judge)	January 1, 1976 (Blais) March 1, 1992 (Létourneau)
T.R.D.A.	*Tobacco-related Damages and Health Care Costs Recovery Act,* CQLR, c. R-2.2.0.0.1.
Voluntary Codes	Cigarette Advertising and Promotion Codes (rules adopted by the tobacco industry as of 1972 for the advertising and promotion of cigarettes)
Warnings	The warning notices printed on all cigarette packs sold in Canada

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SCHEDULE II: Basis for calculating interest and the additional indemnity

LUNG CANCER				
Year diagnosed	**Number of diagnoses**	**-12% (immigration)**	**Total moral damages**	**80% factor**
1995	4,124	3,629.12	$362,912,000	$290,329,600
1996	4,179	3,677.52	$367,752,000	$294,201,600
1997	4,269	3,756.72	$375,672,000	$300,537,600
1998	4,431	3,899.28	$389,928,000	$311,942,400
1999	4,493	3,953.84	$395,384,000	$316,307,200
2000	4,564	4,016.32	$401,632,000	$321,305,600
2001	4,759	4,187.92	$418,792,000	$335,033,600
2002	4,825	4,246.00	$424,600,000	$339,680,000
2003	4,877	4,291.76	$429,176,000	$343,340,800
2004	5,025	4,422.00	$442,200,000	$353,760,000
2005	5,046	4,440.48	$444,048,000	$355,238,400
2006	5,105	4,492.40	$449,240,000	$359,392,000
2007	5,249	4,619.12	$461,912,000	$369,529,600
2008	5,446	4,792.48	$479,248,000	$383,398,400
2009	5,366	4,722.08	$472,208,000	$377,766,400
2010	5,196	4,572.48	$457,248,000	$365,798,400
2011	5,315	4,677.20	$467,720,000	$374,176,000

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THROAT CANCER (larynx, oropharynx and hypopharynx)					
Year diagnosed	**Number of diagnoses (larynx)**	**Number of diagnoses (throat)**	**-12% (immigration)**	**Total moral damages**	**80% factor**
1995	369	121	431.20	$43,120,000	$34,496,000
1996	338	136	417.12	$41,712,000	$33,369,600
1997	309	130	386.32	$38,632,000	$30,905,600
1998	324	141	408.20	$40,920,000	$32,736,000
1999	369	151	457.60	$45,760,000	$36,608,000
2000	312	147	403.92	$40,392,000	$32,313,600
2001	337	158	435.60	$43,560,000	$34,848,000
2002	325	161	427.68	$42,768,000	$34,214,400
2003	307	174	423.28	$42,328,000	$33,862,400
2004	294	158	397.76	39,776,000	$31,820,800
2005	289	176	409.20	$40,920,000	$32,736,000
2006	287	169	401.28	$40,128,000	$32,102,400
2007	276	199	418.00	$41,800,000	$33,440,000
2008	314	194	447.04	$44,704,000	$35,763,200
2009	311	217	464.64	$46,464,000	$37,171,200
2010	300	222	459.36	$45,936,000	$36,748,800
2011	300	208	447.04	$44,704,000	$35,763,200

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EMPHYSEMA				
Year diagnosed	**Number of diagnoses[1072]**	**-12% (immigration)**	**Total moral damages**	**80% factor**
1995	1,357	1,194.16	$35,824,800	$28,659,840
1996	1,357	1,194.16	$35,824,800	$28,659,840
1997	1,357	1,194.16	$35,824,800	$28,659,840
1998	1,357	1,194.16	$35,824,800	$28,659,840
1999	1,357	1,194.16	$35,824,800	$28,659,840
2000	1,357	1,194.16	$35,824,800	$28,659,840
2001	1,357	1,194.16	$35,824,800	$28,659,840
2002	1,357	1,194.16	$35,824,800	$28,659,840
2003	1,357	1,194.16	$35,824,800	$28,659,840
2004	1,357	1,194.16	$35,824,800	$28,659,840
2005	1,357	1,194.16	$35,824,800	$28,659,840
2006	1,357	1,194.16	$35,824,800	$28,659,840
2007	1,357	1,194.16	$35,824,800	$28,659,840
2008	1,357	1,194.16	$35,824,800	$28,659,840
2009	1,357	1,194.16	$35,824,800	$28,659,840
2010	1,357	1,194.16	$35,824,800	$28,659,840
2011	1,357	1,194.16	$35,824,800	$28,659,840

[1072] In the case of emphysema, the number of diagnoses is constant from year to year for the reason given by the witness Siemiatycki: “The survey on respiratory diseases was conducted in the late 1990s; we have no data specific to individual years in the period 1995-2006, but there is no reason to believe that annual incidence was increasing or decreasing during this period. Consequently, we have taken the survey-derived estimate and applied it to each year in the period.” (Exhibit 1426.1 at 41.)

2019 QCCA 358 (CanLII)

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SCHEDULE III: Definitions of Blais and Létourneau Classes

February 21, 2005 – AUTHORIZATION JUDGMENT[1073]	
Blais File	**Létourneau File**
[TRANSLATION] All persons residing in Quebec who had lung, larynx or throat cancer or emphysema when the motion was served or who have developed lung, larynx or throat cancer or emphysema since the motion was served after directly inhaling cigarette smoke and smoking a minimum of 15 cigarettes per 24-hour period over a prolonged and uninterrupted period of at least five years, as well as the successors of any person who met the above-mentioned requirements and who has died since the motion was served.	[TRANSLATION] All persons residing in Quebec who, when the motion was served, were addicted to the nicotine found in the cigarettes made by the respondents and have remained addicted and the legal heirs of persons who were included in the class when the motion was served but who subsequently died without quitting smoking.
July 3, 2013 – JUDGMENT AMENDING THE CLASS DESCRIPTION[1074]	
Blais File	**Létourneau File**
[TRANSLATION] The class consists of all persons residing In Quebec who satisfy the following criteria: 1) To have smoked, before November 20, 1998, a minimum of 5 pack/years of cigarettes made by the defendants (that is, the equivalent of a minimum of 36,500 cigarettes, namely any combination of the number of cigarettes smoked per day multiplied by the number of days of consumption insofar as the total is equal to or greater than 36,500 cigarettes). For example, 5 pack/years equals: 20 cigarettes per day for 5 years (20 X 365 X 5 = 36,500)	[TRANSLATION] The class consists of 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 three criteria: 1) They started to smoke before September 30, 1994, by smoking the defendants' cigarettes; 2) They were smoking the cigarettes made by the defendants on a daily basis on September 30, 1998;

[1073] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, J.E. 2005-589, 2005 CanLII 4070 (Sup. Ct.).

[1074] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2013 QCCS 4904.

or 25 cigarettes per day for 4 years (25 X 365 X 4 = 36,500) or 10 cigarettes per day for 10 years (10 X 365 X 10 = 36,500) or 5 cigarettes per day for 20 years (5 X 365 x 20 = 36,500) or 50 cigarettes per day for 2 years (50 X 365 X 2 = 36,500)	3) They were still smoking the cigarettes made by the defendants on February 21, 2005, or until their death, if it occurred before that date.

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2) To have developed before March 12, 2012: 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. The class also includes the heirs of the persons deceased after November 20, 1998, who satisfy the criteria mentioned herein.	The class also includes the heirs of the members who satisfy the criteria described herein.
June 9, 2015 – JUDGMENT *A QUO*[1075]	
Blais File	**Létourneau File**
All persons residing in Quebec who satisfy the following criteria: 1) To have smoked, before 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 to or greater than 87,600 cigarettes) For example, 12 pack/years equals: 20 cigarettes a day for 12 years (20 x 365 x 12 = 87,600) or 30 cigarettes a day for 8 years (30 x 365 x 8 = 87,600) or 10 cigarettes a day for 24 years (10 x 365 x 24 = 87,600); 2) To have been diagnosed before March 12, 2012 with: 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. The group also includes the heirs of the persons deceased after November 20, 1998 who satisfied the criteria mentioned herein.	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: 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.

[1075] Judgment *a quo* at para. 1208.

SCHEDULE IV: Extracts from the "*Special Report on Smoking and Health*", *The Leaflet,* Vol. 5, No. 5, June 1969 (Exhibit 2 at 1 *et seq*. − see *supra* note 580)

2019 QCCA 358 (CanLII)

• There is no proof that tobacco smoking causes human diseases.
• Other factors, such as environmental pollution, occupational exposures, have not been adequately assessed.
• Statistical associations, on which many of the claims against smoking are based, have many failings and do not show causation.

...

"Significant beneficial effects" of smoking have been acknowledged and consideration must be given to them.

…

The diseases under study, namely lung cancer, heart diseases and respiratory ailments, afflicted mankind long before smoking was ever heard of, according to a position paper prepared by the Canadian tobacco industry for the Commons Standing Committee on health.

Ignoring the fact that statistical associations are not proof of causation, 'do gooders' have been attempting to solve a scientific question in an emotional manner. They have made strong pronouncements (against cigarette smoking) based upon meagre evidence which they translate into absolute proof. And they choose to ignore or dismiss views and facts which are not consistent with their theories, the position paper states.

…

The data submitted to support the contentions that smoking is linked to heart disease, lung cancer and respiratory ailments, does not take into adequate account, and often completely ignores, other factors that might well be causal or contributory.

To the extent there may be an actual increase in the rates of these chronic diseases - all of them, it should be noted, occur in mainly aging populations - it correlates with a number of influences at work today. Among them:

1) The increased stresses and strains of living today's highly industrialized and urbanized modern world;

2) Environment pollution (industrial wastes in air and water);

3) Physiological disturbances associated with sudden changes in the way of life;

4) Emotional trauma and the crowding in congested cities;

5) Monotony, boredom and compulsory leisure from automated work.

...

Random autopsy studies have failed to correlate cigarette smoking with changes in blood vessels and the onset of heart failures. One scientist observed cigarette smoking "is a simple and easily visualized or discoverable trait which is very likely to be part of the behaviour pattern of an individual reacting to stress."

2019 QCCA 358 (CanLII)

Much scientific literature exists on the role of nervous tension as a factor in heart disease. Because heavy smoking appears to be more common among these individuals, some authorities believe the true association exists between heart diseases and tension, rather than smoking.

…

… The causes of chronic bronchitis and emphysema have not been established and the diseases pose great problems for doctors even in diagnoses and recognition as a cause of death.

The National Institute of Allergy and Infectious Diseases of the U.S. Department of Health, Education and Welfare issued a special report on emphysema which states “The cause or causes of emphysema are not now known.” It mentions smoking only twice as one of the factors being studied, along with viruses, bacterial infections, asthma, hay fever, urban fumes, substandard economic and social conditions, genetics, lung clearance mechanisms, fungus, smog and racial influences.

…

The significant beneficial effects of smoking must also be considered in the current smoking and health dispute, according to a paper prepared by the Canadian tobacco industry.

Millions of people find in smoking some satisfaction, relaxation and help in meeting the stresses of modern living. For many, smoking provides one of the few available means for control of emotional stress.

The paper says nicotine is important for it produces two distinct effects. It reduces tension in the agitated and improves concentration in periods of stress, particularly prolonged stress.

…

Smoking is a weight control aid as well. The usual explanation is that smoking decreases the appetite.

The paper makes the distinction that the regular use of tobacco should be characterized by the term habituation rather than addiction. For unlike addiction, there is little tendency to increase the dosage and a psychic but not physical dependence is developed.

...

Is there sound scientific validity to the charges that smoking is a major cause of illness and death - validity that justifies the nature and extent of the anti-smoking proposals? No. Because there have been differences that have been shown to exist between people who do not smoke and those who choose to smoke, because data used against cigarettes are often ‘selected', and because efforts have been made to blame cigarettes for every ailment with which there may be a statistical association.

Court File No.: CV-19-615862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

APPLICANT

THIRD AMENDED AND RESTATED COURT-APPOINTED MEDIATOR'S AND MONITOR'S CCAA PLAN OF COMPROMISE AND ARRANGEMENT

PURSUANT TO THE
COMPANIES' CREDITORS ARRANGEMENT ACT

concerning, affecting and involving

JTI-MACDONALD CORP.

FEBRUARY 27, 2025

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Schedule “E”: Contribution Security Agreement

Schedule “F”: Deed of Immoveable Hypothec (official French version)

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Schedule “N”: Quebec Class Action Administration Plan

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Schedule “P”: Curriculum vitae of Daniel Shapiro, K.C.

Schedule “Q”: Pan-Canadian Claimants’ Compensation Plan: Methodology and Analysis dated December 5, 2024

Schedule “R”: Analysis of Limitations Law applicable to Pan-Canadian Claimants dated September 2, 2020

Schedule “S”: Pan-Canadian Claimants’ Compensation Plan dated December 5, 2024

Schedule “T”: Resume of Dr. Robert Bell

Schedule “U”: Curriculum vitae of Dr. Robert Bell

Schedule “V”: The Cy-près Fund: Methodology and Analysis dated December 5, 2024

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THIRD AMENDED AND RESTATED COURT-APPOINTED MEDIATOR'S AND MONITOR'S CCAA PLAN OF COMPROMISE AND ARRANGEMENT CONCERNING, AFFECTING AND INVOLVING JTI-MACDONALD CORP.

WHEREAS JTI-Macdonald Corp. ("**JTIM**") is insolvent;

AND WHEREAS JTIM was granted protection from its creditors under the CCAA pursuant to the initial Order of the Honourable Justice Hainey of the CCAA Court dated March 8, 2019 ("**Initial Order**");

AND WHEREAS by the Initial Order the CCAA Court appointed Deloitte Restructuring Inc. ("**Deloitte**") as an officer of the CCAA Court and the monitor of JTIM ("**Monitor**");

AND WHEREAS by an Order dated April 5, 2019, the CCAA Court appointed the Honourable Warren K. Winkler, K.C. ("**Court-Appointed Mediator**") as an officer of the CCAA Court to, as a neutral third party, mediate a global settlement of the Tobacco Claims;

AND WHEREAS by an Order dated September 27, 2023, the Honourable Chief Justice Geoffrey B. Morawetz directed the Monitor to work with the Court-Appointed Mediator to develop a plan of compromise and arrangement concerning JTIM;

NOW THEREFORE, set out herein is the third amended and restated plan of compromise and arrangement of JTIM developed by the Court-Appointed Mediator and Monitor pursuant to the Order dated September 27, 2023 and in accordance with the CCAA.

ARTICLE 1. INTERPRETATION

1.1 Definitions

In the CCAA Plan, including all Schedules hereto, unless otherwise stated or the context otherwise requires:

"**Administration Charge**" means the charge over the Property for the benefit of the Monitor, counsel to the Monitor, the PCC Representative Counsel and counsel to JTIM, created by paragraph 39 of the Initial Order, and having the priority provided in paragraphs 46 and 48 of such Order.

"**Administrative Coordinator**" means Daniel Shapiro, K.C., in his capacity as the Court-appointed administrative coordinator in respect of the administration of both the PCC Compensation Plan and the Quebec Administration Plan. Daniel Shapiro's appointment as the Administrative Coordinator will be upon the recommendation of the Court-Appointed Mediator and the Monitors and subject to the approval of the CCAA Court.

"**Affected Claim**" means any Claim, other than an Unaffected Claim, against JTIM. For greater certainty, all Tobacco Claims, including the Provincial HCCR Claims, Territorial HCCR Claims,

QCAP Claims, PCC Claims, *Knight* Claims, Tobacco Producers Claims and Miscellaneous Claims are Affected Claims.

"**Affected Creditor**" means a creditor who holds an Affected Claim.

"**Affected Creditor Class**" means the single class of creditors comprised solely of Affected Creditors grouped for the purposes of considering and voting on the CCAA Plan.

"**Affiliate**" means a Person is an affiliate of another Person if,

(a) one of them is the subsidiary of the other, or

(b) each of them is controlled by the same Person.

For the purpose of this definition,

(i) "subsidiary" means a Person that is controlled directly or indirectly by another Person and includes a subsidiary of that subsidiary, and

(ii) a Person (first Person) is considered to control another Person (second Person) if,

(A) the first Person beneficially owns or directly or indirectly exercises control or direction over securities of the second Person carrying votes which, if exercised, would entitle the first Person to elect a majority of the directors of the second Person, unless that first Person holds the voting securities only to secure an obligation,

(B) the second Person is a partnership, other than a limited partnership, and the first Person holds more than 50% of the interests of the partnership, or

(C) the second Person is a limited partnership and the general partner of the limited partnership is the first Person.

"**Aggrieved Parties**" has the meaning given in Article 12, Section 12.1.

"**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.

"**Alternative Product Claim**" means any Claim of any Person, against or in respect of JTIM or any member of its Tobacco Company Group, excluding any part of any such Claim that constitutes a Tobacco Claim, that has been advanced (including, without limitation, in any outstanding or pending litigation), that could have been advanced or that could be advanced, and whether such Claim is on such Person's own account, on behalf of another Person, as a dependent of another

Person, or on behalf of a certified or proposed class, or made or advanced by a Government, agency, insurer, employer or otherwise, under or in connection with Applicable Law, or under any current or future statute to recover damages or any other remedy or costs in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Alternative Products, the use of or exposure (whether directly or indirectly) to Alternative Products or their emissions, the development of any disease related to the use of Alternative Products or any representation or omission in respect of Alternative Products, including any misrepresentations, breach of duty or fraud in respect thereof by any member of JTIM's Tobacco Company Group or its Representatives in Canada or, in the case of JTIM, anywhere else in the world, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place before or after the Effective Time.

"**Annual Amount**" has the meaning given in the definition of Reserved Amount.

"**Annual Contributions**" has the meaning given in Article 5, Section 5.6, and "**Annual Contribution**" means any one of them.

"**Annual Financial Statement**" has the meaning given in Article 10, Section 10.2.1(a).

"**Applicable Law**" means any law, statute, order, decree, judgment, rule, regulation, ordinance or other pronouncement having the effect of law, whether in Canada or any other country, or any domestic or foreign state, county, province, city or other political subdivision of any Government.

"**Arbitrator**" means the arbitrator who is appointed pursuant to Article 13, Section 13.4.2.

"**Bank**" has the meaning given in Article 5, Section 5.3.

"**Bankruptcy Action**" means, with respect to JTIM, where:

(a) An Order of a court of competent jurisdiction is entered adjudging JTIM bankrupt or insolvent, or subject to the CCAA or the BIA, or any other bankruptcy, insolvency or analogous laws;

(b) JTIM admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;

(c) JTIM makes an assignment in bankruptcy or makes any other assignment for the benefit of creditors, gives notice of intention to make a proposal or makes a proposal under the BIA, or any comparable law, or seeks relief under the CCAA, or any other bankruptcy, insolvency or analogous law of any relevant jurisdiction;

(d) A creditor delivers notice of its intention to enforce its security on JTIM's property pursuant to the BIA, or a creditor brings an application seeking, or the court or a creditor appoints, or JTIM consents to or acquiesces in, the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of JTIM's assets, or a creditor otherwise

exercises any of its rights or remedies under any of the PPSAs over all or any substantial portion of JTIM's assets;

(e) JTIM files a petition, application or otherwise commences any proceeding seeking any reorganization, arrangement, composition, or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar insolvency law affecting creditors' rights, or consents to, or acquiesces in, such proceedings; or

(f) JTIM files a petition, application or otherwise commences any proceeding seeking any reorganization, arrangement, composition, or readjustment, whether or not affecting creditors' rights, under any applicable corporate statute, or consents to, or acquiesces in, such proceedings.

"**BIA**" means the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.

"***Blais* Class Action**" means the class action commenced on November 20, 1998 by Conseil Québécois sur le tabac et la santé and Jean-Yves Blais against ITCAN, RBH and JTIM in the Superior Court of Quebec, District of Montreal, bearing Court File No. 500-06-000076-980.

"***Blais* Class Members**" means individuals who meet the criteria of the following certified class definition in the *Blais* Class Action:

All persons residing in Quebec who satisfy the following criteria:

(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 to or greater than 87,600 cigarettes).

For example, 12 pack/years equals:

20 cigarettes a day for 12 years (20 X 365 X 12 = 87,600) or

30 cigarettes a day for 8 years (30 X 365 X 8 = 87,600) or

10 cigarettes a day for 24 years (10 X 365 X 24 = 87,600);

(2) To have been diagnosed before March 12, 2012 with:

(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.

The group also includes the Heirs of the persons deceased after November 20, 1998 who satisfied the criteria mentioned herein.

"***Blais* Eligibility Criteria**" means the criteria set out in the certified class definition in the *Blais* Class Action which a person must meet to be eligible to receive a Compensation Payment as a Blais Class Member.

"***Blais* Judgment**" means the judgment rendered by the Honourable Justice Brian Riordan on May 27, 2015 as rectified on June 9, 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. 500-06-00076-980 (*Conseil québécois sur le tabac et la santé et Jean-Yves Blais* c. *Imperial Tobacco Ltée, Rothmans, Benson & Hedges Inc. et JTI-MacDonald Corp.*).

"**Breach**" has the meaning given in Article 12, Section 12.4.

"**Business Day**" means a day other than a Saturday, Sunday, or statutory or civic holiday in the Province of Ontario.

"**Business Plan**" has the meaning given in Article 10, Section 10.1.

"**Canada**" means His Majesty in right of Canada.

"**Canada Newco**" has the meaning given in Article 11, Section 11.1(h).

"**CapEx**" has the meaning given in Article 10, Section 10.1(b).

"**CapEx Thresholds**" has the meaning given in Article 11, Section 11.3.

"**Carry Amount**" has the meaning given in the definition of Reserved Amount.

"**Cash**" means cash, certificates of deposit, bank deposits, term deposits, guaranteed investment certificates, cheques, commercial paper, treasury bills and other cash equivalents.

"**Cash Management Bank**" means any Person that is providing cash management services to JTIM under the Cash Management System, as defined in the Initial Order.

"**Cash Management Bank Claim**" means the Claim of any Cash Management Bank in connection with the provision of cash management services to JTIM under the Cash Management System pursuant to the Initial Order.

"**Cash Security Deposits**" means, collectively, (i) in the case of Imperial, the cash and interest, if any, deposited by ITCAN as suretyship pursuant to the Order of the Quebec Court of Appeal dated October 27, 2015; and (ii) in the case of RBH, the cash and interest, if any, deposited by RBH as suretyship pursuant to the Order of the Quebec Court of Appeal dated October 27, 2015, and "**Cash Security Deposit**" means any of them.

"**CCAA**" means the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.

"**CCAA Charges**" means, collectively, the Administration Charge, Court-Appointed Mediator Charge, Sales and Excise Tax Charge and Directors' Charge, as each term is defined in the Initial Order, as amended and restated, or any subsequent order in the CCAA Proceeding.

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

"**CCAA Plan**", or "**Plan**", means the Court-Appointed Mediator's and Monitor's plan of compromise and arrangement pursuant to the CCAA concerning, affecting and involving JTIM, including all Schedules thereto.

"**CCAA Plan Administration Reserve**" means the Cash reserve to be established on the Plan Implementation Date prior to any distributions to Affected Creditors as authorized by the CCAA Court pursuant to the Sanction Order, in the amount of $25.0 million in respect of the CCAA Plan of each Tobacco Company (Imperial, RBH and JTIM), and to be paid out of the Upfront Contributions and deposited into the separate CCAA Plan Administration Reserve Account for each Tobacco Company for the purpose of paying the CCAA Plan Administration Reserve Costs for that Tobacco Company. The CCAA Plan Administrator shall hold the CCAA Plan Administration Reserve in trust for those Persons entitled to such funds pursuant to the CCAA Plan in respect of the CCAA Proceeding.

"**CCAA Plan Administration Reserve Account**" means a segregated interest-bearing trust account established by the CCAA Plan Administrator to hold the CCAA Plan Administration Reserve on behalf of the beneficiaries thereof.

"**CCAA Plan Administration Reserve Costs**" means Costs incurred and payments to be made on or after the Plan Implementation Date, including Costs incurred prior to the Plan Implementation Date which remain outstanding as of the Plan Implementation Date, in respect of:

(a) The Costs of the services which Deloitte (including its legal, financial, investment or other advisors) provides in connection with the performance of its duties as both the Monitor and the CCAA Plan Administrator under the CCAA Plan and in the CCAA Proceeding, including the fulfillment of its duties and responsibilities enumerated in Article 14, Section 14.4 herein; and

(b) The Costs of the services which the Court-Appointed Mediator (including his legal counsel and other consultants and advisors) may provide after the date of the Sanction Order, as requested by Deloitte acting as either the Monitor or the CCAA Plan Administrator, or by the CCAA Court, and approved by the CCAA Court.

"**CCAA Plan Administrators**" has the meaning given in Article 14, Section 14.1, and "**CCAA Plan Administrator**" means Deloitte in respect of JTIM.

"**CCAA Plan Administrators' Order**" means the order or orders of the CCAA Court appointing Deloitte to serve, as an officer of the CCAA Court, in the capacity of CCAA Plan Administrator of the CCAA Plan in respect of JTIM and, among other things, setting out the rights, powers and obligations of the CCAA Plan Administrator in connection with such appointment.

"**CCAA Plans**" means, collectively, the Court-Appointed Mediator's and Monitor's plans of compromise and arrangement pursuant to the CCAA concerning, affecting and involving each of Imperial, RBH and JTIM, including all Schedules to each 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 of Plan Completion**" has the meaning given in Article 19, Section 19.2(w).

"**Chapter 15 Proceedings**" means the foreign recognition proceeding of JTIM to be commenced pursuant to Chapter 15 of the US Bankruptcy Code.

"**Claimant Allocation**" has the meaning given in Article 16, Section 16.1.

"**Claimant Contractual Release**" means the release in the form attached to the CCAA Plan as Schedule "W" which the Claimants shall provide to the Released Parties that will fully, finally, irrevocably and unconditionally release and forever discharge the Released Parties of and from the Claimants' respective Released Claims, provided that such Claimant Contractual Release shall not release any of the Non-Released Claims.

"**Claimants**" means the Provinces and Territories, Quebec Class Action Plaintiffs, Pan-Canadian Claimants, *Knight* Class Action Plaintiffs and Tobacco Producers, and "**Claimant**" means any one of them.

"**Claimants' Representatives**" means:

(a) Counsel for the Provinces and Territories identified on the Common Service List;

(b) Quebec Class Counsel;

(c) PCC Representative Counsel;

(d) Knight Class Counsel; and

(e) Counsel for the Tobacco Producers.

"**Claims**" means any and all manner of requests, demands, complaints, claims (including claims for contribution or indemnity), rights, 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, whether asserted or unasserted, 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 or civil 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, including acting as agent for the PCCs, 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.

"**Claims Package**" means the documents attached to the Claims Procedure Order as Schedule "A", including the Instruction Letter and the Miscellaneous Claimant Proof of Claim form which are attached as Schedule "B" to the CCAA Plan.

"**Claims Procedure**" means the claims procedure contemplated by the Claims Procedure Order for (i) disputing the value and number of votes attributed to the Affected Claims of the Claimants, and (ii) identifying Miscellaneous Claims for the purpose of voting on the CCAA Plan.

"**Claims Procedure Order**" means the order of the CCAA Court (including all schedules and appendices thereto) made in the CCAA Proceeding establishing and approving the Claims Procedure in respect of JTIM, and as may be further amended, restated or varied from time to time.

"**Closing Judgment**" means the judgment terminating the *Blais* Class Action and the *Létourneau* Class Action which will be requested on a motion brought by the Quebec Class Counsel after all Eligible Blais Class Members have been paid their Compensation Payments.

"**Collateral Agent**" means the collateral agent and hypothecary representative which shall act on behalf and for the benefit of the Claimants under and in relation to the Contribution Security. The Collateral Agent will be engaged prior to the Effective Time.

"**Common Service List**" means the service list posted on the Monitor's website, as may be amended from time to time.

"**Compensation Payment**" means the amount determined by the Claims Administrator to be payable to an Eligible *Blais* Class Member under the Quebec Administration Plan in satisfaction of their QCAP Claim.

"**Contribution**" means, in respect of a Tobacco Company, each of its Upfront Contribution and Annual Contributions, excluding any applicable Reserved Amounts retained in the Supplemental Trust Account. A Contribution shall also include any Reserved Amount (including any income therefrom) following release of such Reserved Amount (or income therefrom) from the Supplemental Trust Account to the Global Settlement Trust Account, but exclude any Reserved Amount released from the Supplemental Trust Account to a Tax Authority or to a Tobacco Company.

"**Contribution Period**" has the meaning given in Article 5, Section 5.8.

"**Contribution Security**" has the meaning given in Article 5, Section 5.13.

"**Contribution Security Agreement**" has the meaning given in Article 5, Section 5.13 and is attached to the CCAA Plan as Schedule "E".

"**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.

"**Cost of Health Care Benefits**" means the sum of (a) the present value of the total expenditure by a Province or Territory 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 a Province or Territory 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.

"**Cost of Health Care Benefits Percentages**" has the meaning given in Section 4 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Costs**" has the meaning given in Article 14, Section 14.9.

"**Counsel for the Tobacco Producers**" means the law practice of Strosberg Sasso Sutts LLP.

"**Counsel for the Tobacco Producers' Fee**" means the amount to be determined and approved by the CCAA Court that will be payable from the Tobacco Producers Settlement Amount to the Counsel for the Tobacco Producers in respect of their fees, disbursements and costs as Counsel for the Tobacco Producers, and any applicable Sales and Excise Taxes payable thereon. The retainer agreement respecting fees and disbursements between the Counsel for the Tobacco Producers and the representative plaintiffs, as well as the Counsel for the Tobacco Producers' Fee, are subject to the approval of the CCAA Court.

"**Court-Appointed Mediator**" means the Honourable Warren K. Winkler, K.C., in his capacity as the Court-appointed mediator in the CCAA Proceedings of the Tobacco Companies.

"**Court-Appointed Mediator Charge**" means the charge over the Property for the benefit of the Court-Appointed Mediator created by paragraph 43 of the Initial Order, and having the priority provided in paragraphs 46 and 48 of such Order.

"**CRA**" means the Canada Revenue Agency.

"**CRO**" means Mr. William E. Aziz and BlueTree Advisors Inc.

"**Cy-près Foundation**" has the meaning given in Article 9, Section 9.1.

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

"**Cy-près Trust Account**" has the meaning given in Article 9, Section 9.2.

"**Deeds of Hypothec**" has the meaning given in Section 1.2 of the Contribution Security Agreement which is Schedule "E" to the CCAA Plan, and includes the Deed of Immoveable Hypothec and the Deed of Moveable Hypothec.

"**Definitive Documents**" means the CCAA Plan, the Sanction Order, the Contribution Security Agreement, the Deeds of Hypothec, JTIM Subordination Agreement, the documents required to implement and give effect to the PCC Compensation Plan and the Cy-près Foundation, and all other agreements, documents and orders contemplated by, or necessary to implement the transactions contemplated by, any of the foregoing.

"**Deliberation Meetings**" has the meaning given in Section 14(b) of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Deliberation Phase**" has the meaning given in Section 14(b) of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Deliberation Phase Secretariat**" has the meaning given in Section 25 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Deloitte**" means Deloitte Restructuring Inc.

"**Director**" means any Person who, as at the Effective Time, is a former or present director or officer of JTIM or any other Person of a similar position or who by Applicable Law is deemed to be or is treated similarly to a director or officer of JTIM or who currently manages or supervises the management of the business and affairs of JTIM or did so in the past.

"**Directors' Charge**" means the charge over the Property for the benefit of the Directors created by paragraph 28 of the Initial Order, and having the priority provided in paragraphs 46 and 48 of such Order.

"**Disposition**" means, with respect to any Person, the sale, lease, license, transfer, assignment or other disposition of, or the expropriation, condemnation, destruction or other loss of, all or any portion of its business, assets, rights, revenues or property, real, personal or mixed, tangible or intangible, whether in one transaction or a series of transactions, and "**Dispose**" shall have a correlative meaning thereto.

"**Dispute**" has the meaning given in Article 13, Section 13.1.

"**Dispute Resolution Procedure**" has the meaning given in Article 13, Section 13.1.

"**Distribution Record Date**" means the date that is seven Business Days prior to the date that any distribution is made under the CCAA Plan.

"**Effective Time**" means such time on the Plan Implementation Date as the Court-Appointed Mediator and the Monitor may determine and designate.

"**Eligible *Blais* Class Members**" means the Tobacco-Victim Claimants and Succession Claimants whom the Claims Administrator has determined meet all the *Blais* Eligibility Criteria such that

their Tobacco-Victim Claims and Succession Claims are approved to receive a Compensation Payment in accordance with the terms of the Quebec Administration Plan, and "**Eligible *Blais* Class Member**" means any one of them.

"**Eligible Pan-Canadian Claimants**" means the Individuals whom the Claims Administrator has determined meet all the PCC Eligibility Criteria such that their PCC Claims are approved for an Individual Payment in accordance with the terms of the PCC Compensation Plan, and "**Eligible Pan-Canadian Claimant**" means any one of them.

"**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 and the Quebec Administration Plan, "Emphysema" includes COPD (GOLD Grade III or IV).

"**Employee Priority Claim**" means any Claim for (a) accrued and unpaid wages and vacation pay owing to an employee of JTIM whose employment was terminated between the Filing Date and the Plan Implementation Date; and (b) unpaid amounts provided for in sections 6(5)(a) and 6(6)(a) of the CCAA.

"**Encumbrance**" means a mortgage, floating charge, deed of trust, lien, pledge, hypothecation, assignment, security interest, right of offset or any other encumbrance, charge, or transfer of, on or affecting the property or assets of any Person or any interest therein, including any conditional sale contract or other title retention agreement or arrangement of any kind or character intended to create a security interest in substance, regardless of whether the Person creating the interest retains the equity of redemption, any financing lease having substantially the same economic effect as any of the foregoing, any rights of way, any easements and any construction, builder's, mechanic's, materialmen's or other similar liens, encumbrances and any trust imposed or deemed to exist by law.

"**Epiq**" means Epiq Class Actions Services Canada, Inc.

"**Event of Default**" has the meaning given in Article 12, Section 12.2.

"**Extended Cure Period**" has the meaning given in Article 12, Section 12.3(c).

"**EY**" means Ernst & Young Inc.

"**Filing Date**" means March 8, 2019.

"**Final Information Request**" has the meaning given in Article 10, Section 10.5(c).

"**Financially Viable**", or "**Financial Viability**", means the ability of JTIM to meet its obligations to creditors in the Ordinary Course of Business as they come due.

"**First Notice**" means the initial notice which the Claims Administrator shall publish regarding the PCC Compensation Plan.

"**First Notice Date**" means the date on which the Claims Administrator publishes the First Notice.

"**FTI**" means FTI Consulting Canada Inc.

"**Foreign Representative**" means, with respect to the Chapter 15 Proceedings, BlueTree Advisors Inc., in its capacity as the foreign representative for JTIM within the meaning of section 101(24) of the US Bankruptcy Code.

"**GAAS**" means Generally Accepted Auditing Standards.

"**Global Settlement Amount**" has the meaning given in Article 5, Section 5.1.

"**Global Settlement Trust Account**" has the meaning given in Article 5, Section 5.3.

"**Government**" means any government, including the Provinces, Territories and Canada, and any person, body or entity within such government having or purporting to have jurisdiction on behalf of any nation, province, territory, municipality or state or any other geographic or political subdivision of any of them.

"**Government Priority Claim**" means any Claim of any Government against JTIM in respect of amounts that are outstanding, if any, provided for in section 6(3) of the CCAA.

"**Governmental Authority**" means any government (including the Provinces, Territories and Canada), regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"**Harrison Report**" means the report of Dr. Glenn Harrison dated March 14, 2024 entitled "The Provincial and Territorial Present Value of Smoking Attributable Expenditures" that is attached to the CCAA Plan as Schedule "J".

"**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.

"**Health Care Benefits**" means "health care benefits", "health services" or "health care services" as such terms, as applicable, are defined in each of the statutes enumerated in the definition of "HCCR Legislation".

"**Hypopharynx**" means the laryngeal part of the pharynx extending from the hyoid bone to the lower margin of the cricoid cartilage.

"**Impacted Claimants**" means, at any given time during the Contribution Period, all Claimants, other than the Provinces and Territories, who have not yet been paid their full share of the Global Settlement Amount, and "**Impacted Claimant**" means any one of them.

"**Imperial**" means, collectively, ITCAN and ITCO.

"**Imperial's Chapter 15 Proceedings**" means the foreign recognition proceedings of ITCAN pursuant to Chapter 15 of the US Bankruptcy Code pending before the US Bankruptcy Court (Case No. 19-10771(SCC)).

"**Indebtedness**" means for JTIM or any Material Subsidiary, at a particular time, the sum (without duplication) at such time of all:

(a) Indebtedness or liability of JTIM (including amounts for borrowed money and mezzanine debt and preferred equity that would be considered to be debt under relevant generally accepted accounting principles);

(b) Obligations evidenced by bonds, debentures, notes or other similar instruments;

(c) Obligations for the deferred purchase price of property or services (including trade obligations);

(d) Amounts drawn or available to be drawn under letters of credit or under guaranties or similar obligations;

(e) Face amounts outstanding under acceptance or letter of credit facilities;

(f) Guaranties, endorsements (other than for collection or deposit in the Ordinary Course of Business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person, or otherwise to assure a creditor against loss; and

(g) Obligations secured by any Encumbrances, whether or not the obligations have been assumed.

"**Indemnified Parties**" has the meaning given in Article 18, Section 18.1.8.

"**Individual Claimants**" means all individuals who have asserted or may be entitled to assert a Tobacco Claim, which individuals are either Pan-Canadian Claimants or Quebec Class Action Plaintiffs and are represented in this CCAA Proceeding by either the PCC Representative Counsel or the Quebec Class Counsel respectively.

"**Individual Payment**" means the amount determined by the Claims Administrator to be payable to an Eligible Pan-Canadian Claimant under the PCC Compensation Plan.

"**Individuals**" means all individuals residing in a Province or Territory of Canada, and "**Individual**" means any one of them.

"**Information Request**" has the meaning given in Article 10, Section 10.5.

"**Initial Order**" means the initial order commencing the CCAA Proceedings of JTIM, as amended and restated from time to time.

"**Instruction Letter**" means the letter included in the Claims Package which is attached to the CCAA Plan as Schedule "B".

"**Insured Person**" means (a) a Person, including a deceased Person, for whom Health Care Benefits have been provided by a Province or Territory directly or through one or more agents or other intermediate bodies, or (b) a Person for whom Health Care Benefits could reasonably be expected will be provided by a Province or Territory directly or through one or more agents or other intermediate bodies.

"Intercompany Claim" means any Claim, other than an Intercompany Services Claim, that may be asserted against JTIM by or on behalf of any member of JTIM's Tobacco Company Group and, for greater certainty, includes all arrears of royalty and license fees as well as principal and interest due on loans made by any member of JTIM's Tobacco Company Group to JTIM.

"**Intercompany Services**" has the meaning given in Article 5, Section 5.15.

"**Intercompany Services Claim**" means any Claim that may be asserted by or on behalf of JTIM's Parent or the relevant Affiliates within its Tobacco Company Group in accordance with Article 5, Section 5.15 in respect of the provision of Intercompany Services to JTIM.

"**Intercompany Transaction**" means any transaction in the Ordinary Course of Business between JTIM and any member(s) of its Tobacco Company Group to buy and sell goods and/or services, licences, intellectual property and/or allocate, collect and pay any costs, expenses and other amounts from and to the members of its Tobacco Company Group, including in relation to:

(a) Head office, shared or supplied services and operational support (including information technology and marketing services);

(b) Finished, unfinished (including tobacco leaf purchases) and semi-finished goods and materials;

(c) Manufacturing of goods;

(d) Distribution and sale of goods;

(e) Equipment purchases;

(f) Personnel, administrative, technical and professional services;

(g) Royalties and fees in respect of trademark licenses;

(h) Treasury and debt; and

(i) JTIM's central Cash Management System and all related transactions and intercompany funding policies and procedures between JTIM and its Tobacco Company Group,

collectively, "**Intercompany Transactions**".

"**Interface Meetings**" has the meaning given in Section 14(a) of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Interface Phase**" has the meaning given in Section 14(a) of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Interface Phase Secretariat**" has the meaning given in Section 24 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**ITA**" means the *Income Tax Act* (Canada), as amended from time to time.

"**ITCAN**" means Imperial Tobacco Canada Limited.

"**ITCAN Subsidiaries**" means Imperial Tobacco Services Inc., Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., Imperial Brands Ltd., 2004969 Ontario Inc., Construction Romir Inc., Genstar Corporation, Imasco Holdings Group, Inc., ITL (USA) Limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., and Liggett & Myers Tobacco Company of Canada Limited.

"**ITCO**" means Imperial Tobacco Company Limited.

"**Jha Report**" means the report of Dr. Prabhat Jha dated March 24, 2021 entitled "Analyses to quantify smoking-attributable conditions that could be compensable and quantification of these conditions for each province and over time from 2003-2019", that is attached to the CCAA Plan as Schedule "L".

"**JTIM**" means JTI-Macdonald Corp.

"**JTIM Subordination Agreement**" has the meaning given in Article 5, Section 5.14.

"**JTIM TM**" means JTI-Macdonald TM Corp.

"***Knight* Claim**" means any Claim that has been advanced, could have been advanced or could be advanced in the following class action, whether before or after the Effective Time: *Kenneth Knight* v. *Imperial Tobacco Canada Limited* (Supreme Court of British Columbia, Court File No. L031300), including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"***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.

"***Knight* Class Action Plaintiffs Settlement Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable to the *Knight* Class Action Plaintiffs as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein.

"***Knight* Class Counsel**" means Klein Lawyers LLP.

"***Knight* Class Counsel Fee**" means the amount to be determined and approved by the CCAA Court that will be payable from the *Knight* Class Action Plaintiffs Settlement Amount to the *Knight* Class Counsel in respect of their fees, disbursements and costs as *Knight* Class Counsel and any applicable Sales and Excise Taxes payable thereon. The retainer agreement respecting fees and disbursements between the *Knight* Class Counsel and the representative plaintiffs, as well as the *Knight* Class Counsel Fee, are subject to the approval of the CCAA Court.

"**Larynx**" means the upper part of the respiratory passage that is bounded above by the glottis and is continuous below with the trachea.

"**Legal Representative**" means an Individual who establishes through the submission to the Claims Administrator of one of the documents listed in the Claim Form for the Legal Representative of a PCC-Claimant that they have the right and are authorized to make a Submitted PCC-Claim on behalf of the PCC-Claimant.

"***Létourneau* Class Action**" means the class action commenced on September 30, 1998 by Cecilia Létourneau against ITCAN, RBH and JTIM in the Superior Court of Quebec, District of Montreal, bearing Court File No. 500-06-000070-983.

"***Létourneau* Class Members**" means Persons who meet the criteria of the following certified class definition in the *Létourneau* Class Action:

> 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:
>
> (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.

"***Létourneau* Judgment**" means the judgment rendered by the Honourable Justice Brian Riordan on May 27, 2015 as rectified on June 9, 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.*).

"**Lung Cancer**" has the meaning given in Article 8, Section 8.1(d)(i).

"**Material Adverse Effect**" means an event or condition that caused or would reasonably be expected to cause a material adverse effect on:

(a) The assets and liabilities of JTIM considered as a whole or the use or operation thereof;

(b) The business, profits, operations or condition (financial or otherwise) of JTIM;

(c) The ability of JTIM to perform its obligations in any material respect under any of the Definitive Documents to which it is a party or by which it is bound; or

(d) The Contribution Security.

"**Material Subsidiary**" means, in relation to JTIM:

(a) Any of its Subsidiaries that holds 5% or more of the consolidated assets of JTIM or contributes 5% or more of the consolidated revenues or net income of JTIM, or

(b) Any of its Subsidiaries that are material to the conduct of JTIM's business and operations,

provided that, without limiting the generality of Subsections (a) and (b), it includes JTI-Macdonald TM Corp.

"**MD&A**" has the meaning given in Article 10, Section 10.2.2.

"**Meeting**" means the meeting of Affected Creditors to be called and held pursuant to the Meeting Order for the purpose of considering and voting on the CCAA Plan, and includes any adjournment, extension, postponement or other rescheduling of such meeting.

"**Meeting Date**" means the date fixed for the Meeting pursuant to the Meeting Order subject to any adjournment or postponement or further order of the CCAA Court.

"**Meeting Order**" means the order of the CCAA Court directing the calling and holding of the Meeting of Affected Creditors to consider and vote on the CCAA Plan, as such order may be amended, restated or varied from time to time.

"**Metric**" has the meaning given in Article 5, Section 5.6.

"**Miscellaneous Claimant Proof of Claim**" means the proof of claim form included as part of the Claims Package which is attached to the CCAA Plan as Schedule "B".

"**Miscellaneous Claims**" means, collectively:

(a) any Pre-Implementation Miscellaneous Claim;

(b) any Section 5.1(2) Claim, in respect of which the Person holding such Claim, or an authorized Person on their behalf, has not executed and delivered, or will not execute and deliver, a Claimant Contractual Release;

(c) any Section 19(2) Claim in regard to which the compromise or arrangement in respect of JTIM explicitly provides for the Section 19(2) Claim's compromise, and the Person holding such Claim, or an authorized Person on their behalf, has not voted, or will not vote, for the acceptance of the compromise or arrangement, or otherwise execute and deliver a Claimant Contractual Release; and

(d) any other Claim in respect of JTIM (excluding any Unaffected Claim) which is received by the Monitor and asserted against any Released Party based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter, or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) by a Person who asserts that such Claim will not be or, if asserted after the Effective Time, has not been compromised and fully, finally and irrevocably and unconditionally released and forever discharged, and permanently barred and enjoined pursuant to the terms of the CCAA Plan, the Claims Procedure Order, the Sanction Order or any other Order made in the CCAA Proceeding, and in accordance with Article 18, Section 18.2.3 of the CCAA Plan, the CCAA Court grants leave for such Person to bring such Claim for determination on its merits by the CCAA Court.

The existence of any such Miscellaneous Claims is not admitted but is expressly denied by JTIM, its Tobacco Company Group and the Claimants. For greater certainty, no Claimant or Individual Claimant may assert a Miscellaneous Claim.

"**Miscellaneous Claims Amount**" has the meaning given in Article 18, Section 18.2.1.

"**Miscellaneous Claims Bar Date**" means 5:00 pm (Eastern Time) on December 5, 2024.

"**Miscellaneous Claims Fund**" has the meaning given in Article 18, Section 18.2.1.

"**Miscellaneous Claims Fund Period**" has the meaning given in Article 18, Section 18.2.1.

"**Miscellaneous Claims Procedure**" means the procedure pursuant to which a Putative Miscellaneous Claimant can assert a Miscellaneous Claim as established in Article 18, Section 18.2 of the CCAA Plan.

"**Monetary Cure Period**" has the meaning given in Article 12, Section 12.3(b).

"**Monitor**" means Deloitte Restructuring Inc. in its capacity as the Court-appointed monitor appointed pursuant to the Initial Order in the CCAA Proceeding.

"**Monitors**" means, collectively, the Court-appointed monitors of the Tobacco Companies in the CCAA Proceedings.

"**NDA**" means a confidentiality, non-disclosure and non-use agreement between JTIM and another Person in the form already agreed to by the Parties.

"**Negative Notice Bar Date**" means 5:00 p.m. (Eastern Time) on the date that is twenty-one (21) days following the Negative Notice Issuance Date.

"**Negative Notice Claim**" means the value (for voting purposes only) of the Affected Claims of each Claimant and the number of votes associated therewith as set forth in a Statement of Negative Notice Claim to be sent to each Claimant in accordance with the following:

Claimant	Number of Votes for Voting Purposes	Value of Claim for Voting Purposes
Quebec Class Action Plaintiffs (QCAPs)	99,958	$13,706,891,279
Pan-Canadian Claimants (PCCs)	186,003	$5,041,088,110
Tobacco Producers	3,930	$29,043,876
British Columbia	1	$136,681,344,490
Alberta	1	$119,266,303,168
Saskatchewan	1	$27,189,868,453
Manitoba	1	$42,741,373,788
Ontario	1	$271,795,731,959
Quebec	1	$253,365,332,712
New Brunswick	1	$22,778,964,723
Nova Scotia	1	$29,979,033,060
Prince Edward Island	1	$6,238,547,995
Newfoundland and Labrador	1	$20,279,767,449
Yukon	1	$3,752,573,987
Northwest Territories	1	$6,865,708,611
Nunavut	1	$3,584,449,605

"**Negative Notice Claims Package**" means the Claimant's Statement of Negative Notice Claim and the form of Notice of Dispute of Negative Notice Claim to be used in the event that the Claimant wishes to raise a dispute in accordance with paragraph 8 of the Claims Procedure Order, which are attached as Schedule "A" to the CCAA Plan.

"**Negative Notice Issuance Date**" means the date that the Statement of Negative Notice Claim is sent to a Claimant.

"**Net After-Tax Income**" is as described in Article 5, Section 5.6.

"**Non-Monetary Cure Period**" has the meaning given in Article 12, Section 12.3(c).

"**Non-Released Claims**" means all Claims that are not Released Claims and, for greater certainty, includes all Unaffected Claims.

"**Normal Reassessment Period**" has the meaning ascribed by subsection 152(3.1) of the ITA (and any analogous provisions of provincial or territorial law), taking into account any applicable extension under the *Taxation Act* (Quebec) resulting from a reassessment made by the CRA or another Provincial Tax Authority, except that in the case of a Tax Refund Cash Payment, the extended period provided by subparagraph 152(4)(b)(i) of the ITA (and any analogous provisions of provincial or territorial law) will apply, and where the CCAA Plan Administrators and JTIM have agreed to file a waiver, the extended period provided by subparagraph 152(4)(a)(ii) of the ITA (or the relevant analogous provisions of provincial or territorial law) shall apply.

"**Notice of Breach**" has the meaning given in Article 13, Section 13.3.

"**Notice of Default**" has the meaning given in Article 12, Section 12.3.

"**Notice of Dispute of Negative Notice Claim**" means the notice, substantially in the form included in the Negative Notice Claims Package and attached to the CCAA Plan as Schedule "A", which may be delivered to the Monitor by a Claimant disputing a Statement of Negative Notice Claim and providing reasons for such dispute.

"**Omnibus Notice**" means the notice which the Monitor shall cause to be published regarding the Claims Procedure Order and the Meeting, in accordance with the Omnibus Notice Program, a copy of which notice is attached as Schedule "C" to the Claims Procedure Order and as Schedule "C" to the CCAA Plan.

"**Omnibus Notice Program**" means the plan to publish comprehensive legal notice regarding the Claims Procedure Order and the Meeting to Persons, including Putative Miscellaneous Claimants, situated in all the Provinces and Territories, as set forth on the document attached as Schedule "D" to the Claims Procedure Order and as Schedule "D" to the CCAA Plan.

"**Omnibus Sanction Hearing Notice**" means the notice which the Monitor shall cause to be published regarding the Sanction Hearing in accordance with the Omnibus Sanction Hearing Notice Program.

"**Omnibus Sanction Hearing Notice Program**" means the plan to publish comprehensive legal notice regarding the Sanction Hearing to Persons, including Putative Miscellaneous Claimants, situated in all the Provinces and Territories.

"**Ordinary Course Divestitures**" has the meaning given in Article 11, Section 11.4.

"**Ordinary Course Divestitures Thresholds**" has the meaning given in Article 11, Section 11.4.

"**Ordinary Course of Business**" means, in relation to JTIM or a member of its Tobacco Company Group, the ordinary course of day-to-day business activities and operations of that company consistent with past practices, as such practices may change from time to time in the tobacco industry in response to regulatory, market or industry developments or changes, and materially similar in nature and magnitude to actions customarily taken in the normal course of day-to-day operations.

"**Ordinary Course Operational Activities**" has the meaning given in Article 11, Section 11.2.

"**Oropharynx**" means the part of the pharynx that is below the soft palate and above the epiglottis and is continuous with the mouth. It includes the back third of the tongue, the soft palate, the side and back walls of the throat, and the tonsils.

"**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, 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 Claim**" means any Claim of any Pan-Canadian Claimant that has been made or may in the future be asserted or made in whole or in part against or in respect of the Released Parties, or any one of them (either individually or with any other Person), that has been advanced, could have been advanced or could be advanced, whether on such Pan-Canadian Claimant's own account, or on their behalf, or on behalf of a certified or proposed class, to recover damages or any other remedy in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, including any representations or omissions in respect thereof, the historical or ongoing use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions and the development of any disease or condition as a result thereof, whether existing or hereafter arising, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) including, all Claims that have been advanced, could have been advanced or could be advanced in the following actions commenced by Individuals under provincial class proceedings legislation and actions commenced by Individuals, or in any other similar proceedings:

(a) *Barbara Bourassa* v. *Imperial Tobacco Canada Limited et al.* (Supreme Court of British Columbia, Court File No. 10-2780 and Court File No. 14-4722);

(b) *Roderick Dennis McDermid* v. *Imperial Tobacco Canada Limited et al.* (Supreme Court of British Columbia, Court File No. 10-2769);

(c) *Linda Dorion* v. *Canadian Tobacco Manufacturers' Council et al*. (Alberta Court of Queen's Bench, Court File No. 0901-08964);

(d) *Thelma Adams* v. *Canadian Tobacco Manufacturers' Council et al.* (Saskatchewan Court of Queen's Bench, Court File No. 916 of 2009);

(e) *Deborah Kunta* v. *Canadian Tobacco Manufacturers' Council et al.* (Manitoba Court of Queen's Bench, Court File No. CI09-01-61479);

(f) *Suzanne Jacklin* v. *Canadian Tobacco Manufacturers' Council* (Ontario Superior Court of Justice, Court File No. 53794/12);

(g) *Ben Semple* v. *Canadian Tobacco Manufacturers' Council et al.* (Supreme Court of Nova Scotia, Court File No. 312869);

(h) *Victor Todd Sparkes* v. *Imperial Tobacco Canada Limited* (Newfoundland and Labrador Supreme Court - Trial Division, Court File No. 200401T2716 CP);

(i) *Peter Stright* v. *Imperial Tobacco Canada Limited* (Supreme Court of Nova Scotia, Court File No. 177663);

(j) *Ljubisa Spasic as estate trustee of Mirjana Spasic* v. *Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.* (Ontario Superior Court of Justice, Court File No. C17773/97);

(k) *Ljubisa Spasic as estate trustee of Mirjana Spasic* v. *B.A.T. Industries P.L.C.* (Ontario Superior Court of Justice, Court File No. C18187/97);

(l) *Ragoonanan* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 00-CV-183165-CP00);

(m) *Scott Landry* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 1442/03);

(n) *Joseph Battaglia* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 21513/97);

(o) *Roland Bergeron* v. *Imperial Tobacco Canada Limited* (Quebec Superior Court, Court File No. 750-32-700014-163);

(p) *Paradis, in personal capacity and on behalf of estate of Lorraine Trepanier* v. *Rothmans, Benson & Hedges Inc.* (Quebec Small Claims Court);

(q) *Couture* v. *Rothmans, Benson & Hedges Inc.* (Quebec Superior Court); and

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"PCC Claim Package" means all of the documents that a PCC-Claimant or a PCC-Claimant's Legal Representative, as applicable, is required to complete and submit to the Claims Administrator including the Claim Form for PCC-Claimant, Claim Form for the Legal Representative of a PCC-Claimant, Physician Form (only if a pathology report in respect of Lung Cancer or Throat Cancer, or a spirometry report in respect of Emphysema/COPD (GOLD Grade III or IV), is not available), and all medical and other documents requested in the Claim Forms and the Physician Form. The aforesaid forms are Appendices "C", "D" and "E" to the PCC Compensation Plan which is attached as Schedule "S" to the CCAA Plan.

"**PCC-Claimants**" means the Pan-Canadian Claimants who are all Individuals resident in a Province or Territory of Canada, excluding the Quebec Class Action Plaintiffs in relation to QCAP Claims but including the Pan-Canadian Claimants' respective heirs, successors, assigns and representatives, who assert a PCC Claim by submitting a PCC Claim Package to the Claims

Administrator pursuant to the PCC Compensation Plan, and "**PCC-Claimant**" means any one of them.

"**PCC Claims Application Deadline**" means the date twenty-four months after the First Notice Date by which all PCC-Claimants are required to submit their completed PCC Claim Packages to the Claims Administrator. The PCC Claims Application Deadline may be extended by the CCAA Court if it is deemed necessary and expedient to do so as the implementation of the PCC Compensation Plan unfolds.

"**PCC Claims Period**" has the meaning given in Article 8, Section 8.1(d).

"**PCC Compensable Diseases**" has the meaning given in Article 8, Section 8.1(d)(iii).

"**PCC Compensation Plan**" has the meaning given in Article 8, Section 8.1 and is attached as Schedule "S".

"**PCC Compensation Plan Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable into the PCC Trust Account in respect of compensation for Eligible Pan-Canadian Claimants as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein.

"**PCC Compensation Plan Reserve**" means the Cash reserve to be established on the Plan Implementation Date prior to any distributions to Affected Creditors as authorized by the CCAA Court pursuant to the Sanction Order, in the amount of $5.0 million, and to be paid out of the total Upfront Contributions from the Tobacco Companies and deposited into the PCC Compensation Plan Reserve Account for the purpose of paying the PCC Compensation Plan Reserve Costs. The CCAA Plan Administrators for Imperial, RBH and JTIM shall hold the PCC Compensation Plan Reserve in trust for those Persons entitled to such funds pursuant to the CCAA Plan.

"**PCC Compensation Plan Reserve Account**" means a segregated interest-bearing trust account established by the CCAA Plan Administrators to hold the PCC Compensation Plan Reserve on behalf of the beneficiaries thereof.

"**PCC Compensation Plan Reserve Costs**" means Costs incurred and payments to be made on or after the Plan Implementation Date, including Costs incurred prior to the Plan Implementation Date which remain outstanding as of the Plan Implementation Date, in respect of:

(a) The Costs of the services which the Claims Administrator (including its advisors) provides in relation to the PCC Compensation Plan;

(b) The Costs of the services which the Administrative Coordinator (including his advisors) provides in connection with the performance of his duties under the CCAA Plan; and

(c) The Costs of the services which the PCC Representative Counsel (including their advisors) provide in connection with the performance of their duties under the CCAA Plan and in the CCAA Proceeding.

"**PCC Eligibility Criteria**" has the meaning given in Article 8, Section 8.1.

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

"**PCC Trust Account**" has the meaning given in Article 8, Section 8.3.

"**Pending Litigation**" has the meaning given in Article 18, Section 18.3.1.

"**Permitted Encumbrance**" in regard to JTIM or any Material Subsidiary means:

(a) Encumbrances in favour of JTIM or any Material Subsidiary existing on the date of the Contribution Security Agreement;

(b) Subject to the covenants set forth in Article 11, Section 11.1(g) and Article 11, Section 11.1(k) herein, Encumbrances on property, or on capital stock or Indebtedness, of a Person existing at the time such Person is merged with or into, amalgamated with, or consolidated with JTIM or any Material Subsidiary, provided that such Encumbrances were in existence prior to the contemplation of such merger, amalgamation or consolidation and do not extend to any assets other than those of the Person merged into, amalgamated with, or consolidated with JTIM or any Material Subsidiary;

(c) Encumbrances on property (including capital stock) existing at the time of acquisition of the property by JTIM or any Material Subsidiary, provided that such Encumbrances were in existence prior to, and not incurred in contemplation of, such acquisition;

(d) Encumbrances to secure the performance of bids, tenders, leases, statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the Ordinary Course of Business;

(e) Encumbrances existing on the Plan Implementation Date;

(f) Encumbrances for Taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, provided that any reserve or other appropriate provision as is required in conformity with generally accepted accounting principles has been established therefor;

(g) Encumbrances imposed by law, such as carriers', warehousemen's, landlord's, construction and mechanics' liens, in each case incurred in the Ordinary Course of Business;

(h) Survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate constitute a Material Adverse Effect on the value of such property or materially impair their use in the operation of the business of such Person;

(i) Encumbrances created for the benefit of or to secure the obligations created in the Definitive Documents; and

(j) Encumbrances incurred in the Ordinary Course of Business of JTIM or any Material Subsidiary with respect to obligations that do not cause a Material Adverse Effect.

"**Permitted Transfers**" has the meaning given in Article 11, Section 11.1(h).

"**Person**" means an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated association, a Government, or any other group, entity or body.

"**Plan Implementation Conditions**" has the meaning given in Article 19, Section 19.3.

"**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 Plan, the Sanction Order and the other Definitive Documents are to be implemented, as evidenced by the Monitor's Plan Implementation Date Certificate to be delivered to JTIM and filed with the CCAA Court.

"**Plan Implementation Date Certificate**" has the meaning given in Article 19, Section 19.4.

"**PPSAs**" means, collectively, *Personal Property Security Act*, RSBC 1996, c. 359, *Personal Property Security Act*, RSA 2000, c. P-7, *The Personal Property Security Act, 1993*, SS 1993, c. P-6.2, *The Personal Property Security Act*, RSM 1987, c. P35, *Personal Property Security Act*, RSO 1990, c. P.10, *Personal Property Security Act*, SNB 1993, c. P-7.1, *Personal Property Security Act*, SNS 1995-96, c. 13, *Personal Property Security Act*, RSPEI 1988, c. P-3.1, *Personal Property Security Act*, SNL 1998, c. P-7.1, *Personal Property Security Act*, RSY 2002, c. 169, *Personal Property Security Act*, SNWT (Nu) 1994, c. 8, as amended, and the relevant provisions of the Civil Code of Quebec, CQLR c. CCQ-1991.

"**Pre-Implementation Miscellaneous Claim**" means an Affected Claim by a Person who is not an Individual Claimant and which Affected Claim is not a: (a) Provincial HCCR Claim, (b) Territorial HCCR Claim, (c) QCAP Claim, (d) PCC Claim, (e) Tobacco Producers Claim, or (f) *Knight* Claim.

"**Property**" means all current and future assets, undertakings and properties of JTIM of every nature and kind whatsoever, and wherever situate, including all Cash and other proceeds thereof.

"**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**"), and "**Province**" means any one of them.

"**Provinces and Territories Settlement Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable to the Provinces and Territories to settle the Provincial HCCR Claims and Territorial HCCR Claims, as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein.

"**Provincial and Territorial Liaison Committee**", or "**PTLC**", means the committee that shall be established by the Provinces and Territories in accordance with the PTLC Terms set out in Schedule "AA".

"**Provincial and Territorial Liaison Committee Terms**", or "**PTLC Terms**", are attached to the CCAA Plan as Schedule "AA".

"**Provincial HCCR Claim**" means any Claim that has been advanced, could have been advanced or could be advanced in any of the following actions or in any other similar proceedings, whether before or after the Effective Time and whether under the HCCR Legislation or otherwise:

(a) *Her Majesty the Queen in right of British Columbia* v. *Imperial Tobacco Canada Limited* (Supreme Court of British Columbia, Court File No. S010421);

(b) *Her Majesty in right of Alberta* v. *Altria Group, Inc.* (Alberta Court of Queen's Bench, Court File No. 1201-07314);

(c) *The Government of Saskatchewan* v. *Rothmans, Benson & Hedges Inc.* (Saskatchewan Court of Queen's Bench, Court File No. 8712012);

(d) *Her Majesty the Queen in right of the Province of Manitoba* v. *Rothmans, Benson & Hedges Inc.* (Manitoba Court of Queen's Bench, Court File No. CI 12-01-78127);

(e) *Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.* (Ontario Superior Court of Justice, Court File No. CV-09-387984);

(f) *Procureur général du Québec* v. *Impérial Tobacco Canada Limitée* (Quebec Superior Court, Court File No. 500-17-072363-123);

(g) *Her Majesty the Queen in right of the Province of New Brunswick* v. *Rothmans Inc.* (New Brunswick Court of Queen's Bench, Court File No. F/C/88/08);

(h) *Her Majesty the Queen in right of the Province of Nova Scotia* v. *Rothmans, Benson & Hedges Inc.* (Supreme Court of Nova Scotia, Court File No. 434868/737686);

(i) *Her Majesty the Queen in right of the Province of Prince Edward Island* v. *Rothmans, Benson & Hedges Inc.* (Prince Edward Island Supreme Court, Court File No. S1 GS-25019);

(j) *Attorney General of Newfoundland and Labrador* v. *Rothmans Inc.* (Supreme Court of Newfoundland and Labrador, Court File No. 201101G0826); and

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"**PTLC Chair**" has the meaning given in Section 8 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**PTLC Members**" has the meaning given in Section 5 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**PTLC Vice-Chair**" has the meaning given in Section 11 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Putative Miscellaneous Claimant**" means a Person, other than a Claimant or an Individual Claimant, who asserts a Miscellaneous Claim.

"**QCAP Claim**" means any Claim that has been advanced, could have been advanced or could be advanced in the following class actions, 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 Claims Process**" means the process established pursuant to the Quebec Administration Plan for *Blais* Class Members to assert claims for direct monetary compensation.

"**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 herein.

"**QCAP Trust Account**" means the segregated interest-bearing 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 Action Plaintiffs**", or "**QCAPs**", means individuals who meet the criteria of the certified class definitions in the Quebec Class Actions.

"**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 Counsel**" means, collectively, the law practices of Trudel Johnston & Lespérance s.e.n.c., Kugler Kandestin s.e.n.c.r.l., L.L.P., De Grandpré Chait s.e.n.c.r.l., L.L.P., and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P.

"**Quebec Class Counsel Fee**" means the amount to be determined subject to the approval of the CCAA Court that will be payable from the QCAP Settlement Amount to Quebec Class Counsel, and to any legal counsel or other advisors of any nature or kind whatsoever who have provided, are providing or may in the future provide services to the Quebec Class Counsel in connection with the CCAA Proceedings, the Quebec Class Actions and/or any other proceedings on behalf of the *Blais* Class Members and/or *Létourneau* Class Members both before and after the Plan Implementation Date, in respect of their fees, disbursements and costs as Quebec Class Counsel, and any applicable Sales and Excise Taxes payable thereon. All Costs incurred in respect of the services provided by Raymond Chabot (as agent for the Quebec Class Counsel on behalf of the QCAPs) both before and after the Plan Implementation Date shall be paid by Quebec Class Counsel out of the Quebec Class Counsel Fee.

"**Quebec Superior Court**" means the Superior Court of Quebec, Class Action Division, at Montreal.

"**Raymond Chabot**" means Raymond Chabot Administrateur Provisoire Inc. and its Affiliates.

"**RBH**" means Rothmans, Benson & Hedges Inc.

"**RBH Retained Amount**" has the meaning given in Article 5, Section 5.4.

"**Release**" has the meaning given in Article 18, Section 18.1.1.

"**Released Claims**" means, collectively, any and all of the following Claims, excluding Unaffected Claims:

(a) any Tobacco Claims; and

(b) any Claims:

(i) in respect of the assets, obligations, business or affairs of the Released Parties in Canada or, in the case of JTIM, anywhere else in the world, relating to Tobacco Products, which are based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter);

(ii) in respect of the CCAA Proceedings and the Chapter 15 Proceedings up to the Effective Time, provided that such Released Party is not determined by (A) a final

order of the CCAA Court to have committed fraud in the CCAA Proceedings, or (B) a final order of the US Bankruptcy Court to have committed fraud in the Chapter 15 Proceedings;

(iii) existing at or prior to the Effective Time that have been advanced, that could have been advanced or could be advanced in the CCAA Proceeding; and

(iv) released as against the Monitors, the CRO, Foreign Representative, CCAA Plan Administrators, Court-Appointed Mediator and Administrative Coordinator pursuant to Article 18, Sections 18.1.4, 18.1.5, 18.1.6 and 18.1.7 herein.

For greater certainty, Released Claims include all Tobacco Claims in respect of fraud, misrepresentation or omission that have been or could have been asserted in any proceeding initiated prior to the Effective Time, including all Claims released by the Release and the Claimant Contractual Release.

"**Released Parties**", collectively, means:

(a) ITCAN,

(b) ITCO,

(c) RBH,

(d) JTIM,

(e) British American Tobacco p.l.c.,

(f) Philip Morris International Inc.,

(g) JT International Holding B.V.,

(h) the ITCAN Subsidiaries,

(i) B.A.T. Investment Finance p.l.c.,

(j) B.A.T Industries p.l.c.,

(k) British American Tobacco (Investments) Limited,

(l) Carreras Rothmans Limited,

(m) Philip Morris U.S.A. Inc.,

(n) Philip Morris Incorporated,

(o) Philip Morris Global Brands Inc.,

(p) Philip Morris S.A.,

(q) Rothmans Inc.,

(r) Ryesekks p.l.c.,

(s) Altria Group, Inc.,

(t) R.J. Reynolds Tobacco Company,

(u) R.J. Reynolds Tobacco International Inc.,

(v) RJR Nabisco, Inc.,

(w) JT International SA,

(x) JT Canada LLC Inc.,

(y) Japan Tobacco Inc.,

(z) JTIM TM,

(aa) Canadian Tobacco Manufacturers' Council, and

(bb) every other current or former Affiliate of any of the companies listed in subparagraphs (a) to (z) herein, and each of their respective indemnitees,

and "**Released Party**" means any of them. Each Released Party includes their respective Representatives.

"**Releasors**", collectively, means:

(a) the Provinces and Territories,

(b) the Quebec Class Action Plaintiffs,

(c) the Pan-Canadian Claimants,

(d) the *Knight* Class Action Plaintiffs,

(e) the Tobacco Producers, and

(f) every other Person having an Affected Claim or a Released Claim,

and "**Releasor**" means any one of them. "**Releasors**" and "**Releasor**" shall include their respective Representatives.

"Representatives" means, in respect of a Person, as may be applicable, such Person's past, present or future representatives, predecessors, successors, executors, trustees, heirs, dependents, children, siblings, parents, administrators, executors, directors, officers, shareholders, partners, employees,

servants, agents, consultants, legal counsel and advisers, including their respective successors and assigns, and each of their respective directors, officers, partners and employees.

"**Request for Particulars**" has the meaning given in Article 13, Section 13.2.

"**Required Majority**" means, in respect of the Affected Creditor Class, a majority in number of the Affected Creditors holding Voting Claims representing at least two-thirds in value of the Voting Claims of the Affected Creditors, in each case who are entitled to vote at the Meeting in accordance with the Meeting Order and who are present and voting in person or by proxy at the Meeting.

"**Reserved Amount**" of a Tobacco Company means: (i) any Tax Refund attributable to the carryback of a Tax Attribute to a preceding taxation year (other than the taxation year in which the Upfront Contribution is made) (a "**Tax Refund Cash Payment**"); (ii) in respect of an Annual Contribution, the reduction in income tax payable by the Tobacco Company in respect of its taxation year in which the Annual Contribution is made attributable to the deduction in computing income for tax purposes of the Annual Contribution and any resulting Tax Refund Cash Payment (the "**Annual Amount**"); and (iii) the reduction in income tax payable by the Tobacco Company in respect of a subsequent taxation year attributable to the carryforward of a Tax Attribute to the subsequent taxation year (the "**Carry Amount**").

"**Response**" has the meaning given in Article 13, Section 13.3.

"**Sales and Excise Tax Charge**" means the charge over the Property for the benefit of a Tax Authority that is entitled to receive payments or collect monies from JTIM in respect of Sales and Excise Taxes (including for greater certainty the Canada Border Services Agency), created by paragraph 25 of the Initial Order, and having the priority provided in paragraphs 46 and 48 of such Order.

"**Sales and Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales or use taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes.

"**Sanction Hearing**" means the hearing before the CCAA Court in respect of the Sanction Order.

"**Sanction Hearing Objection Notice**" means the notice, substantially in the form attached as a schedule to the Sanction Hearing Order, which may be submitted or delivered to the Monitor by a Putative Miscellaneous Claimant objecting to the Sanction Order and providing reasons for such objection.

"**Sanction Hearing Order**" means the Order of the CCAA Court (including all schedules and appendices thereto) made in the CCAA Proceeding approving the Omnibus Sanction Hearing Notice, the Omnibus Sanction Hearing Notice Program and the timetable and procedure for the Sanction Hearing, as such Order may be amended, restated or varied from time to time.

"**Sanction Order**" means the Order of the CCAA Court, among other things, sanctioning and approving the CCAA Plan and granting, approving and declaring the settlements, compromises and releases, as applicable, contemplated by the CCAA Plan.

"**Sanction Recognition Order**" means the Order entered by the US Bankruptcy Court recognizing and enforcing the Sanction Order in the Chapter 15 Proceedings, which shall be in form and substance acceptable to JTIM.

"**Section 5.1(2) Claims**" means any Claims against the Directors that:

(a) arose before the commencement of the CCAA Proceeding;

(b) relate to the obligations of JTIM where the Directors are by law liable in their capacity as Directors for the payment of such obligations; and

(c) either relate to contractual rights of one or more creditors, or are based on allegations of misrepresentations made by Directors to creditors, or of wrongful or oppressive conduct by Directors.

"**Section 19(2) Claims**" means any Claims against JTIM that relate to any of the following debts or liabilities, present or future, to which JTIM is subject on the day on which the CCAA Proceeding commenced, or to which JTIM may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by JTIM before the day on which the CCAA Proceeding commenced, unless the compromise or arrangement in respect of JTIM explicitly provides for the Claim's compromise, and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(b) any award of damages by a court in civil proceedings in respect of:

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting from an act referred to in subparagraph (i);

(c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).

"**Secured Claim**" means any Claim of a creditor to the extent that it is secured by a valid Encumbrance that is duly and properly registered or otherwise perfected in accordance with Applicable Law in the appropriate jurisdiction as of the Filing Date or thereafter pursuant to an Order, to the extent of the value of such Encumbrance as at the Filing Date (having regard to the

value of the assets subject to such Encumbrance and the priority of such Encumbrance) and which Claim is entitled to be proven as a secured claim pursuant to the provisions of the CCAA.

"**Statement of Negative Notice Claim**" means the respective statements to be prepared by the Monitor, each of which shall contain, for voting purposes, the amount and number of votes ascribed to the Negative Notice Claim of each Claimant. The Statement of Negative Notice Claim is included in Schedule "A" to the CCAA Plan.

"**Stay Period**" has the meaning ascribed to such term in the Initial Order.

"**Submitted PCC-Claims**" means the claims made by the PCC-Claimants by submitting a PCC Claim Package to the Claims Administrator, and "**Submitted PCC-Claim**" means any one of them.

"**Subsidiary**" has the meaning attributed thereto in Section 2(5) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended.

"Succession Claim" means the QCAP Claim of a Succession Claimant which is submitted to the Claims Administrator using the Succession Claim Form.

"**Succession Claimant**" means a person who asserts a Succession Claim pursuant to the Quebec Administration Plan.

"**Supplemental Trust Account**" has the meaning given in Article 5, Section 5.3.

"**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.

"**Tax Attribute**" means, with respect to JTIM, any tax attribute resulting from the deductibility of an Upfront Contribution, Annual Contribution or applicable Reserved Amount that is available for carryforward or carryback to another taxation year, including a non-capital loss, capital loss, credit, and other balance.

"**Tax Authority**" means the CRA, the Receiver General for Canada, any other federal Governmental Authority (such as the Canada Border Services Agency) and any corresponding provincial or territorial Governmental Authority.

"**Tax Matter**" has the meaning given in Article 10, Section 10.2.2(m).

"**Tax Refund Cash Payment**" has the meaning given in the definition of Reserved Amount.

"**Tax Refund**" means any income tax refund received from a Tax Authority in cash or cash equivalent by JTIM during the Contribution Period. For greater certainty, any tax instalment overpayment shall not be considered a Tax Refund.

"**Taxes**" means all federal, state, provincial, territorial, county, municipal, local or foreign taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Tax Authority including those levied on, or measured by, or referred to as, income, net income, gross income, gross receipts, business, royalty, capital, capital gains, goods and services, harmonized sales, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, profits, windfall profits, withholding, environmental, payroll, employment, employer health, pension plan, anti-dumping, countervail, excise, severance, stamp, occupation, or premium tax, all employment insurance premiums, Canada, Québec and any other pension plan contributions or premiums.

"**Territorial HCCR Claim**" means any Claim that:

(a) Northwest Territories has advanced, could have advanced or could advance pursuant to the *Tobacco Damages and Health Care Costs Recovery Act*, SNWT 2011, c 33 (proclaimed but not yet in force), whether before or after the Effective Time, and whether under the HCCR Legislation or otherwise;

(b) Nunavut has advanced, could have advanced or could advance pursuant to the *Tobacco Damages and Health Care Costs Recovery Act*, SNu 2010, c 31 (proclaimed but not yet in force), whether before or after the Effective Time, and whether under the HCCR Legislation or otherwise;

(c) Yukon has advanced, could have advanced or could advance, whether before or after the Effective Time, in relation to the recovery of (i) the present value of the total expenditure by Yukon for health care benefits provided for Insured Persons resulting from Tobacco-related Disease or the risk of Tobacco-related Disease, and (ii) the present value of the estimated total expenditure by Yukon 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, including pursuant to any legislation that may be enacted by Yukon in the future which could result in a Claim against any of the Released Parties relating to such expenditures; and

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"**Territories**" means, collectively, the Government of Yukon ("**Yukon**"), the Government of the Northwest Territories ("**Northwest Territories**") and the Government of Nunavut ("**Nunavut**"), and "**Territory**" means any one of them.

"**Throat Cancer**" has the meaning given in Article 8, Section 8.1(d)(ii).

"**Tobacco Claim**" means any Claim of any Person against or in respect of a Tobacco Company and/or any Director thereof, or any member of its Tobacco Company Group and/or any Director

thereof, that has been advanced (including, without limitation, in any outstanding or pending litigation), that could have been advanced or that could be advanced, and whether such Claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced by a Government, or an agency, insurer, employer or otherwise, under or in connection with Applicable Law, or under any current or future statute to recover damages or any other remedy or costs in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products, the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions, the development of any disease related to the use of Tobacco Products, or any representation or omission in respect of Tobacco Products, including any misrepresentations, breach of duty or fraud in respect thereof by any member of the Tobacco Company Group or its Representatives in Canada or, in the case of the Tobacco Company, anywhere else in the world, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) and including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim. For greater certainty, Tobacco Claim includes:

(a) Any Provincial HCCR Claim;

(b) Any Territorial HCCR Claim;

(c) Any QCAP Claim;

(d) Any PCC Claim;

(e) Any *Knight* Claim; and

(f) Any Tobacco Producers Claim.

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

"**Tobacco Company Group**" means, in respect of JTIM, its Parent and all other current or former Affiliates, direct or indirect Subsidiaries or parents, of JTIM, and their respective indemnitees.

"**Tobacco Producers**" means, collectively, the Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler, Arpad Dobrentey and all other tobacco growers and producers, including any successors or assigns, who sold their tobacco through the Ontario Flue-Cured Tobacco Growers' Marketing Board pursuant to the annual Heads of Agreement made with ITCAN, RBH and JTIM from January 1, 1986 to December 31, 1996, and "**Tobacco Producer**" means any one of them.

"**Tobacco Producers' Actions**" means the uncertified class actions enumerated in the definition of "Tobacco Producers Claim" in the CCAA Plan.

"**Tobacco Producers 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) *The Ontario Flue-Cured Tobacco Growers' Marketing Board* v. *JTI-Macdonald Corp.* (Ontario Superior Court of Justice, Court File No. 1056/10CP);

(b) *The Ontario Flue-Cured Tobacco Growers' Marketing Board* v. *Rothmans, Benson & Hedges Inc.* (Ontario Superior Court of Justice, Court File No. 64462 CP); and

(c) *The Ontario Flue-Cured Tobacco Growers' Marketing Board* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 64757 CP);

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"**Tobacco Producers Settlement Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable to the Ontario Flue-Cured Tobacco Growers' Marketing Board for the benefit of the Tobacco Producers, as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein. The Counsel for the Tobacco Producers' Fee is subject to the approval of the CCAA Court and shall be paid out of the Tobacco Producers Settlement Amount.

"**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-Victim**" means any Individual who suffers or suffered from a Tobacco-related Disease.

"Tobacco-Victim Claim" is the QCAP Claim of a Tobacco-Victim which is submitted to the Claims Administrator using the Tobacco-Victim Claim Form.

"**Tobacco-Victim Claimant**" means a person who asserts a Tobacco-Victim Claim pursuant to the Quebec Administration Plan.

"**Twelve Pack-Years**" means 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 to or greater than 87,600 cigarettes. For example, Twelve Pack-Years equals:

(a) 20 cigarettes a day for 12 years (20 X 365 X 12 = 87,600); or

(b) 30 cigarettes a day for 8 years (30 X 365 X 8 = 87,600); or

(c) 10 cigarettes a day for 24 years (10 X 365 X 24 = 87,600).

"**Unaffected Claims**" means, collectively:

(a) any Alternative Product Claim;

(b) any Claim by a Person relating to the right to enforce against any Released Party its obligations under any of the Definitive Documents;

(c) any Claim secured by the CCAA Charges;

(d) any Cash Management Bank Claim;

(e) any Employee Priority Claim;

(f) any Government Priority Claim;

(g) any Claim in respect of CCAA Plan Administration Reserve Costs;

(h) any Claim in respect of the PCC Compensation Plan Reserve Costs;

(i) any Secured Claim that is not a Tobacco Claim, including the Secured Claim by JTIM TM against JTIM but provided that the JTIM TM Secured Claim shall be subordinated as described in Article 5, Section 5.14;

(j) any Claim for Costs by the CRO, the Monitor, the CCAA Plan Administrator, the Claims Administrator, the Administrative Coordinator, the Court-Appointed Mediator, including their respective legal or other advisors, or counsel to JTIM, subject to the applicable terms in connection therewith under the CCAA Plan;

(k) any Claim by any Director under any directors' or officers' indemnity policy or agreement with JTIM to the extent not otherwise covered by the CCAA Charges;

(l) any Intercompany Services Claim;

(m) any Intercompany Claim, subject to the terms of Article 5, Section 5.16;

(n) any Claim by a supplier against JTIM for the supply of goods or services other than a Tobacco Claim;

(o) any Claim against JTIM relating to environmental remediation pursuant to Applicable Law;

(p) any Claim by Canada or any Province or Territory against any Released Party relating in any manner to:

(i) any applicable Taxes of any kind whatsoever applicable to any Released Party, and

(ii) such Released Party's compliance with any Applicable Law and statutes and the regulations made thereunder, except for liability for actions or omissions occurring prior to the Effective Time in respect of a Tobacco Claim; and

(q) any Claim by any Person under any contract with JTIM that has not been disclaimed and which Claim is not a Tobacco Claim;

and, for greater certainty, shall include any Unaffected Claim arising through subrogation.

"**Unaffected Creditor**" means a Person who has an Unaffected Claim.

"**Upfront Contributions**" has the meaning given in Article 5, Section 5.4, and "**Upfront Contribution**" means any one of them.

"**US Bankruptcy Code**" means title 11 of the United States Bankruptcy Code 11 U.S.C. §§ 101 – 1532, as amended.

"**US Bankruptcy Court**" means the United States Bankruptcy Court, Southern District of New York.

"**Virtual Data Room**" has the meaning given in Article 10, Section 10.10.

"**Voting Claim**" means the amount of the Affected Claim of an Affected Creditor as finally determined for voting purposes in accordance with the Statements of Negative Notice Claims, the Claims Procedure Order and the Meeting Order entitling such Affected Creditor to vote at the Meeting in accordance with the provisions of the Meeting Order, the CCAA Plan and the CCAA.

1.2 Certain Rules of Interpretation

For the purposes of the CCAA Plan:

(a) Any reference in the CCAA Plan to an Order or an existing document or exhibit filed or to be filed means such Order, document or exhibit as it may have been or may be amended, modified, or supplemented;

(b) Unless otherwise specified, all references to currency are in Canadian dollars;

(c) The division of the CCAA Plan into "articles" and "sections" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the CCAA Plan, nor are the descriptive headings of "articles" and "sections" intended as complete or accurate descriptions of the content thereof;

(d) The use of words in the singular or plural, or with a particular gender, including a definition, will not limit the scope or exclude the application of any provision of the CCAA Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;

(e) The words "includes" and "including" and similar terms of inclusion will not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather will mean "includes but is not limited to" and "including but not limited to", so that references to included matters will be regarded as illustrative without being either characterizing or exhaustive;

(f) Unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day means prior to 5:00 p.m. (Eastern time) on such Business Day;

(g) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

(h) Unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;

(i) References to a specified "article" or "section" will, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article or section of the CCAA Plan, whereas the terms "the CCAA Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions will be deemed to refer generally to the CCAA Plan and not to any particular article, section or other portion of the CCAA Plan and includes any documents supplemental hereto; and

(j) When a capitalized term used in the CCAA Plan references a definition in any other document, the CCAA Plan shall be interpreted as if the definition in that other document is included in the CCAA Plan.

1.3 Governing Law and Jurisdiction

The CCAA Plan and all Definitive Documents shall be governed and construed in accordance with the laws of the Province of Ontario and the Applicable Laws of Canada, save for the Chapter 15 Proceedings which shall be subject to the jurisdiction of the US Bankruptcy Court, and the administration of the QCAP Claims Process pursuant to the Quebec Administration Plan which shall be governed by the laws of the Province of Quebec and the Applicable Laws of Canada.

1.4 Schedules

The following are the Schedules to the CCAA Plan, which are incorporated by reference into the CCAA Plan and form an integral part of it:

Schedule "A": Negative Notice Claims Package comprised of Statement of Negative Notice Claim (Schedule "B-1") and the Notice of Dispute of Negative Notice Claim (Schedule "B-2")

Schedule “B”:	Claims Package comprised of Miscellaneous Claims Instruction Letter (Schedule “A-1”) and the Miscellaneous Claimant Proof of Claim (Schedule “A-2”)
Schedule “C”:	Omnibus Notice
Schedule “D”:	Omnibus Notice Program comprised of condensed version of the Omnibus Notice (Appendix “A”) and the list of the regional newspapers in which the Omnibus Notice will be published (Appendix “B”)
Schedule “E”:	Contribution Security Agreement
Schedule “F”:	Deed of Immoveable Hypothec (official French version)
Schedule “G”:	Deed of Immoveable Hypothec (unofficial English version)
Schedule “H”:	Deed of Moveable Hypothec
Schedule “I”:	JTIM Subordination Agreement
Schedule “J”:	Harrison Report
Schedule “K”:	Curriculum vitae of Dr. Glenn Harrison
Schedule “L”:	Jha Report
Schedule “M”:	Curriculum vitae of Dr. Prabhat Jha
Schedule “N”:	Quebec Class Action Administration Plan
Schedule “O”:	Overview of Epiq’s complex claims administration experience
Schedule “P”:	Curriculum vitae of Daniel Shapiro, K.C.
Schedule “Q”:	Pan-Canadian Claimants’ Compensation Plan: Methodology and Analysis dated December 5, 2024
Schedule “R”:	Analysis of Limitations Law applicable to Pan-Canadian Claimants dated September 2, 2020
Schedule “S”:	Pan-Canadian Claimants’ Compensation Plan dated December 5, 2024
Schedule “T”:	Resume of Dr. Robert Bell
Schedule “U”:	Curriculum vitae of Dr. Robert Bell
Schedule “V”:	The Cy-près Fund: Methodology and Analysis dated December 5, 2024
Schedule “W”:	Claimant Contractual Release – JTIM

Schedule "X": List of Health Care Costs Recovery Actions of the Provinces and HCCR Claims asserted by Territories

Schedule "Y": List of Actions commenced under Provincial Class Proceedings Legislation

Schedule "Z": List of Actions commenced by Individuals

Schedule "AA": Provincial and Territorial Liaison Committee Terms

ARTICLE 2. PURPOSE AND EFFECT OF THE CCAA PLAN

2.1 Purpose

The purposes of the CCAA Plan are to:

(a) Effect a full and final settlement and irrevocable compromise of all Tobacco Claims;

(b) Effect a release, discharge and bar of all Released Claims;

(c) Eliminate liability for all Tobacco Claims for actions up to the Effective Time;

(d) Effect the distributions of the Global Settlement Amount to the Claimants as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein;

(e) Provide for the disposition and resolution of all Pending Litigation; and

(f) Permit JTIM to exit this CCAA Proceeding and continue to carry on its business as a going concern.

2.2 Exclusion of Alternative Products from CCAA Plan

Alternative Products are excluded from the CCAA Plan. The CCAA Plan shall not be applicable to any right or claim against JTIM or any member of its Tobacco Company Group relating to its development, manufacture, production, marketing, advertising, distribution, purchase or sale of Alternative Products, use of or exposure to Alternative Products, representations in respect of Alternative Products or otherwise in connection with Alternative Products. For greater certainty, the CCAA Plan shall not release any such rights or claims relating to Alternative Products against JTIM or members of its Tobacco Company Group.

ARTICLE 3. CLAIMS PROCEDURE, CLASSIFICATION OF AFFECTED CREDITORS, VOTING, PROCEDURE FOR SANCTION HEARING AND RELATED MATTERS

3.1 Claims Procedure

3.1.1 CCAA Court Hearing regarding Claims Procedure

The procedure for determining the validity and quantum of the Affected Claims for voting purposes shall be governed by the Statements of Negative Notice Claims, the Claims Procedure

Order, the Meeting Order, the CCAA, the CCAA Plan and any other Order of the CCAA Court, as applicable.

The Court-Appointed Mediator and the Monitor will make a motion to the CCAA Court for Orders:

(a) Approving the filing of the CCAA Plan;

(b) Approving the Claims Procedure set forth in the Claims Procedure Order;

(c) Approving the Omnibus Notice and the Omnibus Meeting Notice Program which shall include the timetable for the implementation of the Omnibus Notice Program; and

(d) Approving the Meeting Order, including setting the Meeting Date, approving the classification of the Affected Creditors into one single class for the purpose of considering and voting on the CCAA Plan at the Meeting, and authorizing the Claimants' Representatives to vote on the CCAA Plan in person or by proxy at the Meeting.

3.1.2 Claims Procedure for Negative Notice Claims

The procedure for addressing Negative Notice Claims shall be governed by the terms of the Claims Procedure Order including the schedules thereto. Notwithstanding the foregoing, the Monitor, in consultation with the Court-Appointed Mediator, may make minor non-substantive changes to the Negative Notice Claims Package as they may consider necessary or desirable.

As soon as practicable after the date of the Claims Procedure Order, the Monitor shall cause to be sent to each Claimant's Representative a Negative Notice Claims Package which will contain a Statement of Negative Notice Claim that specifies, for voting purposes, the amount and number of votes ascribed to such Claimant's Negative Notice Claim. Attached to the CCAA Plan as Schedule "A" is the Negative Notice Claims Package comprised of the Statement of Negative Notice Claim (Schedule "B-1") and the Notice of Dispute of Negative Notice Claim (Schedule "B-2"). The Negative Notice Claims Package shall be deemed to have been received by each Claimant's Representative on the Negative Notice Issuance Date.

If a Claimant wishes to dispute the amount of its Affected Claim for voting purposes and the number of votes associated therewith as set forth in the relevant Statement of Negative Notice Claim, the Claimant's Representative shall deliver to the Monitor a Notice of Dispute of Negative Notice Claim by no later than the Negative Notice Bar Date, failing which the Claimant shall be conclusively and irrevocably deemed to have accepted the Statement of Negative Notice Claim and the value and number of votes associated with its Affected Claim solely for the purpose of voting on the CCAA Plan at the Meeting.

The Monitor, in consultation with the Court-Appointed Mediator, shall review any Notice of Dispute of Negative Notice Claim received and shall attempt to resolve such dispute with the relevant Claimant following receipt of the Notice of Dispute of Negative Notice Claim. In the event that the dispute is not settled, the Monitor shall refer the dispute to the CCAA Court, and provide timely notice of such hearing date to the disputing Claimant's Representative.

Unless any dispute of a Statement of Negative Notice Claim results in a revision to the value or number of votes associated with the relevant Affected Claim pursuant to the terms of the Claims Procedure Order, each of the Claimants shall be entitled to vote at the Meeting in accordance with the value and number of votes set forth on the applicable Statements of Negative Notice Claim.

Except as may be required by the Meeting Order, no further steps shall be required to be taken by any of the Claimants in order for them to be able to be present and vote at the Meeting.

3.1.3 Claims Procedure for Persons, other than Claimants or Individual Claimants, to assert a Claim

The Claims Procedure for Persons, other than Claimants or Individual Claimants, to file a Claim and assert the right to attend at the Meeting and vote on the CCAA Plan shall be governed by the terms of the Claims Procedure Order and schedules thereto. Save for establishing the entitlement of certain Persons to vote on the CCAA Plan, the Claims Procedure shall not constitute, nor may it be construed as, an acceptance by the CCAA Court, the Court-Appointed Mediator, the Monitor and/or JTIM of the existence, validity or value of any Claim asserted in a Miscellaneous Claimant Proof of Claim filed thereunder, including for distribution purposes under the CCAA Plan which shall be determined in accordance with the Miscellaneous Claims Procedure.

The solicitation of Miscellaneous Claimant Proofs of Claim, and the filing by any Person of any Miscellaneous Claimant Proof of Claim, shall not grant such Person any rights, including without limitation, in respect of the nature, quantum and priority of its Claims or its standing in the CCAA Proceedings, except the rights specifically set out in the Claims Procedure Order.

3.1.3.1 Notification Procedure

Attached to the CCAA Plan are the following schedules relating to the notification procedure for the Claims Procedure:

(a) Schedule “B” is the Claims Package comprised of the Miscellaneous Claims Instruction Letter (Schedule “A-1”) and the Miscellaneous Claimant Proof of Claim (Schedule “A-2”);

(b) Schedule “C” is the Omnibus Notice; and

(c) Schedule “D” is the Omnibus Notice Program which includes a condensed version of the Omnibus Notice (Appendix “A” to Schedule “D”) and the list of the regional newspapers in which the Omnibus Notice will be published (Appendix “B” to Schedule “D”).

The Monitor shall cause the Claims Procedure Order, the Omnibus Notice and the Claims Package to be posted to the Monitor’s website within five Business Days following the date of the Claims Procedure Order. The Monitor shall also cause the Omnibus Notice, the Claims Package and the Claims Procedure Order to be sent to: (i) each Person that appears on the Common Service List within five Business Days following the date of the Claims Procedure Order; and (ii) any Person that has identified itself in writing to the Monitor prior to the Miscellaneous Claims Bar Date as a Putative Miscellaneous Claimant, as soon as reasonably practicable thereafter.

Reasonable compliance with the notice program set forth in the Omnibus Notice Program, shall constitute good and sufficient service and delivery of notice of the Claims Procedure Order and the Miscellaneous Claims Bar Date on all Persons that may be entitled to receive notice, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of the Claims Procedure Order.

3.1.3.2 Miscellaneous Claims Bar Date

In order for a Person, other than a Claimant or an Individual Claimant, to assert a Claim and be permitted to attend the Meeting and vote thereat, such Person must file a Miscellaneous Claimant Proof of Claim with the Monitor by the Miscellaneous Claims Bar Date. Only such Persons who have filed a Miscellaneous Claimant Proof of Claim by the Miscellaneous Claims Bar Date shall be entitled to attend and vote on the CCAA Plan at the Meeting as a Putative Miscellaneous Claimant.

If a Person holding any Pre-Implementation Miscellaneous Claim fails to file a Miscellaneous Claimant Proof of Claim by the Miscellaneous Claims Bar Date, in addition to being barred from attending the Meeting and voting on the CCAA Plan, such Person:

(a) shall be forever barred, estopped and enjoined from asserting any Pre-Implementation Miscellaneous Claim under the Miscellaneous Claims Procedure;

(b) shall not be entitled to receive any distribution under the CCAA Plan in respect of any such Pre-Implementation Miscellaneous Claim, including from the Miscellaneous Claims Fund; and

(c) shall be bound by and subject to the Release and injunctions set forth in Article 18, Section 18.1 of the CCAA Plan in respect of any such Pre-Implementation Miscellaneous Claim.

The filing by any Person of a Miscellaneous Claimant Proof of Claim shall not constitute a determination of the existence, validity or value of such Miscellaneous Claim and shall not entitle such Person to any distribution under the CCAA Plan, or otherwise. For certainty, subject to a Miscellaneous Claimant Proof of Claim being filed by the Miscellaneous Claims Bar Date, provided that the CCAA Plan is approved by the Affected Creditor Class, sanctioned by the CCAA Court, and implemented, any Person who purports to have a Miscellaneous Claim shall be obliged to follow the procedure set forth in the Miscellaneous Claims Procedure to prove the existence, validity and value of such Miscellaneous Claim.

Any Miscellaneous Claimant Proof of Claim in a foreign currency that is filed with the Monitor shall be converted by the Monitor to Canadian dollars at the applicable Bank of Canada exchange rate at 12:00 pm on March 8, 2019.

3.1.3.3 Monitor's Role for Purposes of the Meeting and the Vote

In addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other Orders of the CCAA Court in the CCAA Proceeding, the Monitor shall administer the Claims Procedure and take such other actions and fulfill such other roles as are authorized by the Claims Procedure Order or incidental thereto. The Monitor shall seek such

assistance as may be reasonably required from the Court-Appointed Mediator, JTIM and the Claimants, as applicable, to carry out the terms of the Claims Procedure Order.

Subject to the approval of the CCAA Court, the Monitor, in consultation with the Court-Appointed Mediator, will be authorized pursuant to the Claims Procedure Order to use its reasonable discretion as to the adequacy of compliance with respect to the manner and timing in which forms delivered pursuant to the Claims Procedure Order are completed and executed, and may, where it is satisfied that a Miscellaneous Claimant Proof of Claim has been adequately filed, waive strict compliance with the requirements of the Claims Procedure Order as to completion and execution of such forms. Notwithstanding any other provision of the Claims Procedure Order, any Miscellaneous Claimant Proof of Claim filed with the Monitor after the Miscellaneous Claims Bar Date but prior to the Meeting may, in the reasonable discretion of the Monitor or subject to further Order of the Court, be deemed to have been filed before the Miscellaneous Claims Bar Date, and may be treated by the Monitor in accordance with the Claims Procedure.

The Monitor shall receive and keep a record of all Miscellaneous Claimant Proofs of Claim filed in order to prepare a list of Persons, in addition to the Claimants, entitled to attend and vote at the Meeting, but the Monitor shall not be required to make any inquiry or assessment as to the validity or quantification of any such Miscellaneous Claimant Proofs of Claim that it may receive, provided that the Monitor shall be entitled, in its sole discretion, to seek further direction from the CCAA Court with respect to any Miscellaneous Claimant Proof of Claim filed if the Monitor considers such direction necessary, including for the conduct of the Meeting.

Notwithstanding the foregoing, the Monitor shall not take into consideration any Miscellaneous Claimant Proof of Claim filed either by an Individual Claimant or on behalf of any group of Individual Claimants, as all Individual Claimants are represented by either the PCC Representative Counsel or the Quebec Class Counsel, as the case may be. For greater certainty, no Individual Claimant nor any Person purporting to represent any Individual Claimants (other than the PCC Representative Counsel and Quebec Class Counsel) shall be permitted to attend or vote at the Meeting.

At the Meeting, the Monitor shall keep distinct ledgers in order to tally the votes of all Persons that file a Miscellaneous Claimant Proof of Claim separately from the votes of the Claimants, and it shall report to the CCAA Court on the results recorded on each such ledger at the Sanction Hearing. Notwithstanding the foregoing, and without accepting the existence, validity or value of any Miscellaneous Claimant Proof of Claim received, any votes recorded by the Monitor for such Persons shall be deemed to be included in the Affected Creditor Class in accordance with the Meeting Order.

3.2 Classification of Creditors

In accordance with the Meeting Order, the Affected Creditors shall be placed into one single class for the purpose of considering and voting on the CCAA Plan at the Meeting.

3.3 Meeting of Affected Creditors

The Meeting shall be held in accordance with the CCAA Plan, the Meeting Order and any further Order of the CCAA Court. The only Persons entitled to attend and vote on the CCAA Plan at the Meeting are those specified in the Meeting Order and any further Order of the CCAA Court.

3.4 Approval by Creditors

In order to be approved, the CCAA Plan must receive the affirmative vote of the Required Majority of the Affected Creditor Class.

3.5 Voting of the Affected Creditor Class

The Affected Creditors in the Affected Creditor Class who are entitled to vote at the Meeting, pursuant to and in accordance with the Claims Procedure Order, the Meeting Order, the CCAA Plan and the CCAA, shall be entitled to the following number of votes representing the amount equal to their respective Voting Claims:

(a) The Quebec Class Action Plaintiffs shall be entitled to a total of 99,958 votes;

(b) The Pan-Canadian Claimants shall be entitled to a total of 186,003 votes;

(c) Each Province shall be entitled to a total of 1 vote;

(d) Each Territory shall be entitled to a total of 1 vote; and

(e) The Ontario Flue-Cured Tobacco Growers' Marketing Board plus the Tobacco Producers shall be entitled to a total of 3,930 votes.

In addition to the foregoing, any Putative Miscellaneous Claimant that files a Miscellaneous Claimant Proof of Claim in conformity with the Claims Procedure shall be entitled to a total of 1 vote.

3.6 Unaffected Creditors

No Unaffected Creditor, in respect of an Unaffected Claim, shall be entitled to:

(a) vote on the CCAA Plan;

(b) attend the Meeting; or

(c) receive any distributions pursuant to the CCAA Plan, other than its right to have its Unaffected Claim addressed in accordance with Article 3, Section 3.7 of the CCAA Plan.

3.7 Treatment of Unaffected Claims

Unaffected Claims are not compromised by the CCAA Plan and shall remain in full force and effect in accordance with their terms. Subject to Article 5, Section 5.16, Unaffected Claims shall be paid by JTIM in the Ordinary Course of Business as and when they become due, further subject

only to JTIM's rights and defences, both legal and equitable, with respect to any Unaffected Claim, including any entitlement to set-off, compensation or recoupment.

3.8 Extinguishment of Claims

At the Effective Time, in accordance with the terms of the CCAA Plan and the Sanction Order, the treatment of Affected Claims and Released Claims will be final and binding on JTIM, the Affected Creditors, and any Person with an Affected Claim or a Released Claim. Save and except as set out in the CCAA Plan, the Released Parties will have no further obligation whatsoever in respect of the Affected Claims and the Released Claims, as applicable.

3.9 Guarantees and Similar Covenants

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Claim that is compromised and released under the CCAA Plan or who has any right to claim over in respect of, or to be subrogated to, the rights of any Person in respect of a Claim that is compromised under the CCAA Plan will be entitled to any greater rights as against JTIM than the Person whose Claim is compromised under the CCAA Plan.

3.10 Procedure for Sanction Hearing

3.10.1 CCAA Court Hearing regarding Procedure for Sanction Hearing

Subsequent to the Meeting, the Court-Appointed Mediator and the Monitor will report to the CCAA Court regarding the results of the vote on the CCAA Plan at the Meeting. If the CCAA Plan received the affirmative vote of the Required Majority of the Affected Creditor Class, then the Monitor will make a motion to the CCAA Court for Orders:

(a) Setting the date for the Sanction Hearing;

(b) Approving the Omnibus Sanction Hearing Notice and the Omnibus Sanction Hearing Notice Program, including the timetable for implementation of the Omnibus Sanction Hearing Notice Program;

(c) Setting the date for the filing of any Sanction Hearing Objection Notices with the Monitor which will be dealt with at the Sanction Hearing;

(d) Establishing the litigation timetable leading up to the Sanction Hearing, including the dates for the filing of motion records, factums and any reply motion materials; and

(e) Establishing the agenda and procedure for the Sanction Hearing.

3.10.2 Omnibus Sanction Hearing Notice

The form and content of the Omnibus Sanction Hearing Notice and the manner and extent of publication of such notice are subject to the approval of the CCAA Court. By no later than 5:00 p.m. (Eastern time) on the 30th calendar day prior to the Sanction Hearing, the Monitor shall cause

the Omnibus Sanction Hearing Notice to be sent in accordance with the Omnibus Sanction Hearing Notice Program:

(a) To each Person that appears on the Common Service List;

(b) To any Person known to JTIM or the Monitor as having a potential Affected Claim based on the books and records of JTIM that is not captured in any Statement of Negative Notice Claim or in any Miscellaneous Claimant Proof of Claim;

(c) To any Putative Miscellaneous Claimant who has identified itself to JTIM and/or the Monitor prior to the publication of the Omnibus Sanction Hearing Notice; and

(d) By way of general notice to any other Persons in Canada who may potentially be affected by the CCAA Plan as a Putative Miscellaneous Claimant.

The Omnibus Sanction Hearing Notice will:

(a) Include the CCAA Plan attached as a schedule;

(b) Specify the date, time and mode of hearing of the Sanction Hearing;

(c) Advise that at the Sanction Hearing the Court-Appointed Mediator and the Monitor will be seeking the granting of the Sanction Order sanctioning the CCAA Plan under the CCAA and ancillary relief relating to such sanction; and

(d) Advise that any Putative Miscellaneous Claimant who wishes to oppose the granting of the Sanction Order must serve on all Persons on the Common Service List and file with the CCAA Court a copy of the materials to be used to oppose the Sanction Order by no later than 5:00 p.m. (Eastern Time) 14 calendar days prior to the Sanction Hearing. The materials delivered by any Person desiring to oppose the granting of the Sanction Order shall specify their objection with particularity and the remedies, if any, that are sought.

3.10.3 Omnibus Sanction Hearing Notice Program

The Omnibus Sanction Hearing Notice Program is subject to the approval of the CCAA Court. It will be designed to effectively reach as many Persons across Canada as possible, including any Putative Miscellaneous Claimants, and capture their attention with notice of the Sanction Hearing communicated in clear, concise, plain language so that such Persons may fully understand their rights and options.

A pan-Canadian notice program will be implemented to widely communicate the Omnibus Sanction Hearing Notice throughout Canada using various mediums and platforms.

3.10.4 Sanction Hearing

If the CCAA Plan receives the affirmative vote of the Required Majority of the Affected Creditor Class at the Meeting in conformity with the Meeting Order and the CCAA, then the Monitor will make a motion to the CCAA Court for Orders:

(a) Approving and sanctioning the CCAA Plan and ordering the releases and injunctions necessary to implement the CCAA Plan and give effect to the settlement contemplated thereby;

(b) Authorizing and directing JTIM, the Monitor, the Claimants, the Claimants' Representatives and other Persons as applicable to take all steps and actions and to do all things necessary or appropriate to implement and give effect to the transactions contemplated by the CCAA Plan in accordance with and subject to its terms and conditions; and

(c) Granting such other relief as necessary, appropriate and the CCAA Court may allow to implement and give effect to the transactions contemplated by the CCAA Plan.

ARTICLE 4. RESTRUCTURING STEPS

4.1 Restructuring Steps

At the Effective Time, the following will occur and be deemed to have occurred in the order set out below unless otherwise specified in this Article 4 and become effective without any further act or formality:

(a) JTIM shall deposit its Upfront Contribution into the Global Settlement Trust Account;

(b) The Contribution Security Agreement and the Deeds of Hypothec and JTIM Subordination Agreement will become effective;

(c) The Sales and Excise Tax Charge and Directors' Charge will be terminated, discharged, expunged and released;

(d) The amount of $25.0 million shall be paid out of JTIM's Upfront Contribution and deposited into the CCAA Plan Administration Reserve Account to establish the CCAA Plan Administration Reserve;

(e) The amount of $5.0 million shall be paid out of the total Upfront Contributions from all of the Tobacco Companies and deposited into the PCC Compensation Plan Reserve Account to establish the PCC Compensation Plan Reserve;

(f) The distributions that are required to be paid to the Claimants on the Plan Implementation Date shall be paid in full as set forth in the CCAA Plan;

(g) All Affected Claims and Released Claims will be fully, finally, irrevocably and forever released, discharged, barred and enjoined in accordance with Article 3, Section 3.8 and Article 18, Sections 18.1 to 18.1.11, and all notes, certificates and other instruments evidencing Affected Claims and Released Claims (and all guarantees associated with each of the foregoing) will be deemed cancelled and extinguished and be null and void in accordance with Article 17, Section 17.9;

(h) The Claimant Contractual Release will become effective in accordance with its terms; and

(i) The Stay Period will terminate,

(collectively, the "**Restructuring Steps**"). The failure of the CCAA Plan to incorporate any provision of a document evidencing a Restructuring Step will not derogate from the enforceability of such provision.

4.2 Corporate Approvals

At the Effective Time, all corporate actions of JTIM contemplated by the CCAA Plan shall be deemed to have been authorized and approved in all respects (subject to the provisions of the CCAA Plan). All matters provided for in the CCAA Plan shall be deemed to have timely occurred, in accordance with Applicable Laws, and shall be effective, without any requirement of further action by the Affected Creditors, directors, officers, or managers of JTIM. On the Plan Implementation Date, the appropriate directors and officers of JTIM shall be authorized and directed to issue, execute and deliver the agreements, documents, securities and instruments contemplated by the CCAA Plan, in the name of and on behalf thereof.

ARTICLE 5. CCAA PLAN CONSIDERATION

5.1 Global Settlement Amount

The global settlement amount under the CCAA Plan shall be **$32.5 billion** (the "**Global Settlement Amount**").

5.2 Intentionally deleted

5.3 Global Settlement Trust Account and Supplemental Trust Account

The Tobacco Companies shall deposit their respective Contributions, less applicable Reserved Amounts, into a segregated interest-bearing trust account or trust accounts ("**Global Settlement Trust Account**"). The Tobacco Companies shall deposit their respective Reserved Amounts into an interest-bearing trust account or trust accounts ("**Supplemental Trust Account**") (for greater certainty, a separate Supplemental Trust Account shall be established and maintained for each Tobacco Company). The Global Settlement Trust Account and Supplemental Trust Account shall be held in Schedule I Chartered Banks designated by the CCAA Plan Administrators, or in a syndicate of Schedule I Chartered Banks which may include such financial institutions as may be approved and designated by the CCAA Plan Administrators ("**Bank**").

5.4 Upfront Contributions

On or before the Plan Implementation Date, each Tobacco Company shall make a cash contribution which shall be deposited into the Global Settlement Trust Account (collectively, the "**Upfront Contributions**"). The Upfront Contributions shall equal the aggregate of each Tobacco Company's cash and cash equivalents generated from all sources by each Tobacco Company as at the month end prior to the Plan Implementation Date, including all amounts pledged by the Tobacco Companies to cash collateralize any outstanding letters of credit, surety or bonding obligations to the issuers thereof, plus the Cash Security Deposits, less the sum of $750 million which shall be deducted from the aggregate amount and retained by RBH (the "**RBH Retained**

Amount"). RBH shall be free to deal in its sole discretion with the RBH Retained Amount, including being free to transfer or distribute such monies outside of Canada in such manner as RBH may determine. For greater certainty, any such transfers or distributions of the RBH Retained Amount will be deemed to be a Permitted Transfer for the purposes of Article 11.

5.5 Reserved Amounts

JTIM shall make a cash payment equal to any Reserved Amounts into the Supplemental Trust Account at the times referred to in this Section 5.5. JTIM shall pay its Tax Refund Cash Payment into the Supplemental Trust Account within 30 days after its receipt of the applicable Tax Refund. If JTIM receives its Tax Refund Cash Payment in instalments, it shall pay for deposit into the Supplemental Trust Account 100% of each instalment received within 30 days after its receipt of each instalment. JTIM shall pay its respective Annual Amount into the Supplemental Trust Account on or before the 30th day following its tax filing due date for the relevant taxation year for which the Annual Contribution is made (or in the case of the final calendar year of the Contribution Period, on or before the 182nd day following the end of the Contribution Period). JTIM shall pay its respective Carry Amount into the Supplemental Trust Account within 30 days after its tax filing due date for the taxation year to which the relevant Tax Attribute is carried forward (or in the case of the final calendar year of the Contribution Period, on or before the 182nd day following the end of the Contribution Period).

For certainty and to avoid duplication, any Tax Refund Cash Payment will not be taken into account in the Metric used to compute the Annual Contributions. Reserved Amounts of JTIM shall be released from the Supplemental Trust Account in the following circumstances:

(a) in respect of Annual Amounts and Carry Amounts, consistent with the Annual Contribution percentage in respect of the relevant Annual Contributions (in the case of a Carry Amount, the Annual Contribution percentage in respect of the Annual Contribution for the tax year in which the Tax Attribute is utilized) provided for in this CCAA Plan and in the case of a Tax Refund Cash Payment, 85.0% to the Global Settlement Trust Account and 15.0% to JTIM, in each case, 30 days following the expiry of the last applicable Normal Reassessment Period (or, such earlier time as determined by JTIM with the concurrence of the CCAA Plan Administrator, acting reasonably) in respect of the relevant taxation year of JTIM to which the Reserved Amount relates, being (i) in the case of an Annual Amount, the taxation year in which the relevant Annual Contribution is deducted in computing income for tax purposes, (ii) in the case of a Tax Refund Cash Payment, the taxation year to which the relevant Tax Refund relates and (iii) in the case of a Carry Amount, the taxation year to which the relevant Tax Attribute has been carried forward;

(b) to a relevant Tax Authority on account of a notice of assessment or reassessment of Taxes (including any related assessed interest or penalties) related to a Tax Matter of JTIM issued by a Tax Authority with the concurrence of the CCAA Plan Administrator (such concurrence not to be unreasonably withheld). Any amounts released to a Tax Authority on behalf of JTIM shall be excluded from the Contributions made by JTIM at any time. For greater certainty, should there be a dispute regarding a notice of assessment or reassessment of Taxes, interest or penalties, the CCAA Plan Administrator, at the request of JTIM, shall

transfer the amount requested by JTIM (not exceeding 100% of any Taxes, interest and penalties assessed) to the relevant Tax Authority pending final resolution of the dispute; or

(c) to JTIM, following termination of the Contribution Period with the concurrence of the CCAA Plan Administrator (such concurrence not to be unreasonably withheld).

5.6 Annual Contributions

On or before the July 30th following each calendar year during the Contribution Period (or in the case of the final calendar year of the Contribution Period, on or before the 182nd day following the end of the Contribution Period), JTIM shall deposit into the Global Settlement Trust Account or the Supplemental Trust Account, as applicable, payments calculated in accordance with the Metric (collectively, the "**Annual Contributions**"), until such time as the total Contributions, in the aggregate, equal the Global Settlement Amount.

The CCAA Plan provides that net after-tax income is used in the calculation of the Annual Contributions in accordance with a metric ("**Metric**"). The Metric is the method by which, on an annual basis, the profits of the operating business of JTIM and any additional realization of assets are calculated, excluding the Alternative Products Business to be carved out in accordance with Section 5.7 ("**Net After-Tax Income")**. For greater certainty, the Metric will:

(a) Be based on the amount generated from all sources by JTIM, excluding Alternative Products;

(b) Include interest income;

(c) Include the proceeds of any disposition of any assets, including capital assets and intangible assets;

(d) Exclude one-time accounting adjustments that are non-operational in nature;

(e) Exclude one-time restructuring and global settlement related adjustments that are non-operational in nature (for greater certainty, this includes the recognition of any global settlement liability and/or associated expense of that liability). Subparagraph (e) is not intended to exclude cash expenses associated with CCAA Plan implementation including: (i) the Costs for the services of the CCAA Plan Administrators; (ii) the Costs for the services of the Claims Administrator (both as administrator and agent) in respect of the administration of the PCC Compensation Plan; (iii) the Costs for the services of the Administrative Coordinator; and (iv) the Costs for the services of the PCC Representative Counsel;

(f) Exclude interest expense to related parties; and

(g) Exclude any penalties and fines imposed by taxing and/or regulatory authorities.

The Annual Contributions required to be made for deposit into the Global Settlement Trust Account by JTIM for each year during the Contribution Period shall be calculated as follows:

(a) In years 1-5 (adjusted to take into account any stub period as appropriate, including eliminating the portion of the first year that occurs prior to the Plan Implementation Date) following the Plan Implementation Date, **85.0%** of the amount calculated pursuant to the Metric;

(b) In years 6-10 following the Plan Implementation Date, **80.0%** of the amount calculated pursuant to the Metric;

(c) In years 11-15 following the Plan Implementation Date, **75.0%** of the amount calculated pursuant to the Metric; and

(d) In year 16 following the Plan Implementation Date, **70.0%** of the amount calculated pursuant to the Metric, and continuing thereafter until the aggregate of the Contributions totals the Global Settlement Amount.

For greater certainty, the percentage of the Annual Contributions payable by JTIM shall commence at 85.0% in years 1-5 (adjusted to take into account any stub period as applicable) following the Plan Implementation Date and, thereafter, shall be reduced in 5.0% increments every five years until the percentage reaches 70.0% in year 16, and shall continue fixed at 70.0% thereafter until such time as the Global Settlement Amount has been paid in full. Notwithstanding the foregoing and without limiting the Claimants' rights in respect of an Event of Default, JTIM shall only be permitted to reduce the percentage of the Annual Contributions by the next 5% increment provided that JTIM has made all of the payments of Annual Contributions due and owing for all prior periods.

The Annual Contributions to be made by JTIM for the first and final calendar years of the Contribution Period shall be pro-rated to ensure that the Global Settlement Amount is not exceeded.

5.7 Exclusion of Alternative Products from Metric

All revenues from Alternative Products and all proceeds from any disposition of any assets related to the Alternative Products shall be excluded from the Metric, and all capital expenditures, fees, costs, disbursements, indebtedness, liabilities, expenses and other expenditures of any kind whatsoever, irrespective of whether they are made in the Ordinary Course of Business, that are made in respect of or relating to any Alternative Products shall be excluded from the Metric and shall not be charged against the revenue from Tobacco Products. Within sixty days before the Plan Implementation Date, JTIM shall provide to the CCAA Plan Administrators a list of all its Tobacco Products that shall be included in the Metric and a list of all its Alternative Products that shall be excluded from the Metric.

5.8 Contribution Period

The Tobacco Companies shall only be required to pay Annual Contributions and Reserved Amounts into the Global Settlement Trust Account and Supplemental Trust Account during the period from the Plan Implementation Date to the date that the aggregate amount of the Contributions paid into the Global Settlement Trust Account equals the Global Settlement Amount (the "**Contribution Period**"), and upon payment of the Global Settlement Amount in full, the

Tobacco Companies' obligations in respect of the CCAA Plan shall terminate. For greater certainty, the Contribution Period shall include the period of time during which any debt collection or other enforcement proceedings are pursued by any of the Claimants.

5.9 Several Liability

The obligations of the Tobacco Companies under their CCAA Plans to pay their respective Upfront Contributions, Annual Contributions and Reserved Amounts for deposit into the Global Settlement Trust Account and Supplemental Trust Account, shall be several and not joint and several.

5.10 No Admission of Liability

Nothing in the CCAA Plan or in any other Definitive Document is or shall be deemed to be an admission of fact or liability of any kind by any member of the Tobacco Company Group.

5.11 Retention/Transfer of Cash

During the Contribution Period, in each year until the end of the Contribution Period, JTIM shall retain its cash, cash equivalents and investments in Canada until such time as the Annual Contribution and Reserved Amounts owing in respect of that fiscal year have been deposited into the Global Settlement Trust Account or Supplemental Trust Account. Each year, after such deposit has been made in respect of that year, and provided that the amounts of the Annual Contribution and Reserved Amounts are not in dispute between the Parties, JTIM shall be free to deal in its sole discretion with its respective share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to JTIM that remain with JTIM, including being free to transfer or distribute such monies outside of Canada in such manner as JTIM may determine. Notwithstanding the foregoing, in the event that there is a dispute regarding the amount of JTIM's share of the Annual Contributions and/or the relevant Reserved Amounts:

(a) JTIM shall preserve and retain in Canada the amount that is in dispute out of its share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to JTIM in respect of that year until such time as such dispute is fully and finally resolved and the balance of the Annual Contribution and any relevant Reserved Amounts, if any, determined to be owing by JTIM to the Claimants has been deposited in full into the Global Settlement Trust Account and Supplemental Trust Account, as applicable, or as otherwise ordered by the CCAA Court; and

(b) JTIM shall be required to deposit into the Global Settlement Trust Account and the Supplemental Trust Account, as applicable, the amount of the Annual Contribution and/or Reserved Amounts, as applicable, that JTIM does not dispute is due and payable by it. After the dispute has been fully and finally resolved, JTIM shall be free to deal in its sole discretion with the balance remaining of its respective share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to JTIM, including being free to transfer or distribute such monies outside of Canada in such manner as JTIM may determine.

Provided that it is not alleged that RBH and Imperial are in any way implicated or involved in, or responsible for, the dispute regarding the amount of JTIM's share of the Annual Contributions

and/or the amount of JTIM's Reserved Amounts, RBH and Imperial shall be free to deal in their sole discretion with their respective shares of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to RBH and/or Imperial that remain with RBH and Imperial, as applicable, including being free to transfer or distribute such monies outside of Canada in such manner as RBH and Imperial may determine.

5.12 Transparency of Payments by Tobacco Companies

The amounts of all Contributions and Reserved Amounts paid by JTIM pursuant to the terms of the CCAA Plan shall be fully disclosed to the Provinces and Territories and counsel for any Impacted Claimants, pursuant to and in accordance with the CCAA Plan Administrators' Order, to enable the Provinces and Territories and any Impacted Claimants to verify that the Contributions and Reserved Amounts have been calculated accurately in accordance with the Metric and all other applicable terms of the Definitive Documents. For greater certainty, the Tobacco Companies shall not merge their Contributions and Reserved Amounts and then blindly deposit them into the Global Settlement Trust Account.

5.13 Contribution Security

At least 10 Business Days prior to the Plan Implementation Date, JTIM and its Material Subsidiaries shall enter into an agreement ("**Contribution Security Agreement**") granting security, including Deeds of Hypothec, to the Collateral Agent for the exclusive benefit of the Claimants over all of its present and after acquired assets, undertakings and properties and otherwise as may be agreed, to secure the obligations of JTIM to make the Annual Contributions and Reserved Amounts (the "**Contribution Security**"). Recourse to the Contribution Security shall only be available upon the occurrence of an Event of Default which is not cured pursuant to Article 12, Section 12.3. The Collateral Agent shall have no rights to enforce the Contribution Security in the event of the occurrence of a Breach. The Contribution Security Agreement is attached to the CCAA Plan as Schedule "E", the Deed of Immoveable Hypothec (official French version) as Schedule "F", the Deed of Immoveable Hypothec (unofficial English version) as Schedule "G" and the Deed of Moveable Hypothec as Schedule "H".

The Collateral Agent, to be engaged, shall agree pursuant to the terms of an intercreditor agreement on market terms to be agreed, to subordinate the Contribution Security to (i) any statutory deemed trusts; and (ii) any security granted (or to be granted) by JTIM to any lender in connection with an operating facility on market terms with a principal amount that does not exceed an amount to be agreed in respect of JTIM.

Subject to the terms of an NDA entered into between JTIM and the Claimants, JTIM shall provide to the Claimants the full particulars regarding the assets, undertakings and properties over which JTIM and its Material Subsidiaries shall grant security.

5.14 Subordination of Security in respect of JTIM

At least 10 Business Days prior to the Plan Implementation Date, JTIM TM shall enter into a subordination agreement to subordinate its existing security over JTIM's assets, undertakings and properties to the Collateral Agent and to defer exercising any recourses until the Global Settlement Amount has been paid in full (the "**JTIM Subordination Agreement**"). For greater certainty, the

JTIM Subordination Agreement shall provide that, during the Contribution Period, JTIM shall be permitted:

(a) to pay all principal and interest (including default interest and fees) on its debentures owing to JTIM TM solely from JTIM's share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to JTIM that, pursuant to the Metric, remain with JTIM subject, however, to the terms of Article 5, Section 5.11 that govern JTIM's retention of its cash, cash equivalents and investments in Canada until such time as the Annual Contributions and Reserved Amounts owing in respect of each fiscal year, as applicable, have been deposited into the Global Settlement Trust Account or Supplemental Trust Account, as applicable to pay, as of and from the Plan Implementation Date, from amounts generated from its ongoing operations, the royalties and license fees in respect of trademark licenses pursuant to its existing license arrangements that are in place on the Plan Implementation Date, save during the pendency of a Standstill Period as that term is defined in the JTIM Subordination Agreement; and

(c) to pay any arrears of royalty and license fees that accrued prior to the Effective Time, solely from JTIM's share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to JTIM that, pursuant to the Metric, remain with JTIM subject, however, to the terms of Article 5, Section 5.11.

The JTIM Subordination Agreement is attached to the CCAA Plan as Schedule "I".

5.15 Parent and Tobacco Company Group Support through Intercompany Transactions

During the Contribution Period, JTIM's Parent and the relevant Affiliates within its Tobacco Company Group shall continue to provide to JTIM and its Subsidiaries shared services and other operational support ("**Intercompany Services**") pursuant to the Intercompany Transactions that are in place on the Plan Implementation Date, or new Intercompany Services that are part of a broader operational restructuring among JTIM's Tobacco Company Group. The provision of such Intercompany Services shall be (a) consistent with existing arrangements or past practice, or as otherwise approved by the CCAA Plan Administrators, and (b) in compliance with Applicable Law and subject to the Tobacco Company Group's transfer pricing policies across global markets, and (c) subject to normal course market adjustments. Any adjustments to Intercompany Services within JTIM's Tobacco Company Group shall not affect JTIM in a manner that is materially less favourable as compared to the terms on which similar Intercompany Services are provided to any other members of JTIM's Tobacco Company Group. The chief financial officer of JTIM shall certify that any adjustments to the Intercompany Services are consistent with the treatment of the other companies within the Tobacco Company Group. Any such certification shall not give rise to any personal liability on the part of the applicable certifying officer.

JTIM, its Parent and the relevant Affiliates within its Tobacco Company Group shall:

(a) maintain and not make any revision to or variation of the terms of any Intercompany Transaction, including the withdrawal, termination or cessation of the Intercompany Transaction; and

(b) shall maintain and not make any material change to its related party Canadian trademark and other intellectual property licensing arrangements, together with the structure and pricing methodology currently used for carrying on business in Canada,

except in compliance with the requirements set out in this Section 5.15.

In the event that JTIM is no longer Financially Viable due to circumstances beyond the control of JTIM or its Tobacco Company Group, JTIM's Parent may give the CCAA Plan Administrators, the Provinces and Territories, the Impacted Claimants and the other Tobacco Companies one year's notice of its intention to discontinue its Canadian operations. If the CCAA Plan Administrators are satisfied, based on the financial information made available to them by JTIM pursuant to the CCAA Plan, that JTIM is no longer Financially Viable due to circumstances beyond the control of JTIM or its Tobacco Company Group, then they will communicate such position to the Provinces and Territories and the Impacted Claimants. If each of the Provinces and Territories and the Impacted Claimants accept such position, then JTIM's Parent may discontinue the provision of shared services and other operational support on the date that the discontinuance takes effect.

The foregoing does not negate the prohibition against JTIM's Parent and relevant Affiliates within its Tobacco Company Group entering the market for Tobacco Products in Canada with any other company or entity in place of the discontinued business, or any other provision in the CCAA Plan except for the obligation to provide shared services and other operational support. For greater certainty, except through JTIM and its Material Subsidiary, JTIM's Parent and the relevant Affiliates within its Tobacco Company Group shall not directly or indirectly, including by (i) exporting or supplying Tobacco Products to Canada, (ii) licensing technology, trademarks and intellectual property, or (iii) providing services, engage in any business activity or have any direct or indirect involvement or participation in the market for Tobacco Products in Canada.

In the event that the CCAA Plan Administrators, the Provinces and Territories, the Impacted Claimants or other Tobacco Companies do not accept the position of JTIM and its Parent regarding the Financial Viability of JTIM's Canadian operation, JTIM and its Parent may bring the issue before the CCAA Court for determination.

For greater certainty, JTIM shall be permitted to pay any arrears of royalty and license fees that accrued both prior to and after JTIM's Filing Date of March 8, 2019, solely from JTIM's share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to JTIM that, pursuant to the Metric, remain with JTIM subject, however, to the terms of Article 5, Section 5.11 herein that govern JTIM's retention of its cash, cash equivalents and investments in Canada until such time as the Annual Contributions and Reserved Amounts owing in respect of each fiscal year have been deposited into the Global Settlement Trust Account or Supplemental Trust Account, as applicable.

5.16 Payment of Intercompany Claims

Any Intercompany Claim outstanding and due by JTIM as at the Effective Time may only be repaid by JTIM from its share of the Net After-Tax Income and amounts released from the Supplemental Trust Account, as applicable, that will remain with JTIM in each year after its

Annual Contribution and any Reserved Amounts have been deposited into the Global Settlement Trust Account or Supplemental Trust Account, as applicable, the whole subject, however, to the terms of Article 5, Section 5.11 that govern the retention of its share of funds in the event that the amount of the Annual Contribution or Reserved Amount is in dispute.

ARTICLE 6. ADMINISTRATION OF THE GLOBAL SETTLEMENT AMOUNT

6.1 Allocation of the Global Settlement Amount

Set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein are the terms that will govern the allocation of the Global Settlement Amount and the timing of the distributions thereof to the:

(a) Quebec Class Action Plaintiffs;

(b) Pan-Canadian Claimants;

(c) Provinces and Territories;

(d) Cy-près Foundation;

(e) Tobacco Producers; and

(f) *Knight* Class Action Plaintiffs.

6.2 Expert Evidence supporting Provincial HCCR Claims and Territorial HCCR Claims and Provincial and Territorial Allocation

Expert evidence informing, in part, and supporting the quantification of the Provincial HCCR Claims and the Territorial HCCR Claims, and the allocation of the Provinces and Territories Settlement Amount among the Provinces and Territories, includes the Harrison Report that is attached to this Plan as Schedule "J". Dr. Harrison's curriculum vitae is attached to the CCAA Plan as Schedule "K". The Provinces and Territories Settlement Amount shall be apportioned among the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

6.3 Expert Evidence supporting the Pan-Canadian Claimants' Compensation Plan

Expert evidence informing, in part, and supporting the development, formulation and quantification of the PCC Compensation Plan includes the Jha Report that is attached to this Plan as Schedule "L". Dr. Jha's curriculum vitae is attached to the CCAA Plan as Schedule "M".

6.4 Consideration for Settlement of *Knight* Class Action

The consideration for the settlement of the *Knight* Class Action shall be the contribution to the Cy-près Fund and the payment of the *Knight* Class Counsel Fee.

6.5 Investment of Contributions and Reserved Amounts pending Disbursement

The Contributions and Reserved Amounts paid into the Global Settlement Trust Account and Supplemental Trust Account, PCC Trust Account, QCAP Trust Account and Cy-près Trust Account, as well as the monies deposited into the Miscellaneous Claims Fund, CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account, shall be invested in accordance with approved investment guidelines, pending disbursement to the Claimants and any other applicable payees.

ARTICLE 7. ESTABLISHMENT AND ADMINISTRATION OF QUEBEC CLASS ACTION ADMINISTRATION PLAN

7.1 Purpose of the Quebec Administration Plan

The Quebec Administration Plan will provide direct compensation in the form of monetary payments to QCAPs who meet the criteria to qualify as *Blais* Class Members pursuant to the judgments in the Quebec Class Actions. The Quebec Administration Plan is attached to the CCAA Plan as Schedule "N".

The Court-Appointed Mediator and the Monitors recommend that Epiq be approved by the CCAA Court for appointment as the Claims Administrator to manage the administration of the claims processes for both the Quebec Administration Plan and the PCC Compensation Plan. Attached to the CCAA Plan as Schedule "O" is an overview of Epiq's complex claims administration experience, an eleven page list of Epiq's legal administration projects, a description of Epiq's Tobacco Claims Pre-Settlement Support Program, and the resumes of the key professional management personnel who will be assigned to the administration of the Quebec Administration Plan and the PCC Compensation Plan.

The Court-Appointed Mediator and the Monitors recommend that Daniel Shapiro, K.C. be approved for appointment as the Administrative Coordinator in respect of the administration of both the Quebec Administration Plan and the PCC Compensation Plan. Mr. Shapiro's curriculum vitae is attached to the CCAA Plan as Schedule "P".

The following table summarizes the compensation available to Eligible *Blais* Class Members under the Quebec Administration Plan:

[Remainder of page intentionally left blank]

Quebec Class Action Administration Plan		
Column 1 **Compensable Disease**	**Compensation 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 Payment for Eligible *Blais* Class Members who started to smoke before January 1, 1976**	**Column 3** **Compensation Payment for Eligible *Blais* Class Members who started to smoke on or after January 1, 1976 (80% of Column 2)**
Lung Cancer	$100,000	$80,000
Throat Cancer	$100,000	$80,000
Emphysema/COPD (GOLD Grade III or IV)	$30,000	$24,000

7.2 Quebec Administration Plan is subject to the Approval of the CCAA Court

The CCAA Court shall hear and determine the proceedings relating to the approval of the Quebec Administration Plan, including the approval of the retainer agreement respecting fees and disbursements between the Quebec Class Counsel and the representative plaintiffs in the Quebec Class Actions, and the approval of the Quebec Class Counsel Fee.

Matters relating to the ongoing supervision of the Quebec Administration Plan shall be heard and determined jointly by the CCAA Court and the Quebec Superior Court. In performing this function, the CCAA Court and the Quebec Superior Court may communicate with one another in accordance with a protocol to be worked out and established by them.

No changes, modifications or revisions shall be made to the Quebec Administration Plan without the joint approval of the CCAA Court and the Quebec Superior Court as set out in an Order issued by the CCAA Court.

7.3 Release of Cash Security Deposits

The Cash Security Deposits, which form part of the Upfront Contributions, shall be released from suretyship prior to the Plan Implementation Date and shall be deposited into the Global Settlement Trust Account.

7.4 QCAP Trust Account

The QCAP Settlement Amount, less the QCAP Cy-près Contribution, shall be paid from the Global Settlement Trust Account and deposited into the QCAP Trust Account for the benefit of the *Blais* Class Members.

From time to time, upon the submission of a requisition by the Claims Administrator, the CCAA Plan Administrators shall authorize the advancement of instalments of funds from the QCAP Trust Account to the Claims Administrator's trust account designated for the Quebec Administration Plan, which shall be held in the Bank for the benefit of the *Blais* Class Members, to enable the Claims Administrator to make Compensation Payments to Eligible *Blais* Class Members.

7.5 Payment of QCAP Cy-près Contribution to Cy-près Trust Account

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 constituting the indirect benefit to the *Létourneau* Class Members. 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.

7.6 No Solicitation of *Blais* Class Members

No Persons other than the Quebec Class Counsel, their agent Raymond Chabot, the Claims Administrator, or any Person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit *Blais* Class Members in order to assist them with the preparation or submission of their Proofs of Claim under the Quebec Administration Plan.

ARTICLE 8. ESTABLISHMENT AND ADMINISTRATION OF PAN-CANADIAN CLAIMANTS' COMPENSATION PLAN

8.1 Purpose of the PCC Compensation Plan

The Pan-Canadian Claimants' Compensation Plan ("**PCC Compensation Plan**") will provide direct compensation in the form of monetary payments to PCCs who fulfill all of the following criteria ("**PCC Eligibility Criteria**"):

(a) On the date that a PCC submits their claim to the PCC Compensation Plan:

  (i) If the PCC is alive, they must reside in a Province or Territory in Canada, or

  (ii) If the PCC is deceased, they must have resided in a Province or Territory in Canada on the date of their death;

(b) The PCC was alive on March 8, 2019;

(c) Between January 1, 1950 and November 20, 1998, the PCC smoked a minimum of Twelve Pack-Years of cigarettes sold by the Tobacco Companies;

(d) Between March 8, 2015 and March 8, 2019 ("**PCC Claims Period**"), the PCC was diagnosed with:

(i) Primary lung cancer ("**Lung Cancer**"),

(ii) Primary cancer (squamous cell carcinoma) of the Larynx, Oropharynx or Hypopharynx ("**Throat Cancer**"), or

(iii) Chronic obstructive pulmonary disease (GOLD Grade III or IV only) (collectively, the "**PCC Compensable Diseases**"); and

(e) On the date of the diagnosis with a PCC Compensable Disease the PCC resided in a Province or Territory in Canada.

The following table summarizes the compensation which will be 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 following documents are attached as Schedules to the CCAA Plan:

(a) The document entitled "Pan-Canadian Claimants' Compensation Plan: Methodology and Analysis" dated September 18, 2024 is attached to the CCAA Plan as Schedule "Q";

(b) The Jha Report is attached to the CCAA Plan as Schedule "L"; and

(c) The Analysis of Limitations Law applicable to Pan-Canadian Claimants dated September 2, 2020 is attached to the CCAA Plan as Schedule "R".

8.2 PCC Compensation Plan

The CCAA Court shall hear and determine the proceedings relating to the approval of the PCC Compensation Plan. The PCC Compensation Plan is attached to the CCAA Plan as Schedule "S". The Court-Appointed Mediator and the Monitors recommend that Epiq be approved by the CCAA Court for appointment as the Claims Administrator to manage the administration of the claims processes for both the Quebec Administration Plan and the PCC Compensation Plan.

Matters relating to the ongoing supervision of the PCC Compensation Plan shall be heard and determined solely by the CCAA Court.

8.3 PCC Trust Account

The PCC Compensation Plan Amount shall be paid from the Global Settlement Trust Account and deposited into a segregated interest-bearing trust account or trust accounts ("**PCC Trust Account**") held in the Bank for the benefit of the Pan-Canadian Claimants.

From time to time, upon the submission of a requisition by the Claims Administrator, the CCAA Plan Administrators shall authorize the advancement of instalments of funds from the PCC Trust Account to the Claims Administrator's trust account designated for the PCC Compensation Plan, which shall be held in the Bank for the benefit of the Pan-Canadian Claimants, to enable the Claims Administrator to make Individual Payments to Eligible Pan-Canadian Claimants.

8.4 No Solicitation of Pan-Canadian Claimants

No Persons other than the PCC Representative Counsel, their agent Epiq, the Claims Administrator, or any Person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit Pan-Canadian Claimants in order to assist them with the preparation or submission of their PCC Claim Packages under the PCC Compensation Plan.

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 Tobacco Products who have not yet or may never develop a tobacco-related harm.

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 tobacco-related diseases. The Cy-près Foundation will indirectly benefit users of Tobacco Products and their affected family members or estates who are <u>not</u> directly compensated through the Quebec Administration Plan or PCC Compensation Plan. The smokers who <u>are</u> 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 tobacco 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 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 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.

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 and is not reviewable once it has received approval by the CCAA Court.

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 the present structure for diagnosis, treatment and palliation of Persons suffering from tobacco-related cancers, Emphysema/COPD and other tobacco-related harms.

- 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, 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 diseases, 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 (in the period after the Sanction Hearing and prior to Final Approval of the Cy-près Foundation)

The establishment of the Cy-près Foundation will take place in two phases as set forth herein: the first occurring at the Sanction Hearing, and the second occurring at the hearing for the final approval by the CCAA Court of the Cy-près Foundation, so as to permit the finalization of the administrative aspects of the 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, including the Chair, 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 CCAA Plan Administrators 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.

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 CCAA Plan Administrators 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 CCAA Plan Administrators shall supply reports to the CCAA Court affirming the foregoing.

9.5 Appointment of Board of Directors and Chair of Cy-près Foundation (in the period after the Sanction Hearing and prior to Final Approval of the 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, including the Chair, shall be ratified by the CCAA Plan Administrators and be subject to the approval of the CCAA Court. 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 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;

(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.

The CCAA Plan Administrators shall be empowered to retain the services of such experts as they deem necessary to advise them in regard to the foregoing and in respect of any and all endeavours in connection with the establishment and operation of the Cy-près Foundation.

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.

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 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. 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.

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.

ARTICLE 10. INFORMATION TO BE PROVIDED DURING THE CONTRIBUTION PERIOD

10.1 Annual Business Plans

Notwithstanding any terms or conditions of any Definitive Documents, JTIM and any members of its Tobacco Company Group, as applicable, shall comply with all their obligations pursuant to Article 10 herein. On an annual basis during the Contribution Period, JTIM shall provide to the CCAA Plan Administrator a rolling five-year operating and capital business plan approved by

JTIM's Canadian senior management (the "**Business Plan**") that shall be consistent with the Definitive Documents and, without limitation, shall include the following:

(a) The same schedules and level of detail as JTIM has provided to the Claimants during the pendency of the CCAA Proceedings including, for greater certainty, five-year projections for JTIM's income statement, balance sheet, cash flow statement, gross margin schedule, total margin schedule, Intercompany Transaction details, taxes and government levies schedule, operating costs schedule, statement of financial position, and summary of assumptions and trends;

(b) JTIM's plans to make capital expenditures ("**CapEx**") that:

(i) Are reasonably necessary for the preservation of its assets, undertakings and properties or its business (including payments on account of insurance, maintenance and security services),

(ii) Are reasonably necessary to replace or supplement its assets, undertakings or properties, or

(iii) Are otherwise of benefit to the business; and

(c) The framework, elements and pricing of the intercompany charges for the Intercompany Services which the Parent and relevant Affiliates of JTIM shall continue to provide to JTIM through Intercompany Transactions, subject to the provisions of the CCAA Plan and in accordance with the Definitive Documents.

The CCAA Plan Administrator shall review the Business Plan for JTIM on an annual basis, and may suggest non-binding revisions or amendments to JTIM. The CCAA Plan Administrator may advise the Provinces, Territories and any Impacted Claimants of such suggestions. The suggestions of the CCAA Plan Administrator shall be considered in good faith by JTIM.

10.2 Quarterly and Annual Information

10.2.1 Annual Financial Information

On or before the 90th day following the end of each fiscal year during the Contribution Period, JTIM shall provide the CCAA Plan Administrator with the following financial information:

(a) An audited financial statement ("**Annual Financial Statement**");

(b) A schedule providing the particulars by Affiliate of all receipts and disbursements in respect of all of JTIM's Intercompany Transactions;

(c) A report that identifies and discusses the differences between JTIM's financial performance forecast in its Business Plan and its actual financial performance in each fiscal year during the Contribution Period; and

(d) All other relevant assumptions, details and schedules that support the Annual Financial Statement.

10.2.2 Information to be provided by JTIM in Annual MD&A

The Business Plan which JTIM shall provide annually during the Contribution Period to the CCAA Plan Administrator shall be accompanied by a management discussion and analysis ("**MD&A**") which includes disclosure of information regarding the following matters that is of a similar level of disclosure as in the CCAA Proceedings to enable the CCAA Plan Administrator and the Claimants to understand and assess the impact on and associated risk to JTIM's performance of its obligations under the Definitive Documents:

(a) **Transfer Pricing Arrangements** - Any plan to change any of JTIM's existing intercompany transfer pricing arrangements;

(b) **Intercompany Transaction Changes** - Any plan to enter into a new Intercompany Transaction or amend the terms of an existing Intercompany Transaction which may only be undertaken in compliance with the requirements set out in Article 5, Section 5.15 herein;

(c) **Intercompany Transaction Terminations** - Any plan to not renew, not extend or otherwise terminate an Intercompany Transaction;

(d) **Change in Location** - Any plan to move JTIM's head office or other premises and/or terminate any lease of the premises housing such offices;

(e) **Disposition of Assets** - Any plan to dispose of and/or transfer material assets exceeding $5 million in any one transaction or $10 million in the aggregate, including manufacturing equipment, trademarks, intellectual property and any other intangible assets, that are material to JTIM's conduct of its Ordinary Course of Business;

(f) **Termination of Employees** - Any plan to terminate an operationally significant number of employees of JTIM;

(g) **Change in Executive Management Team** - Any planned or anticipated changes to JTIM's executive management team in regard to both complement and personnel;

(h) **CapEx** - JTIM's CapEx budget, including any plans to make material capital expenditures and dispose of and/or transfer assets;

(i) **Cash Security Arrangements** - Any planned new cash security arrangements or other treasury arrangements, or planned amendments to cash security arrangements or treasury arrangements including: the use of concentration accounts, cash sweeps, increased or new escrow, and deposit or pledged asset requirements;

(j) **Cash Commitments** - Any planned new or amended cash commitments or deposits required that are in excess of $10 million in the aggregate, whether occurring in any one situation, or series of related situations, or series of related transactions;

(k) **Financing Arrangements** - Any planned new or amended financing arrangements into which JTIM proposes to enter, that are in excess of $10 million in the aggregate, whether occurring in any one situation, or series of related situations, or series of related transactions, including full particulars regarding the anticipated security and financing costs;

(l) **Material Change in Business Operations** - Any plans to permanently or temporarily cease, downsize or shutdown any businesses or operations carried on by JTIM, or make any other material changes in JTIM's business or operations (other than in respect of Alternative Products);

(m) **Taxes** – All notices of assessment or reassessment in respect of any taxation year ending during the Contribution Period. Any rulings and any other written communications issued by a Tax Authority relating to the deductibility of the Upfront Contributions, Annual Contributions or Reserved Amounts for income tax purposes, the receipt of Reserved Amounts, or the availability, deductibility, carryforward or carryback of a Tax Attribute (any of which, a "**Tax Matter**");

(n) **Claims and Litigation** – All notices received by JTIM regarding claims or potential claims that may be brought against it, and copies of all originating processes commenced against JTIM;

(o) **Settlements** – All amounts paid to settle claims made and actions commenced against JTIM and whether such payments were made in whole or in part by JTIM's insurer(s); and

(p) **Penalties and Fines** – All penalties and fines, and any interest charged thereon, levied against JTIM by a Governmental Authority.

10.2.3 Information to be provided by JTIM in Quarterly MD&A

Quarterly during the Contribution Period, JTIM shall provide to the CCAA Plan Administrator:

(a) Financial statements which include the same schedules and level of detail as JTIM has provided to the Claimants during the pendency of the CCAA Proceedings including, for greater certainty, income statement, balance sheet, statement of profit and loss, cash flow statement, statement of Tobacco Product shipment volumes by brand, gross margin schedule, total margin schedule, Intercompany Transaction details, Taxes and government levies schedule, operating costs schedule, statement of financial position, and summary of assumptions and trends, and the particulars of the determination of the net income attributable to the Alternative Products; and

(b) An accompanying MD&A which includes disclosure of any new information or updates relating to the matters enumerated in Article 10, Section 10.2.2(a) through Article 10, Section 10.2.2(p) herein that is sufficiently detailed to enable the CCAA Plan Administrator and the Claimants to understand and assess the impact on and associated risk to JTIM's performance of its obligations under the Definitive Documents.

10.3 Other Information to be provided by JTIM

During the Contribution Period, within ten days of receipt of any communication from a Tax Authority relating to a Tax Matter, JTIM shall provide copies of same to the CCAA Plan Administrators. During the Contribution Period, JTIM shall also provide sufficiently detailed information and supporting data to the CCAA Plan Administrator in response to *ad hoc* requests which may be made from time to time in connection with the information produced by JTIM pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3 and 10.8 herein.

10.4 Access to JTIM's Management

During the Contribution Period, JTIM shall provide the CCAA Plan Administrators with reasonable access to its key management personnel to answer any reasonable questions they may have arising from or in connection with the financial records and information 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. The key management personnel of JTIM shall attend quarterly meetings and any meetings scheduled *ad hoc* with the CCAA Plan Administrators.

10.5 Procedure for Provinces and Territories to request Information from JTIM

If, in connection with the interpretation, implementation, application, compliance with, enforcement of, or alleged breach or violation of any terms of any of the Definitive Documents, a Province or Territory wishes to make a request for financial records or other data and information ("**Information Request**") to JTIM, the following procedure shall be followed:

(a) An Information Request from any public servant of, or financial, legal or other advisor to, a Province or Territory shall be delivered to the PTLC Member for the requesting Province or Territory. The Information Request shall be in writing and sufficiently particularized;

(b) The PTLC Member for the requesting Province or Territory shall submit the written Information Request to the PTLC Chair;

(c) The PTLC Chair shall review each Information Request received and, if necessary, confer with the requesting PTLC Member to clarify the particulars of the information sought, remove any duplication with other Information Requests received from other PTLC Members, and then prepare a final written Information Request ("**Final Information Request**"). Notwithstanding the foregoing responsibility, the PTLC Chair may, in their discretion, decline to send to the CCAA Plan Administrator an Information Request which, in the reasonable view of the PTLC Chair, is unreasonable, unnecessary, overly broad or imprecise. If the PTLC Chair declines to send an Information Request to the CCAA Plan Administrator, the PTLC Chair shall advise the requesting PTLC Member in writing of the reason for such decision;

(d) If the Information Request has not been declined, the PTLC Chair shall submit the Final Information Request to the CCAA Plan Administrator, and provide all PTLC Members and any Impacted Claimants with a copy of the Final Information Request;

(e) The CCAA Plan Administrator shall review and then may submit the Final Information Request to JTIM. Notwithstanding the foregoing responsibility, the CCAA Plan Administrator may, in its discretion, suggest revisions, add comments or decline to send to JTIM a Final Information Request which, in the reasonable view of the CCAA Plan Administrator, is unreasonable, unnecessary, overly broad or imprecise. If the CCAA Plan Administrator declines to send a Final Information Request to JTIM, the CCAA Plan Administrator shall advise the PTLC Chair in writing of the reason for such decision. In that event:

(i) The PTLC Chair may reconsider whether to revise or withdraw the Final Information Request; or

(ii) The PTLC Chair may require the CCAA Plan Administrator to provide JTIM with a copy of the Final Information Request, in which case the written reasons for the CCAA Plan Administrator's view that the Final Information Request is improper or irrelevant shall also be submitted to JTIM.

All Final Information Requests that are submitted to JTIM and any written comments or written reasons of the CCAA Plan Administrator shall be admissible in evidence in any arbitration or proceeding in the CCAA Court;

(f) JTIM shall provide to the CCAA Plan Administrator data, information and any documents responsive to the Final Information Request which the CCAA Plan Administrators shall use to prepare a written response to the Final Information Request. The CCAA Plan Administrator shall deposit the written response and any documents received from JTIM in the Virtual Data Room for JTIM, and then notify the PTLC Chair and any Impacted Claimants of such deposit;

(g) The PTLC Chair shall notify the PTLC Members that the written response and any documents responsive to the Final Information Request have been deposited into JTIM's Virtual Data Room; and

(h) The PTLC Chair, any Impacted Claimants or the CCAA Plan Administrator may request an *ad hoc* Interface Meeting to discuss JTIM's response to the Final Information Request.

Under no circumstances shall a PTLC Member, other public servant of, or a financial, legal or other advisor to, any Province or Territory contact JTIM or a member of JTIM's Tobacco Company Group directly to make an Information Request and thereby bypass the PTLC Chair or the CCAA Plan Administrator.

10.6 Procedure for Impacted Claimants to request Information from JTIM

If an Impacted Claimant wishes to make an Information Request to JTIM, the following procedure shall be followed:

(a) An Information Request from an Impacted Claimant, or its financial, legal or other advisor, shall be in writing, sufficiently particularized and not duplicate any Final Information

Requests from the Provinces and Territories which have been provided to the Impacted Claimant by the PTLC Chair;

(b) The Impacted Claimant shall submit its Information Request to the CCAA Plan Administrator with a copy to the PTLC Chair;

(c) The PTLC Chair shall provide a copy of the Impacted Claimant's Information Request to all PTLC Members;

(d) The CCAA Plan Administrator shall review and then may submit the Impacted Claimant's Information Request to JTIM. Notwithstanding the foregoing responsibility, the CCAA Plan Administrator may, in its discretion, suggest revisions, add comments or decline to send to JTIM an Information Request which, in the reasonable view of the CCAA Plan Administrator, is unreasonable, unnecessary, overly broad or imprecise. If the CCAA Plan Administrator declines to send an Information Request to JTIM, the CCAA Plan Administrator shall advise the Impacted Claimant of the reason for such decision. In that event:

(i) The Impacted Claimant may reconsider whether to revise or withdraw its Information Request; or

(ii) The Impacted Claimant may require the CCAA Plan Administrator to provide JTIM with a copy of its Information Request, in which case the written reasons for the CCAA Plan Administrator's view that the Information Request is unreasonable, unnecessary, overly broad or imprecise shall also be submitted to JTIM.

All Information Requests of an Impacted Claimant that are submitted to JTIM and any written comments or written reasons of the CCAA Plan Administrator shall be admissible in evidence in any arbitration or proceeding in the CCAA Court;

(e) JTIM shall provide to the CCAA Plan Administrator data, information and any documents responsive to the Impacted Claimant's Information Request which the CCAA Plan Administrator shall use to prepare a written response to the Information Request. The CCAA Plan Administrator shall deposit the written response and any documents received from JTIM in the Virtual Data Room for JTIM, and then notify the Impacted Claimant and the PTLC Chair of such deposit;

(f) The PTLC Chair shall notify the PTLC Members that the written response and any documents responsive to the Impacted Claimant's Information Request have been deposited into JTIM's Virtual Data Room; and

(g) The Impacted Claimant, PTLC Chair or CCAA Plan Administrator may request an *ad hoc* Interface Meeting to discuss JTIM's response to the Impacted Claimant's Information Request.

Under no circumstances shall an Impacted Claimant, or any of its financial, legal or other advisors, contact JTIM or any member of JTIM's Tobacco Company Group directly to make an Information Request and thereby bypass the CCAA Plan Administrator.

10.7 Confidentiality of Information

In addition to their obligations pursuant to the NDAs and any confidentiality order, the PTLC Members and the Impacted Claimants shall maintain the strict confidentiality of all communications made, all information shared and all agendas, reports, records and other documents exchanged during the Interface Meetings and the Deliberation Meetings and in response to Information Requests, which shall not be disclosed in or used for any proceeding or any other purposes, other than as provided for in Article 10, Sections 10.5(e) and 10.6(d).

10.8 Information and Certification to be provided by JTIM regarding Annual Contributions and Reserved Amounts

During the Contribution Period, JTIM shall provide to the CCAA Plan Administrator sufficiently detailed information and supporting data regarding the quantum of the Annual Contributions and Reserved Amounts to be made by JTIM in respect of each calendar year, including a certification provided by JTIM's chief financial officer that the quantum of the Annual Contributions and Reserved Amounts to be made by JTIM in respect of each calendar year has been calculated accurately in accordance with the Metric and all other applicable terms of the Definitive Documents. Such certification shall be delivered to the CCAA Plan Administrator at the same time as the aforesaid information and supporting data and shall not give rise to any personal liability on the part of the certifying officer.

10.9 Timing of JTIM's Delivery of Business Plan, Financial Statements and MD&A to CCAA Plan Administrators

By no later than the applicable dates specified in the Table below, JTIM shall deliver to the CCAA Plan Administrator the Business Plans and financial records and information that it is required to produce pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 herein:

Financial Documents	Dates by which JTIM shall deliver Financial Documents to CCAA Plan Administrator
Q1 Financial Statements	May 15
Q2 Financial Statements	August 15
Q3 Financial Statements	November 15
Q4 Financial Statements	March 15
Annual Financial Statements	March 31
5 year Business Plan provided annually	May 15
Calculation of Metric	June 30

10.10 Virtual Data Rooms and NDAs

As provided in Article 11, Section 11.1(b) herein, during the Contribution Period, JTIM shall provide to its CCAA Plan Administrator for deposit into its virtual data room ("**Virtual Data Room**") all of the financial records and information required to be produced to the CCAA Plan Administrator pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 herein. JTIM's Virtual Data Room shall only be accessed by the CCAA Plan Administrators, Provinces, Territories and Impacted Claimants and their advisors who have executed an NDA with JTIM.

Provided that they have executed an NDA, any Claimant to whom any portion of its share of the Global Settlement Amount remains unpaid shall be entitled to access all of the financial records and information that JTIM shall deposit in its Virtual Data Room pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 and Article 11, Section 11.1(b) herein.

ARTICLE 11. COVENANTS AND OTHER PAYMENT ASSURANCE

11.1 Covenants

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

(a) JTIM 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 JTIM, or in response to prevailing material market changes affecting JTIM, that are not contemplated by its Business Plan;

(b) In accordance with Article 10, Section 10.10 herein, JTIM 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, JTIM 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 JTIM;

    (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 JTIM's Parent and the relevant Affiliates within its Tobacco Company Group in compliance with the requirements set out in Article 5, Section 5.15 herein; and

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

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

(c) JTIM 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 JTIM 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) JTIM 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) JTIM shall diligently pursue any Tax Matter raised by a Tax Authority to establish a positive outcome for JTIM, 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 JTIM in respect of any Tax Matter, provided that following any receipt of any such submissions, objections or appeals, the CCAA Plan Administrators shall not knowingly waive any applicable privilege in respect of such submissions, objections or appeals;

(f) The chief financial officer of JTIM shall certify that the information provided to the CCAA Plan Administrator by JTIM 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 JTIM 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) JTIM 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 JTIM to satisfy its obligations under the CCAA Plan including, the ability of JTIM to pay the Upfront Contributions, Tax Refund Cash Payments and/or Annual Contributions within the Contribution Period;

(h) Except: (i) for an Ordinary Course Divestiture made in accordance with Article 11, Section 11.4 herein, or (ii) 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 JTIM 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 JTIM 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 JTIM 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 JTIM 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) JTIM 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) JTIM 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) JTIM 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) JTIM shall not, and shall not permit any of its Material Subsidiaries to, assign any of its income to any other Person, and JTIM's Parent and any member of its Tobacco Company Group shall not cause JTIM to assign any of its income to any other Person.

11.2 Ordinary Course Operational Activities

Decisions made by JTIM'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 JTIM's directors' and officers' business judgment, provided that such decisions are made in the Ordinary Course of Business, are consistent with JTIM'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 JTIM 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 JTIM 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 JTIM'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 JTIM's assets and business including payments on account of insurance (including directors and officers insurance), maintenance and security services;

(g) Administration of JTIM'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 JTIM'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 JTIM'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 JTIM 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 JTIM to a Governmental Authority under Applicable Law;

(l) Posting of bonding collateral to satisfy regulatory or administrative requirements imposed on JTIM 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, JTIM 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 JTIM 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, JTIM 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 JTIM 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.

ARTICLE 12. EVENTS OF DEFAULT, BREACHES AND REMEDIES

12.1 Aggrieved Parties in Dispute Resolution

For the purpose of the dispute resolution processes set forth in Articles 12 and 13 of the CCAA Plan, the following Persons only may be "**Aggrieved Parties**":

(a) the Provinces and Territories collectively, the collective interests of which will be advanced in the dispute resolution processes in a coordinated manner through the PTLC. Notwithstanding the foregoing, each Province and Territory retains its right to pursue a claim individually should it decide to do so and, if any Province or Territory elects to do so, it shall be designated as an Aggrieved Party hereunder. However, such right shall not extend to any assignee of an Affected Claim of a Province or Territory;

(b) the Pan-Canadian Claimants whose collective interests will be represented in the dispute resolution processes by the PCC Representative Counsel;

(c) the QCAPs whose collective interests will be represented in the dispute resolution processes by the Quebec Class Counsel;

(d) any other Impacted Claimant who has not yet been paid their full share of the Global Settlement Amount; and/or

(e) the Cy-près Foundation solely for the purpose of enforcing any non-payment of any portion of the Cy-près Fund.

Upon the occurrence of an event that may constitute an Event of Default or a Breach, any Aggrieved Party may exercise their rights and pursue any remedies available pursuant to the terms of the CCAA Plan, any other Definitive Documents and Applicable Law. For greater certainty, no Aggrieved Party shall have any rights to enforce the Contribution Security in the event of the occurrence and continuance of a Breach. In so doing, such Aggrieved Party shall consult with and communicate relevant information to all other Impacted Claimants regarding the steps to be taken, remedies sought, outcome and other significant matters relating to the resolution or determination of the Event of Default or Breach.

12.2 Events of Default

The occurrence during the Contribution Period of any of the following events ("**Events of Default**") shall constitute an Event of Default subject, where applicable, to the Monetary Cure Period, Non-Monetary Cure Period or Extended Cure Period:

(a) JTIM fails to pay or cause its Upfront Contribution or any portion thereof to be paid when due in accordance with the terms of the Definitive Documents;

(b) JTIM fails to pay or cause any Annual Contribution or any portion thereof to be paid when due in accordance with the terms of the Definitive Documents;

(c) JTIM fails to pay or cause a Reserved Amount or any portion thereof to be paid when due in accordance with the terms of the Definitive Documents;

(d) JTIM fails to provide any annual Business Plan and MD&A at all to the CCAA Plan Administrator in accordance with Article 10, Section 10.1 and Article 10, Section 10.2.2 herein;

(e) JTIM fails to provide any quarterly financial statements and MD&A at all to the CCAA Plan Administrator in accordance with Article 10, Section 10.2.3 herein;

(f) JTIM fails to provide any Annual Financial Statements at all to the CCAA Plan Administrator in accordance with Article 10, Section 10.2.1 herein;

(g) JTIM fails to provide any information to the CCAA Plan Administrator at all regarding the calculation of the Annual Contributions and Reserved Amounts to be made by JTIM in respect of each calendar year in accordance with Article 10, Section 10.8 herein;

(h) JTIM fails to respond to an *ad hoc* request from the CCAA Plan Administrator for information in connection with any of JTIM's Business Plan, annual MD&A, quarterly MD&A and Annual Financial Statements in accordance with Article 10, Section 10.3 herein;

(i) JTIM's key management personnel fail to attend a quarterly meeting or any meeting scheduled *ad hoc* with the CCAA Plan Administrators in accordance with Article 10, Section 10.4 herein;

(j) JTIM fails to provide the Contribution Security in accordance with Article 5, Section 5.13;

(k) Any material provision in the CCAA Plan or in the Contribution Security Agreement or other Definitive Documents for any reason ceases to be valid, binding and enforceable against JTIM in accordance with its terms, or JTIM so asserts in writing;

(l) Any representation or warranty made by JTIM in the CCAA Plan or in any other Definitive Document or in any report, certificate, financial statement or other instrument, agreement or document furnished pursuant hereto or thereto is false, incorrect, incomplete or misleading in any material respect as of the date that the representation or warranty was made or deemed to be made;

(m) JTIM or its Material Subsidiary transfers any or all of its assets and business to any other entity including an unrelated company, a Canadian Affiliate of its Parent, or a Canada Newco, pursuant to its CCAA Plan or otherwise (except, for greater certainty, Permitted Transfers), or sells or otherwise disposes of its respective assets, including the disposition of manufacturing equipment and the transfer of trademarks, intellectual property and any other intangible assets, that are material to the conduct of the Ordinary Course of Business of JTIM or its Material Subsidiary, other than Permitted Transfers;

(n) JTIM or its Material Subsidiary ceases or threatens to cease to carry on its business or admits its inability to pay its Indebtedness generally, or is insolvent or admits that it is insolvent;

(o) Expressly excepting JTIM's CCAA Proceeding, a Bankruptcy Action exists in respect of JTIM or its Material Subsidiary;

(p) Any arrangement not permitted by the Definitive Documents is proposed involving a reclassification, reorganization, change or conversion of JTIM's shares or its consolidation with or into another entity;

(q) A judgment, writ of execution, garnishment, sequestration, distress, attachment or similar process is issued or levied for the payment of money in a sum which exceeds $1 million against JTIM or its Material Subsidiary, and the same is not released, bonded, satisfied, discharged, vacated, accepted for payment by an insurer or otherwise stayed within 30 days from the date of notice of entry thereof;

(r) Any remedial order that causes or would reasonably be expected to cause a Material Adverse Effect is issued by any Governmental Authority in respect of JTIM or its Material Subsidiary pursuant to any environmental law;

(s) JTIM or its Material Subsidiary violates any legal requirement which results in the issuance of an order or the cancellation of any license or certificate or approval by a Governmental Authority that causes or would reasonably be expected to cause a Material Adverse Effect;

(t) JTIM conducts its business and operations, divests assets, rearranges ownership, alters its corporate structure and/or operational practices either directly or indirectly, in any manner that circumvents or is adverse to the intention underlying the CCAA Plan, including the ability of JTIM to pay the Global Settlement Amount in full;

(u) Any Encumbrance for the benefit of one or more of the Claimants created upon any properties or assets of JTIM or its Material Subsidiary, or intended so to be, pursuant to any Definitive Document ceases to be a valid and perfected Encumbrance, having the priority contemplated in the Definitive Documents;

(v) JTIM or its Material Subsidiary creates, incurs, assumes, suffers to exist or otherwise becomes bound by or subject to any Encumbrance upon any of its properties and assets other than a Permitted Encumbrance;

(w) An encumbrancer pursuant to an Encumbrance takes possession of, or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce an Encumbrance over any of the property or assets of JTIM or its Material Subsidiary;

(x) JTIM or its Material Subsidiary fails to comply with an order, decision or award made by the Arbitrator or the CCAA Court; or

(y) The Parent fails to comply with its obligations pursuant to Article 5, Section 5.15, or an Order of the CCAA Court issued pursuant to Article 5, Section 5.15.

12.3 Cure of Events of Default

Upon the occurrence of an Event of Default, an Aggrieved Party may deliver written notice to JTIM of such default ("**Notice of Default**") and:

(a) If the Event of Default is one referred to in Article 12, Sections 12.2(j), 12.2(k) and 12.2(m) to 12.2(o) herein, no cure period (defined in subsections (b) or (c) as applicable below) shall apply;

(b) If the Event of Default is one referred to in Article 12, Sections 12.2(a), 12.2(b) and 12.2(c) herein, and is capable of being remedied, JTIM shall have 10 days following receipt of the Notice of Default to remedy such default ("**Monetary Cure Period**");

(c) If the Event of Default is one referred to in Articles 12, Sections 12.2(d) to 12.2(i), 12.2(l) and 12.2(p) to 12.2(x) herein and is capable of being remedied, JTIM shall have 15 days following receipt of the Notice of Default to remedy such default ("**Non-Monetary Cure Period**") or, if the nature of such Event of Default is such that it is capable of being remedied, but is not capable of being remedied within the Non-Monetary Cure Period, then the Non-Monetary Cure Period shall be extended for a period not to exceed 45 days from the date that JTIM receives the Notice of Default (the "**Extended Cure Period**") as may be required to permit JTIM to remedy the Event of Default, provided that JTIM makes best efforts to remedy the Event of Default during the Extended Cure Period; or

(d) If the Event of Default is the one referred to in Article 12, Section 12.2(y) herein and is capable of being remedied, the Parent shall have the Non-Monetary Cure Period to remedy such default or, if the nature of such Event of Default is such that it is capable of being remedied, but is not capable of being remedied within the Non-Monetary Cure Period, then the Non-Monetary Cure Period shall be extended for a period not to exceed the Extended Cure Period as may be required to permit the Parent to remedy the Event of Default, provided that the Parent makes best efforts to remedy the Event of Default during the Extended Cure Period.

The discontinuance or correction of an Event of Default shall constitute a cure thereof.

12.4 Breach of CCAA Plan

The occurrence during the Contribution Period of any of the following events constitutes a breach ("**Breach**") of JTIM's obligations pursuant to the CCAA Plan and other Definitive Documents:

(a) On the part of JTIM:

  (i) The provision of an annual Business Plan and MD&A to the CCAA Plan Administrators the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.1 and Article 10, Section 10.2.2 herein;

  (ii) The provision of quarterly financial statements and MD&A to the CCAA Plan Administrators the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.2.3 herein;

(iii) The provision of Annual Financial Statements to the CCAA Plan Administrators the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.2.1 herein;

(iv) The provision to the CCAA Plan Administrators of information regarding the quantum of the Contributions and Reserved Amounts to be made by JTIM in respect of each calendar year, the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.8 herein;

(v) The provision of an unsatisfactory, incomplete or deficient response to an *ad hoc* request from the CCAA Plan Administrators for information in connection with any of JTIM's Business Plan, annual MD&A, quarterly MD&A and Annual Financial Statements in accordance with Article 10, Section 10.3 herein;

(vi) The making of a capital expenditure that exceeds the applicable CapEx Threshold contrary to Article 11, Section 11.3 herein;

(vii) The making of an Ordinary Course Divestiture that exceeds the applicable Ordinary Course Divestitures Threshold contrary to Article 11, Section 11.4 herein;

(viii) The application of the Metric to calculate the Annual Contributions in a manner which is contrary to the applicable provisions of the Definitive Documents; and

(ix) The calculation of the Reserved Amounts in a manner which is contrary to the applicable provisions of the Definitive Documents; and

(b) Any failure on the part of JTIM and/or its Material Subsidiary to perform its obligations in any material respect under any of the Definitive Documents that is not expressly enumerated in Article 12, Sections 12.2 or 12.4 of the CCAA Plan will constitute a Breach that shall be resolved in accordance with the Dispute Resolution Procedure set out in Section 13.1.

12.5 Recourse against Parent

Notwithstanding anything to the contrary in this CCAA Plan or any other Definitive Document, recourse against any Parent and its Affiliates other than JTIM and its Subsidiaries under or in respect of this CCAA Plan and the other Definitive Documents shall be limited solely to circumstances involving a default by such Person of its obligations under Section 5.15, as determined by the CCAA Court.

12.6 Waiver of Events of Default and Breaches

Any Event of Default or Breach, other than a failure to make a Contribution, may be waived in writing by the CCAA Plan Administrators, with the consent of the Provinces and Territories and any Impacted Claimants, subject to the approval of the CCAA Court.

ARTICLE 13. DISPUTE RESOLUTION PROCEDURE

13.1 Procedure for Dispute Resolution

Any question, issue, difference of opinion, disagreement, claim, complaint or dispute arising from or out of, or in any way in connection with the interpretation, implementation, application, compliance with, enforcement of, or alleged breach or violation of any terms of any of the Definitive Documents ("**Dispute**") shall be addressed and determined in accordance with Articles 12 and 13 herein which set out the procedure for the resolution of all Disputes ("**Dispute Resolution Procedure**"). Only the Aggrieved Parties, JTIM, its Tobacco Company Group and the CCAA Plan Administrators, as applicable, shall be entitled to participate in any arbitration or CCAA Court proceeding conducted in accordance with the Dispute Resolution Procedure.

13.2 Investigation of Events causing a Material Adverse Effect

Without limiting the rights of the Provinces, Territories and any other Impacted Claimants as Aggrieved Parties, if the CCAA Plan Administrators are made aware of an issue, event or condition regarding JTIM which caused or would reasonably be expected to cause a Material Adverse Effect, or may constitute a Breach or Event of Default, they will convene an *ad hoc* meeting with the PTLC Chair and any other Impacted Claimants to provide a preliminary report regarding the issue.

If further information is required, the PTLC and any other Impacted Claimants may consult and prepare a written request for particulars ("**Request for Particulars**") which includes a statement of the Breach or Event of Default which JTIM is alleged to have committed. The PTLC Chair will provide the Request for Particulars to the CCAA Plan Administrators who shall send the Request for Particulars to JTIM. Notwithstanding the foregoing responsibility, the CCAA Plan Administrators may, in their discretion, decline to send to JTIM a Request for Particulars or other information request received from the PTLC Chair which, in the reasonable view of the CCAA Plan Administrators, is improper or irrelevant.

Within ten days of receipt of a Request for Particulars, JTIM shall be required to provide a written response to the Request for Particulars and advise why the circumstances at issue do not constitute a Breach or an Event of Default. The deadline specified for JTIM's response may be extended on a case by case basis by the CCAA Plan Administrators, in consultation with the PTLC Chair, and will take into account the nature and complexity of the issue under review in order to set a reasonable and realistic time frame for the response.

The CCAA Plan Administrators will provide to the PTLC Chair JTIM's written response to the Request for Particulars and their explanation regarding the alleged Breach or Event of Default. The PTLC Chair shall provide JTIM's written response to the PTLC and any other Impacted Claimants.

The PTLC and any other Impacted Claimants will then consult and decide whether their position is that the issue:

(a) Falls within JTIM's Ordinary Course Operational Activities such that it is not a Breach or an Event of Default;

(b) Is a Breach; or

(c) Is an Event of Default.

13.3 Resolution of Breaches by Parties

If an Aggrieved Party is of the view that JTIM has committed a Breach and it wishes to resolve such Breach, the Aggrieved Party shall deliver a written notice ("**Notice of Breach**") to JTIM providing particulars regarding the Breach to the extent they are known to the Aggrieved Party, including specifying all Sections of the Definitive Documents that are relevant to the Breach.

After receiving a Notice of Breach JTIM may, within 10 days of such receipt, deliver to the Aggrieved Party a written request for further written particulars regarding the Breach. The Aggrieved Party shall have 10 days to respond to such request in writing. The deadline specified for JTIM's response may be extended on a case by case basis by the CCAA Plan Administrator, in consultation with the Aggrieved Party, and will take into account the nature and complexity of the issue under review in order to set a reasonable and realistic time frame for the response.

Within 10 days after the later of the receipt of the Notice of Breach or the receipt of further particulars if any are known to the Aggrieved Party, JTIM shall deliver to the Aggrieved Party a written response to the Notice of Breach ("**Response**") which provides the full particulars of JTIM's position, including whether JTIM disputes the position of the Aggrieved Party in whole or in part, and the grounds for the disagreement with or denial of the position of the Aggrieved Party.

The Aggrieved Party and JTIM shall have a period of time not exceeding 30 days following the delivery of the Response to consider and, if they believe appropriate to do so, discuss or address the Breach. If the matter is addressed to the reasonable satisfaction of the Aggrieved Party and JTIM within such 30 day period, then the issue in dispute shall be deemed to be resolved and shall not be the basis for further remedies pursuant to the Definitive Documents.

13.4 Resolution of Breaches by Arbitrator

13.4.1 Notice of Arbitration

If the Aggrieved Party and JTIM fail to resolve a Breach within 30 days following JTIM's delivery of the Response, and the Aggrieved Party has decided to seek a resolution of the Breach by way of arbitration pursuant to Article 13, Section 13.2(b), they shall deliver a notice of arbitration to JTIM within a further thirty day period. Such notice of arbitration shall include the following information:

(a) The specific terms of the Definitive Documents that are relevant to the Breach and the relief sought;

(b) A concise summary of the material facts relevant to the issues raised in the Breach that are relied upon by the Aggrieved Party; and

(c) A statement of the material facts that JTIM accepts as correct, and a concise summary of the additional material facts upon which JTIM relies.

Notwithstanding the foregoing, on the CCAA Court's own motion or upon application by any of the Aggrieved Party, JTIM, its Tobacco Company Group or the CCAA Plan Administrator as applicable, in exceptional circumstances the CCAA Court may, in its discretion, decide that it shall hear and determine a Breach in lieu of the Arbitrator doing so.

All Breaches referred to the Arbitrator shall be arbitrated in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, except to the extent that those statutory provisions are expressly varied by the terms hereof or the terms of the other Definitive Documents.

13.4.2 Appointment of an Arbitrator

The Aggrieved Party and JTIM shall agree upon an Arbitrator to appoint who:

(a) Is independent of the Parties and the CCAA Plan Administrators;

(b) Is not and has never been in the employ of or under contract with any Party or any CCAA Plan Administrator at any time; and

(c) Is qualified by education, experience and training to determine the subject matter of the Breach.

If the Aggrieved Party and JTIM are unable to reach an agreement regarding the choice of Arbitrator, the CCAA Court shall appoint the Arbitrator from a list of five prospective Arbitrators provided by the Aggrieved Party and JTIM. The five prospective Arbitrators shall fulfill the criteria set forth in subsections (a) to (c) immediately above and shall have not been rejected by the Aggrieved Party or JTIM. If the Aggrieved Party and JTIM are unable to agree upon the list of five prospective Arbitrators, then the CCAA Court may appoint an Arbitrator in its discretion.

The Arbitrator shall be empowered and shall have the discretion to conduct a mediation of the Breach and, in doing so, shall not be disqualified from conducting an arbitration hearing to resolve the Breach if the mediation is unsuccessful.

The Aggrieved Party shall advise the Arbitrator of the position of the CCAA Plan Administrator and provide to the Arbitrator any report prepared by the CCAA Plan Administrator in regard to the issue to be arbitrated.

13.5 Jurisdiction of Arbitrator

The Arbitrator has exclusive jurisdiction to determine:

(a) All Disputes pertaining to a Breach unless, pursuant to Article 13, Section 13.4.1, the CCAA Court, in its discretion, decides that exceptional circumstances exist which warrant the CCAA Court hearing and determining a Breach in lieu of the Arbitrator doing so;

(b) All questions pertaining to the interpretation of the terms of the Definitive Documents; and

(c) All questions of fact, law and mixed fact and law that arise in any Dispute referred to the Arbitrator for determination pursuant to Article 13, Section 13.4 herein.

In deciding a Dispute, the Arbitrator shall apply the laws of the Province of Ontario and the Applicable Laws of Canada.

The Arbitrator may receive evidence, rely upon it and determine what, if any, weight to give to the evidence, whether or not such evidence is admissible in a court of law.

All decisions of the Arbitrator shall be final and conclusive for all purposes, and shall bind the parties to the arbitration.

No appeal shall lie to the CCAA Court or any other Court in Canada from a decision of the Arbitrator on questions of fact, law or mixed fact and law.

13.6 Arbitration Remedies

The Arbitrator shall decide a Dispute regarding a Breach in accordance with Applicable Law, including equity, and may order specific performance, injunctions and other equitable remedies.

If the Arbitrator makes a finding against JTIM in regard to (i) the application of the Metric to calculate the Annual Contributions [Article 12, Section 12.4(viii)], or (ii) the calculation of the Reserved Amounts [Article 12, Section 12.4(ix)], the Arbitrator may:

(a) Fix the amount of the Annual Contributions or Reserved Amounts, as applicable, that the Arbitrator shall order JTIM to pay;

(b) Remit the matter back to JTIM with the direction that it recalculate the Annual Contributions or Reserved Amounts in accordance with the Arbitrator's findings, and make a finding as to the amount of the adjustment JTIM owes to the Aggrieved Parties. The Arbitrator shall retain jurisdiction over the matter pending its final disposition; or

(c) Make any other order which the Arbitrator determines is appropriate.

The Arbitrator has the jurisdiction to make an order as to interest or any additional sum in respect of any amount found to be due and owing by JTIM. If JTIM withholds payment of all or a portion of the Annual Contributions, or Reserved Amounts, then:

(a) Interest shall accrue on the sum that is ultimately found to be owing to the Aggrieved Parties at the rate of interest payable pursuant to sections 127 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended, such interest to accrue daily until the arbitral award, inclusive of such interest, has been paid in full; and

(b) Any interest paid by JTIM shall not be applied to reduce the balance of the Global Settlement Amount owing.

13.7 Enforcement of Arbitrator's Awards

A Party who is entitled to enforcement of an award made by the Arbitrator may make an application to the CCAA Court on notice to the Party or Person against whom enforcement is sought. The CCAA Court shall give a judgment enforcing the Arbitrator's award and shall have

the same powers with respect to the enforcement of the Arbitrator's award as with respect to the enforcement of its own judgments.

13.8 Costs of Arbitration

The Arbitrator may award full indemnity costs of an arbitration which include the parties' legal expenses, the fees and expenses of the Arbitrator and any other expenses related to the arbitration.

13.9 Jurisdiction of CCAA Court

After the Effective Time, the CCAA Court shall retain jurisdiction over the CCAA Proceedings, be seized of the implementation of JTIM's CCAA Plan and have exclusive supervisory jurisdiction over the administration of the CCAA Plan, except that the US Bankruptcy Court shall retain jurisdiction with respect to the Sanction Recognition Order, and for the joint supervision of the Quebec Administration Plan by the CCAA Court and the Quebec Superior Court as described in Article 7, Section 7.2, until such time as the CCAA Plans have been fully implemented, including payment of the Global Settlement Amount in full.

The CCAA Court shall, in its discretion, give such directions and make such orders as are necessary to facilitate the Parties completing the implementation of the CCAA Plan, including determining any Disputes that may arise between the Tobacco Companies, any or all members of the Tobacco Company Groups, the Claimants and/or the CCAA Plan Administrators arising out of or relating to the CCAA Plan in accordance with the Dispute Resolution Procedure.

Without exception, the CCAA Court shall have the exclusive jurisdiction to determine:

(a) Whether a matter falls within the scope of Article 13, Section 13.1 herein such that it shall be determined through the Dispute Resolution Procedure;

(b) Whether, on the CCAA Court's own motion or upon application by an Aggrieved Party, JTIM, a member of its Tobacco Company Group or the CCAA Plan Administrators as applicable, the CCAA Court may, in its discretion, decide to hear and determine a Breach in lieu of the Arbitrator doing so in accordance with Article 13, Section 13.4 herein; and

(c) All proceedings regarding Events of Default in accordance with Article 13, Section 13.11 herein.

13.10 Appeals from Orders or Decisions of CCAA Court

JTIM, any applicable members of its Tobacco Company Group, the CCAA Plan Administrator or any Aggrieved Party who is a party to a proceeding that is determined by the CCAA Court in accordance with the Dispute Resolution Procedure may appeal from the order or decision of the CCAA Court in accordance with Sections 13, 14 and 15 of the CCAA.

13.11 Resolution of Events of Default by CCAA Court

Upon the occurrence of any Event of Default, an Aggrieved Party shall be immediately entitled to exercise all rights and remedies available pursuant to the CCAA Plan and any other Definitive

Documents and the laws of Ontario and the laws of Canada, including applying to the CCAA Court for such relief as the CCAA Court finds appropriate.

In addition, upon the occurrence of any of the Events of Default enumerated in Article 12, Sections 12.2(d) to 12.2(i) herein, the CCAA Plan Administrator shall also be entitled to apply to the CCAA Court for such relief as the CCAA Court finds appropriate.

The CCAA Court shall have the exclusive jurisdiction to determine all proceedings regarding Events of Default. The CCAA Court shall have exclusive jurisdiction to determine all matters related to the enforcement of the terms of the Contribution Security Agreement and the exercise of any rights, remedies and powers that the Collateral Agent may have under the Contribution Security Agreement, at law, in equity or under the PPSA.

During the pendency of any proceeding in the CCAA Court relating to the occurrence of an Event of Default, JTIM shall continue to comply with its obligations pursuant to the Definitive Documents, including the obligation to pay the Annual Contributions and Reserved Amounts for deposit into the Global Settlement Trust Account and Supplemental Trust Account.

Upon the occurrence of:

(a) An Event of Default referred to in Article 12, Section 12.3(a) herein, or

(b) An Event of Default referred to in Article 12, Section 12.3(b) or Section 12.3(c) herein, where either JTIM fails to cure such Event of Default within the Monetary Cure Period, Non-Monetary Cure Period or Extended Cure Period, as applicable, or such Event of Default is incapable of being cured,

the terms of Article 5, Section 5.11 shall govern, and JTIM shall fulfill its obligations thereunder. If JTIM fails to deposit into the Global Settlement Trust Account or the Supplemental Trust Account, as applicable, any amount at all on account of its respective share of any of the Upfront Contribution, any Annual Contribution or any Reserved Amounts, then the balance remaining to be paid of JTIM's share of the Global Settlement Amount shall accelerate and be deemed to be due and payable in full without any further action being required to be taken by any Aggrieved Party, and any and all amounts owing by JTIM under or in respect of the CCAA Plan or Definitive Documents shall bear interest at the rate of interest payable pursuant to sections 127 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended. 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.

ARTICLE 14. CCAA PLAN ADMINISTRATORS

14.1 Appointment of CCAA Plan Administrators

Pursuant to the CCAA Plan Administrators' Order, the CCAA Court shall be requested to approve the appointment of an Administrator for the CCAA Plan of each Tobacco Company (collectively, the "**CCAA Plan Administrators**") which shall administer the implementation of the Tobacco

Company's CCAA Plan. The CCAA Plan Administrators' Order shall specify the effective date of the CCAA Plan Administrators' appointment.

Subject to the approval of the CCAA Court, the following firms shall be appointed to serve as the CCAA Plan Administrators until such time as such firms may be replaced with the further approval of the CCAA Court:

(a) For Imperial, FTI Consulting Canada Inc;

(b) For RBH, Ernst & Young Inc.; and

(c) For JTIM, Deloitte Restructuring Inc.

14.2 Role of CCAA Plan Administrators

The CCAA Plan Administrators shall be neutral and independent from the Tobacco Companies, the Tobacco Company Groups and the Claimants and, in this capacity, shall report to the CCAA Court. From time to time, in their discretion, the CCAA Plan Administrators may seek directions from the CCAA Court regarding any matters relevant to the implementation or administration of the Tobacco Companies' CCAA Plans.

For greater certainty, in no circumstances shall the CCAA Plan Administrators:

(a) Be or be deemed to be the representatives of the Claimants, Tobacco Companies and/or Tobacco Company Groups for the purposes of the implementation and administration of the CCAA Plan (including, without limitation, in respect of any notice, consent or agreement contemplated herein), or for any other purpose;

(b) Have the authority to bind any of the Claimants in respect of any matters relating to the CCAA Plan, or any other matter; or

(c) Have the authority to bind any of the Tobacco Companies or Tobacco Company Groups in respect of any matters relating to the CCAA Plan, or any other matter.

The global settlement of all Tobacco Claims in Canada involves the concurrent resolution of the CCAA Proceedings of Imperial, RBH and JTIM in accordance with the terms of the CCAA Plans. As will be set forth with more particularity in the CCAA Plan Administrators' Order in each CCAA Proceeding, as appropriate and as necessitated by the circumstances of the matters being addressed, the CCAA Plan Administrators shall consult with each other and act jointly and in concert in fulfilling their duties and responsibilities enumerated in Article 14, Section 14.4 herein. Accordingly, in certain instances in the CCAA Plan, the joint fulfillment of the CCAA Plan Administrators' duties and responsibilities is referenced. The CCAA Plan Administrators shall have access to all documents and information provided by each Tobacco Company during the Contribution Period, including the financial and other information produced by each Tobacco Company pursuant to Article 10 of the CCAA Plan.

14.3 Trustees of the Global Settlement Trust Account, PCC Trust Account, QCAP Trust Account and Cy-près Trust Account

The CCAA Plan Administrators shall oversee the Global Settlement Trust Account, PCC Trust Account, QCAP Trust Account, Cy-près Trust Account, Miscellaneous Claims Fund, CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account. For greater certainty, the CCAA Plan Administrators shall not be trustees in any capacity other than in regard to holding the Global Settlement Trust Account, PCC Trust Account, QCAP Trust Account, Cy-près Trust Account, Miscellaneous Claims Fund, CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account. The details regarding these accounts will be set forth in greater detail in the CCAA Plan Administrators' Order.

14.4 Duties and Responsibilities of CCAA Plan Administrators

In implementing the administration of the CCAA Plans during the Contribution Period, the duties and responsibilities of the CCAA Plan Administrators shall be as set out below provided, however, that the CCAA Plan Administrators shall incur no liability of any kind whatsoever to the Provinces, Territories, any Impacted Claimants or any other Person in respect of their performance of such duties and responsibilities and shall be held harmless in this regard:

(a) On an annual basis, receiving and reviewing the Business Plan and accompanying MD&A which each Tobacco Company shall provide pursuant to Article 10, Sections 10.1 and Section 10.2.2 of their respective CCAA Plans;

(b) On a quarterly basis, receiving and reviewing the financial statements and accompanying MD&A which each Tobacco Company shall provide pursuant to Article 10, Section 10.2.3 herein;

(c) On an annual basis, receiving and reviewing the financial statements with notes that each Tobacco Company shall provide pursuant to Article 10, Section 10.2.1 herein;

(d) Receiving and reviewing the information that each Tobacco Company shall provide to the CCAA Plan Administrators regarding the calculation of the Annual Contributions and Reserved Amounts to be paid by each Tobacco Company in respect of each calendar year pursuant to Article 10, Section 10.8 herein;

(e) Receiving and reviewing the information that each Tobacco Company shall provide in response to the *ad hoc* requests made from time to time by the CCAA Plan Administrators in connection with the Tobacco Company's Business Plan, annual MD&A, quarterly MD&A and Annual Financial Statements pursuant to Article 10, Section 10.3 herein;

(f) Reporting to the Provinces, Territories and any Impacted Claimants regarding any issue, event or condition pertaining to a Tobacco Company which is disclosed to the CCAA Plan Administrators as an event which may constitute a Material Adverse Effect, or may constitute a Breach or an Event of Default;

(g) Overseeing the investment of the Upfront Contributions, Annual Contributions and Reserved Amounts in accordance with approved investment guidelines pending

disbursement to the Claimants, and reporting from time to time to the Provinces, Territories and any Impacted Claimants regarding same;

(h) Reporting to the Provinces, Territories and any Impacted Claimants regarding the calculation of the amount of the Annual Contributions and Reserved Amounts payable by the Tobacco Companies in each calendar year;

(i) Overseeing and concurring with the release of funds from the Supplemental Trust Account pursuant to Article 5;

(j) Administering the distribution to the Claimants of amounts from the Global Settlement Trust Account in accordance with Article 16, Sections 16.1, 16.2 and 16.3 until such time as the implementation of all of the CCAA Plans has been completed;

(k) Overseeing the administration of the PCC Compensation Plan including:

(i) Ensuring that the PCC Compensation Plan Amount is invested in accordance with approved investment guidelines pending disbursement to the Claims Administrator for payment to the Eligible Pan-Canadian Claimants;

(ii) Entering into a written agreement, that is subject to approval by the CCAA Court, with the Claims Administrator for the provision of services to process claims made to the PCC Compensation Plan;

(iii) Reviewing the budget submitted by the Claims Administrator for the administration of the claims made to the PCC Compensation Plan;

(iv) From time to time, advancing instalments of funds from the PCC Compensation Plan Amount to the Claims Administrator to enable it to make Individual Payments to Eligible Pan-Canadian Claimants; and

(v) Receiving and reviewing reports made annually, and as circumstances warrant at any other times as requested by the CCAA Plan Administrators in their discretion or as the CCAA Court directs, by the Claims Administrator regarding, without limitation, the publication of notices, the PCC Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible Pan-Canadian Claimants, fees charged and disbursements made;

(l) Certain oversight activities regarding the Cy-près Foundation;

(m) Overseeing the administration of the Quebec Administration Plan including:

(i) Ensuring that the QCAP Settlement Amount is invested in accordance with approved investment guidelines pending disbursement to the Claims Administrator for payment to the Eligible *Blais* Class Members;

(ii) Entering into a written agreement, that is subject to approval by the CCAA Court, with the Claims Administrator for the provision of services to process claims made to the Quebec Administration Plan;

(iii) Reviewing the budget submitted by the Claims Administrator for the administration of the claims made to the Quebec Administration Plan;

(iv) From time to time, advancing instalments of funds from the QCAP Settlement Amount to the Claims Administrator to enable it to make Compensation Payments to Eligible *Blais* Class Members; and

(v) Receiving and reviewing reports made annually, and as circumstances warrant at any other times as requested by the CCAA Plan Administrators in their discretion or as the CCAA Court directs, by the Claims Administrator regarding, without limitation, the publication of notices, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible *Blais* Class Members, fees charged and disbursements made;

(n) On an annual basis, and as circumstances warrant at any other times in the discretion of the CCAA Plan Administrators, or as the CCAA Court directs, reporting to the CCAA Court regarding:

(i) The annual amounts of the Annual Contributions and Reserved Amounts paid by the Tobacco Companies for deposit into the Global Settlement Trust Account and Supplemental Trust Account, and the progress of the payment of the share of the Global Settlement Amount allocated to the Provinces and Territories;

(ii) The progress of the payment of the share of the Global Settlement Amount allocated to the Tobacco Producers;

(iii) The progress of the administration of the PCC Compensation Plan including the publication of notices, the PCC Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible Pan-Canadian Claimants, fees charged and disbursements made;

(iv) The progress of the administration of the Cy-près Fund;

(v) The progress of the administration of the Quebec Administration Plan including the publication of notices, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible *Blais* Class Members, fees charged and disbursements made; and

(vi) Any other matter which the CCAA Plan Administrators in their discretion deem to be appropriate.

For greater certainty, the CCAA Plan Administrators shall not conduct an audit or other assurance engagement, or otherwise attempt to verify the accuracy or completeness of the financial information in each Tobacco Company's Business Plan, annual MD&A, quarterly MD&A, Annual Financial Statements and any information produced by a Tobacco Company in response to an *ad hoc* request from the CCAA Plan Administrators.

Also for greater certainty, the duties and responsibilities of the CCAA Plan Administrators shall be fully described in orders of the CCAA Court appointing the CCAA Plan Administrators.

14.5 CCAA Plan Administrators' Communications

The CCAA Plan Administrators shall communicate with:

(a) the Chair of the Provincial and Territorial Liaison Committee representing the Provinces and Territories;

(b) the Administrative Coordinator in regard to the Quebec Administration Plan and Quebec Class Counsel representing the Quebec Class Action Plaintiffs;

(c) the Administrative Coordinator in regard to the PCC Compensation Plan and the PCC Representative Counsel for the Pan-Canadian Claimants;

(d) Dr. Robert Bell, the Chair of the Cy-près Foundation;

(e) *Knight* Class Counsel;

(f) Counsel for the Tobacco Producers; and

(g) the Tobacco Companies.

Notwithstanding the foregoing, in the performance of their duties and responsibilities under the CCAA Plan, the CCAA Plan Administrators may, in their discretion, communicate with any individuals as necessary or desirable.

14.6 Distributions to Claimants from Global Settlement Trust Account

The CCAA Plan Administrators shall, subject to the approval of the CCAA Court, administer the Global Settlement Trust Account and, from time to time, shall authorize the payment from the Global Settlement Trust Account of distributions in accordance with Article 16, Sections 16.1, 16.2 and 16.3 herein, which will be paid to the:

(a) Quebec Class Action Plaintiffs;

(b) Pan-Canadian Claimants;

(c) Provinces and Territories;

(d) Cy-près Foundation;

(e) Tobacco Producers; and

(f) *Knight* Class Action Plaintiffs.

14.7 Advisors to CCAA Plan Administrator

The CCAA Plan Administrator, in its discretion, may retain any advisors, including legal, financial, investment or other advisors, to advise and assist it to carry out its duties in relation to the administration of the CCAA Plan.

14.8 Role of Court-Appointed Mediator after Sanction Order

The Court-Appointed Mediator may provide any services after the date of the Sanction Order, as requested by either the CCAA Plan Administrators or the CCAA Court, and approved by the CCAA Court.

14.9 Payment of Costs

The professional fees, other fees, costs, disbursements, expenses, court costs and other expenditures, and all applicable Sales and Excise Taxes thereon (collectively, "**Costs**"), charged and incurred in relation to the settlement of the Tobacco Claims and the implementation and administration of the CCAA Plan shall be paid as follows:

(a) All Costs incurred in respect of:

(i) All services which the CCAA Plan Administrator provides in relation to the implementation and administration of the CCAA Plan, including the fulfillment of its duties and responsibilities enumerated in Article 14, Section 14.4 herein, and

(ii) All services provided by all legal, financial, investment or other advisors engaged by the CCAA Plan Administrator,

shall be paid biweekly by JTIM. From time to time, the CCAA Plan Administrator shall pass its accounts in the CCAA Court at intervals as the CCAA Court directs;

(b) All Costs for the services of the Court-Appointed Mediator provided after the date of the Sanction Order, including for the services of any of his legal or other advisors, shall be paid equally by the Tobacco Companies;

(c) All Costs for the services of the Claims Administrator, including for the services of any of its legal or other advisors, incurred in respect of the administration of the PCC Compensation Plan shall be paid equally by the Tobacco Companies;

(d) All Costs for the services provided by the Administrative Coordinator, including for the services of any legal or other advisors to the Administrative Coordinator, shall be paid equally by the Tobacco Companies;

(e) All Costs incurred in respect of the administration of the Cy-près Foundation shall be paid from the Cy-près Fund;

(f) The Quebec Class Counsel Fee shall be paid out of and deducted from the QCAP Settlement Amount. The Quebec Class Counsel Fee and the retainer agreement respecting fees and disbursements between the Quebec Class Counsel and the representative plaintiffs in the Quebec Class Actions are subject to the approval of the CCAA Court and shall be dealt with at the Sanction Hearing;

(g) All Costs incurred in respect of the services provided by Raymond Chabot (as agent for the Quebec Class Counsel on behalf of the QCAPs) in relation to the Quebec Administration Plan both before and after the Plan Implementation Date shall be paid by the Quebec Class Counsel out of the Quebec Class Counsel Fee;

(h) All Costs for the services of the Claims Administrator, including for the services of any of its legal or other advisors, incurred in respect of the administration of the Quebec Administration Plan shall be paid from the balance of the QCAP Settlement Amount net of the Quebec Class Counsel Fee;

(i) All Costs for the services which the PCC Representative Counsel, including their advisors, provide in connection with the performance of their duties under the CCAA Plan, including the PCC Compensation Plan, and in the CCAA Proceeding shall be paid equally by the Tobacco Companies;

(j) The Counsel for the Tobacco Producers' Fee shall be paid out of and deducted from the Tobacco Producers Settlement Amount. The Counsel for the Tobacco Producers' Fee and the retainer agreement respecting fees and disbursements between the Counsel for the Tobacco Producers and the representative plaintiffs in the Tobacco Producers' Actions are subject to the approval of the CCAA Court;

(k) All Costs and disbursements of any kind incurred in respect of the administration of the distribution of payments to eligible Tobacco Producers shall be paid from the Tobacco Producers Settlement Amount;

(l) The *Knight* Class Counsel Fee shall be paid out of and deducted from the *Knight* Class Action Plaintiffs Settlement Amount. The *Knight* Class Counsel Fee and the retainer agreement respecting fees and disbursements between the *Knight* Class Counsel and the representative plaintiff in the *Knight* Class Action are subject to the approval of the CCAA Court; and

(m) All Costs and disbursements of any kind incurred in respect of the settlement of the *Knight* Class Action shall be paid from the *Knight* Class Action Plaintiffs Settlement Amount.

The Costs enumerated in Article 14, Sections 14.9(a), (b), (c), (d) and (i) are expenses of the business and deducted from income in the calculation of the Metric

ARTICLE 15. CCAA PLAN ADMINISTRATION RESERVE AND PCC COMPENSATION PLAN RESERVE

15.1 CCAA Plan Administration Reserve

On the Plan Implementation Date, the CCAA Plan Administration Reserve in the amount of $25.0 million, which sum shall be paid out of the Upfront Contributions, shall be established as security for the CCAA Plan Administration Reserve Costs.

The CCAA Plan Administrator will hold the CCAA Plan Administration Reserve in trust for those entitled to be paid CCAA Plan Administration Reserve Costs pursuant to the CCAA Plan. If the CCAA Plan Administration Reserve is no longer required as security after the administration of the CCAA Plan has been completed, any amount remaining in the CCAA Plan Administration Reserve shall be released by the CCAA Plan Administrator and paid to the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

15.2 PCC Compensation Plan Reserve

On the Plan Implementation Date, the PCC Compensation Plan Reserve in the amount of $5.0 million, which sum shall be paid out of the Upfront Contributions, shall be established as security for the PCC Compensation Plan Reserve Costs.

The CCAA Plan Administrators will hold the PCC Compensation Plan Reserve in trust for those entitled to be paid PCC Compensation Plan Reserve Costs pursuant to the CCAA Plan. If the PCC Compensation Plan Reserve is no longer required as security after the administration of the CCAA Plan has been completed, any amount remaining in the PCC Compensation Plan Reserve shall be released by the CCAA Plan Administrators and paid to the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

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ARTICLE 16. CLAIMANT ALLOCATION

16.1 Claimant Allocation

The Global Settlement Amount shall be allocated among the Claimants and the Cy-près Foundation ("**Claimant Allocation**") as follows:

All amounts in CAD, billions

Provinces and Territories Settlement Amount:	24.725
QCAP Settlement Amount ($4.250 minus $0.131 allocated to Cy-près Foundation):	4.119
PCC Compensation Plan Amount:	2.521
Cy-près Fund (inclusive of $0.131 QCAP Cy-près Contribution):	1.000
Tobacco Producers Settlement Amount:	0.015
Knight Class Action Plaintiffs Settlement Amount:	0.015
Miscellaneous Claims Amount (may be increased to $0.060 if the Tobacco Companies make an election pursuant to Section 18.2.1):	0.025
CCAA Plan Administration Reserve	0.075
PCC Compensation Plan Reserve	0.005
Total:	32.500

[Remainder of page intentionally left blank]

Estimated Upfront Contributions Available: **12.456** [See calculation below, 2]

Period[4]	Upfront Contribution	Annual Contributions						Total
		Year 1 (2025)	Year 2 (’26)	Year 3 (’27)	Year 4 (’28)	Year 5 (’29)	Remainder to end of Contribution Period	
Amount Available[3]	12.456	1.111	1.078	1.067	1.037	1.037	14.714	32.500
Provinces & Territories	6.202	0.361	0.682	0.942	0.912	0.912	14.714	24.725
QCAPs[5, 6, 7, 8]	3.869	0.250						4.119
PCCs[6, 7, 8]	1.750	0.500	0.271					2.521
Cy-près Foundation[5, 6]	0.500		0.125	0.125	0.125	0.125		1.000
Tobacco Producers[8]	0.015							0.015
Knight Class Action Plaintiffs[8]	0.015							0.015
Miscellaneous Claims Fund[7]	0.025							0.025
CCAA Plan Administration Reserve[7]	0.075							0.075
PCC Compensation Plan Reserve[7]	0.005							0.005
Total allocated	**12.456**	**1.111**	**1.078**	**1.067**	**1.037**	**1.037**	**14.714**	**32.500**

16.2 Explanatory Notes

1. In preparing the Claimant Allocation, the Court-Appointed Mediator and Monitors have been provided with, and have relied upon, unaudited financial information prepared by the Tobacco Companies. The Monitors have reviewed this financial information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitors have not audited, or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with GAAS pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitors express no opinion or other form of assurance contemplated under GAAS in respect of the financial information. For clarity, the Court-Appointed Mediator has not reviewed the aforementioned financial information.

   This financial information consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional

Accountants of Canada Handbook, has not been performed. The financial information was prepared based on the Tobacco Companies' estimates and assumptions.

Readers are cautioned that since projections are based on assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2. In the table below, the Upfront Contributions are as estimated as at December 31, 2024 and calculated as estimated in the Spring 2024 5-year forecasts prepared by the Tobacco Companies. The Upfront Contributions will be as noted herein for all Claimants except the Provinces and Territories. The Upfront Contributions for the Provinces and Territories will be equal to the total Upfront Contributions less the Upfront Contributions being paid to the other Claimants, the Miscellaneous Claims Amount, the CCAA Plan Administration Reserve and the PCC Compensation Plan Reserve.

All amounts in CAD, billions

Projected Upfront Contributions as at December 31, 2024:

JTIM:	1.581
ITCAN:	4.849
RBH:	5.792
Cash Security Deposits:	0.984
Total:	13.206
Less: Working Capital	(0.750)
Projected Available Upfront Contributions:	**12.456**

3. The Annual Contribution percentage of Net After-Tax Income is calculated as set out in the CCAA Plan. The Claimant Allocation is based on 85% of estimated Net After-Tax Income received from the Tobacco Companies (the percentage of Net After-Tax Income to be reduced in 5.0% increments every five years pursuant to Article 5, Section 5.6 herein). The "Amount Available" is based on the 5-year financial projections provided by the Tobacco Companies in spring 2024. The projection assumes that the 2028 results are replicated thereafter. The Claimant Allocation does not include any Tax Refunds that may be available during the Contribution Period.

4. Payment is contemplated to be made within 182 days following the end of the period noted. For example, the "Year 1 (2025)" payment would be made in mid 2026.

5. The Cy-près Fund includes $131 million of the QCAP Settlement Amount funded to the Cy-près Fund (in addition to the $869 million specifically allocated to the Cy-près Fund).

6. The Year 1 and Year 2 payments to the QCAPs and the PCCs and the Year 2 payment to the Cy-près Foundation will be made in priority to those being made to the Provinces and Territories in the event of a shortfall relative to the estimated Annual Contributions available.

7. If there are any funds remaining in the QCAP Settlement Amount, the PCC Compensation Plan Amount, the CCAA Plan Administration Reserve, the PCC Compensation Plan Reserve and/or the Miscellaneous Claims Fund, such funds shall be paid to the Provinces and Territories (in accordance with the percentages set out in the table in Article 16, Section 16.3), as the foregoing is more particularly defined in paragraph 55 of the Quebec Administration Plan, paragraph 54 of the PCC Compensation Plan, Article 15, Sections 15.1 and 15.2 herein, and Article 18, Section 18.2.5 herein.

8. The Quebec Class Counsel Fee, Counsel for the Tobacco Producers' Fee and *Knight* Class Counsel Fee are subject to approval by the CCAA Court. Subject to such approval, these fees will be paid in full at the time of plan implementation.

16.3 Provincial and Territorial Allocation

The Provinces and Territories have agreed that the Provinces and Territories Settlement Amount shall be apportioned among the Provinces and Territories in accordance with the percentages set out in the table below:

Province/Territory	Percentage Share of Provinces and Territories Settlement Amount
British Columbia	14.4710%
Alberta	12.6272%
Saskatchewan	2.8787%
Manitoba	4.5252%
Ontario	28.7761%
Québec	26.8248%
New Brunswick	2.4117%
Nova Scotia	3.1740%

Province/Territory	Percentage Share of Provinces and Territories Settlement Amount
Prince Edward Island	0.6605%
Newfoundland and Labrador	2.1471%
Yukon	0.3973%
Northwest Territories	0.7269%
Nunavut	0.3795%
Total:	100.0000%

ARTICLE 17. DISTRIBUTIONS, PAYMENTS AND CURRENCY

17.1 Distributions Generally

All distributions to Affected Creditors and other payments to be effected pursuant to the CCAA Plan will be made pursuant to this Article 17. For greater certainty, all payments and distributions pursuant to this Article 17 will be subject to satisfaction or waiver of the Plan Implementation Conditions set forth in Article 19, Section 19.3 and the occurrence of the Effective Time, and will occur in accordance with the timing set out in Article 4, Section 4.1. Except as otherwise expressly stated herein, Deloitte, whether in its capacity as the Monitor and/or as the CCAA Plan Administrator, shall have the sole discretion to determine the timing for any distributions to be made under the CCAA Plan.

17.2 Payment of Claimants' Claims

All distributions to the Claimants will be made pursuant to this Article 17 and Article 16, Sections 16.1, 16.2 and 16.3 herein.

17.3 Payment of Miscellaneous Claims

All distributions to any Putative Miscellaneous Claimants will be made pursuant to this Article 17 and Article 18, Section 18.2.1 to Section 18.2.5.

17.4 Payment of Claims secured by the Administration Charge

To the extent that such payments have not already been made, forthwith after the Plan Implementation Date, JTIM shall pay in full all Claims secured by the Administration Charge as at the Plan Implementation Date.

17.5 Payment of Claims secured by the Court-Appointed Mediator Charge

To the extent that such payments have not already been made, forthwith after the Plan Implementation Date, JTIM shall pay in full all Claims secured by the Court-Appointed Mediator Charge as at the Plan Implementation Date.

17.6 Method of Distribution

All distributions or other payments by the CCAA Plan Administrators to any Person entitled to receive a distribution or payment under the CCAA Plan shall be made by wire transfer in accordance with wire transfer instructions, in form satisfactory to the CCAA Plan Administrators, provided by such Person to the CCAA Plan Administrators at least fifteen (15) Business Days prior to the Plan Implementation Date. If any such Person wishes to thereafter change its wire transfer instructions, notice, in form satisfactory to the CCAA Plan Administrators, must be given to the CCAA Plan Administrators at least fifteen (15) Business Days prior to any subsequent distribution or payment date.

For greater certainty, the CCAA Plan Administrators may, prior to initiating any wire transfer, make any verifications, as they deem appropriate in their discretion, to confirm and validate the wire transfer instructions received.

Notwithstanding the foregoing, in circumstances where the CCAA Plan Administrators consider it more practical or efficient to do so, certain payments hereunder may also be made by cheque.

17.7 Addresses for Distribution

Prior to the applicable Distribution Record Date, an Affected Creditor may, in writing to JTIM and Deloitte, whether in its capacity as the Monitor and/or as the CCAA Plan Administrator, change its address on file with JTIM for distribution purposes. For the avoidance of doubt, Deloitte will not have any responsibility to track such addresses or notices in any capacity.

17.8 Withholding Rights

Deloitte, whether in its capacity as the Monitor and/or as the CCAA Plan Administrator, JTIM and any other Person facilitating payments pursuant to the CCAA Plan will be entitled to deduct and withhold from any such payment to any Person such amounts as may be required to be deducted or withheld under any Applicable Law and to remit such amounts to the appropriate Governmental Authority or other Person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate Governmental Authority or other Person, such withheld or deducted amounts will be treated for all purposes hereof as having been paid to such Person as the remainder of the payment in respect of which such withholding or deduction was made. Without in any way limiting the generality of the foregoing, Deloitte, on behalf of JTIM, shall deduct from any distribution to an Affected Creditor hereunder any amounts as indicated by Employment and Social Development Canada in a Notice of Debt and remit such amounts to Employment and Social Development Canada pursuant to the *Employment Insurance Act* (Canada). Any Affected Creditor whose address on file with JTIM on the Distribution Record Date is not a Canadian address will be treated as a non-resident of Canada for purposes of any applicable non-resident withholding tax on all payments hereunder, subject to receipt by Deloitte or JTIM of information

satisfactory (in their sole discretion) that such Affected Creditor is not a non-resident. No gross-up or additional amount will be paid on any payment hereunder to the extent Deloitte, JTIM or any other Person deducts or withholds amounts pursuant to Article 17, Section 17.8. Notwithstanding any withholding or deduction, each Person receiving a payment will have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority (including income and other tax obligations on account of such distribution).

17.9 Cancellation of Certificates and Notes, etc.

At the Effective Time, all debentures, notes, certificates, indentures, guarantees, agreements, invoices and other instruments evidencing Affected Claims, Released Claims or Miscellaneous Claims (and all guarantees associated with each of the foregoing), will not entitle any holder thereof to any compensation or participation other than as expressly provided for in the CCAA Plan and will be deemed cancelled and extinguished and be null and void.

17.10 Calculations

All amounts to be paid to the Claimants by JTIM pursuant to the CCAA Plan shall be calculated in accordance with Article 5, Section 5.1 to Section 5.16.

17.11 Currency Matters

Distributions to any Persons entitled to distributions under the CCAA Plan will be paid in Canadian dollars and any such Claims that are denominated in a currency other than the lawful money of Canada will be converted to the equivalent thereof in the lawful money of Canada at the noon rate of exchange as quoted by the Bank of Canada on March 8, 2019, in accordance with the Claims Procedure Order.

ARTICLE 18. RELEASES, MISCELLANEOUS CLAIMS, INJUNCTIONS AND DISPOSITION OF PENDING PROCEEDINGS

18.1 CCAA Plan Releases

18.1.1 Consideration for Release

The release ("**Release**") is given by the Releasors, individually and collectively, in consideration of (a) the Tobacco Companies' payment of the Upfront Contributions and promise to pay the Annual Contributions and Reserved Amounts to the Global Settlement Trust Account and Supplemental Trust Account in accordance with the Definitive Documents, (b) the agreement to provide shared services and other operational support to the Tobacco Companies by their respective Parents and relevant Affiliates, and (c) the other promises and commitments made by the Released Parties, or any of them as applicable, in the Definitive Documents.

18.1.2 Release

At the Effective Time, each of the Released Parties shall be, and shall be deemed to be, fully, finally, irrevocably and unconditionally released and forever discharged of and from any and all

of the Released Claims that any of the Releasors has ever had, now has, or may hereafter have against the Released Parties or any of them (either individually or with any other Person), whether or not based on conduct continuing after the Effective Time and whether or not presently known to any of the Releasors.

Nothing herein does release (and the Released Parties agree hereby that they will not assert otherwise), or is intended to release, any Claim of a Released Party (including its Representatives) that has been, could have been or could be advanced, directly or indirectly, against any other Released Party (including its Representatives) other than the Tobacco Companies and their respective Subsidiaries and Representatives (such other Released Parties, not including the Tobacco Companies and their respective Subsidiaries and Representatives, collectively, the "Other Released Parties"), in respect of:

(a) the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products outside of Canada,

(b) the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions outside of Canada,

(c) the development of any disease related to the use of Tobacco Products outside of Canada,

(d) any representation or omission in respect of Tobacco Products outside of Canada, or

(e) conduct of the Other Released Parties not related to Canada;

provided that such Claim is not, in whole or in part, based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada (and it is agreed that to the extent such Claim is based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada, then that same extent of the Claim will be hereby released).

18.1.3 Claimant Contractual Release

The Claimant Contractual Release, which is attached to the CCAA Plan as Schedule "W", shall be executed and delivered by JTIM and each of the Claimants, or an authorized Person on their behalf, in favour of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, and their respective Representatives, and shall take effect as at the Effective Time. From and after the Effective Time, the Claimant Contractual Release will be binding on and enure to the benefit of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives.

18.1.4 Release of Monitors

At the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, shall be deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Monitors and the CCAA Plan

Administrators, and their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known, arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) any Claim that has been barred or extinguished pursuant to the terms of the Claims Procedure Order and/or the terms of the CCAA Plan; (ii) the CCAA Proceedings; (iii) the Chapter 15 Proceedings; (iv) the actions of the Monitors or the CCAA Plan Administrators and their legal counsel and advisors in connection with the CCAA Proceedings or the Chapter 15 Proceedings; (v) the business and affairs of the Tobacco Companies whenever or however conducted; (vi) the administration and management of the Tobacco Companies whenever or however conducted; (vii) the allocation of the Global Settlement Amount and any distributions, payments, disbursements from the Global Settlement Amount, and/or (viii) any matter or transaction involving any of the Tobacco Companies occurring in or in connection with the CCAA Proceedings or the Chapter 15 Proceedings including the CCAA Plans, the development thereof, and any and all actions, steps or transactions taken by the Monitors to implement the CCAA Plans, including in their capacity as CCAA Plan Administrators and in FTI's capacity as the Foreign Representative in Imperial's Chapter 15 Proceedings, and in each case, all Claims arising out of aforesaid actions or omissions above shall be forever waived and released (other than the right to enforce the Monitors' obligations under the CCAA Plans or any related document), all to the fullest extent permitted by Applicable Law.

Nothing in this Release shall derogate from the protections afforded to the Monitors or the CCAA Plan Administrators as officers of the CCAA Court, or in the case of FTI, as the Foreign Representative in Imperial's Chapter 15 Proceedings, and by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings. For greater certainty, the Monitors and the CCAA Plan Administrators shall not be responsible or liable for any obligations of the Tobacco Companies. The Monitors and the CCAA Plan Administrators and their respective Affiliates, shareholders, Affiliates' shareholders, employees, advisors, legal counsel, Representatives or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document.

18.1.5 Release of Court-Appointed Mediator

At the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, shall be deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Court-Appointed Mediator, and his Representatives, legal counsel, consultants and advisors, from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known to the Released Parties, Releasors, Affected Creditors and Unaffected Creditors arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence in any way in connection with the CCAA Proceedings, including: (i) any Claim that

has been barred or extinguished pursuant to the terms of the Claims Procedure Order and/or the terms of the CCAA Plan; (ii) the CCAA Proceedings; (iii) the Chapter 15 Proceedings; (iv) the actions of the Court-Appointed Mediator as an officer of the CCAA Court carrying out his mandate as a neutral third party to mediate a global settlement in the Tobacco Companies' CCAA Proceedings; (v) the business and affairs of the Tobacco Companies whenever or however conducted; (vi) the administration and management of the Tobacco Companies whenever or however conducted; (vii) the allocation of the Global Settlement Amount and any distributions, payments, disbursements from the Global Settlement Amount, and/or (viii) any matter or transaction involving any of the Tobacco Companies occurring in or in connection with the CCAA Proceedings or the Chapter 15 Proceedings including the CCAA Plans, the development thereof, and any and all actions, steps or transactions taken by the Court-Appointed Mediator to implement the CCAA Plans, and in each case, all Claims arising out of aforesaid actions or omissions above shall be forever waived and released to the fullest extent permitted by Applicable Law.

Nothing in this Release shall derogate from the protections afforded to the Court-Appointed Mediator as an officer of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings, including the orders appointing the Court-Appointed Mediator. In particular, the Court-Appointed Mediator shall not be liable to any Party or participant in the mediation for any act or omission in connection with the mediation process and shall have the immunity of a Judge of a Superior Court in Canada. For greater certainty, the Court-Appointed Mediator shall not be responsible or liable for any obligations of the Tobacco Companies. The Court-Appointed Mediator's heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document.

18.1.6 Release of Administrative Coordinator

At the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, shall be deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Administrative Coordinator and his Representatives from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known to the Released Parties, Releasors, Affected Creditors and Unaffected Creditors arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) the CCAA Proceedings; (ii) the Chapter 15 Proceedings; (iii) the development of the PCC Compensation Plan and the development of the Quebec Administration Plan; and (iv) the actions of the Administrative Coordinator in connection with the administration of the PCC Compensation Plan and the administration of the Quebec Administration Plan, and in each case, all Claims arising out of aforesaid actions or omissions above shall be forever waived and released to the fullest extent permitted by Applicable Law.

Nothing in this Release shall derogate from the protections afforded to the Administrative Coordinator by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings. For greater certainty, the Administrative Coordinator shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Administrative Coordinator's heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document.

18.1.7 Release of CRO

At the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, shall be deemed to fully, finally, irrevocably and unconditionally release and forever discharge the CRO and its shareholders, Affiliates' shareholders, directors, officers, employees, advisors, consultants, Representatives and agents from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known, arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) any Claim that has been barred or extinguished pursuant to the terms of the Claims Procedure Order and/or the terms of the CCAA Plan; (ii) the CCAA Proceedings; (iii) the Chapter 15 Proceedings; (iv) the actions of the CRO in connection with the CCAA Proceedings or the Chapter 15 Proceedings; (v) the business and affairs of the Tobacco Companies whenever or however conducted; (vi) the administration and management of the Tobacco Companies whenever or however conducted; (vii) the allocation of the Global Settlement Amount and any distributions, payments, disbursements from the Global Settlement Amount, and/or (viii) any matter or transaction involving any of the Tobacco Companies occurring in or in connection with the CCAA Proceedings or the Chapter 15 Proceedings including the CCAA Plans and the development thereof, and in each case, all Claims arising out of aforesaid actions or omissions above shall be forever waived and released, all to the fullest extent permitted by Applicable Law.

Nothing in this Release shall derogate from the protections afforded to the CRO by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings. For greater certainty, the CRO shall not be responsible or liable for any obligations of the Tobacco Companies. The CRO and its respective Affiliates, shareholders, Affiliates' shareholders, employees, advisors, Representatives or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document.

18.1.8 Indemnity of Monitors, CCAA Plan Administrators, Foreign Representative, Court-Appointed Mediator and Administrative Coordinator

JTIM shall indemnify and save harmless the CRO, the Court-Appointed Mediator, the Monitors (FTI, EY and Deloitte) in their various capacities (including as the Monitors, the CCAA Plan Administrators, and Foreign Representative (as applicable)), the Administrative Coordinator and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents (collectively, the "**Indemnified Parties**"), from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of each Indemnified Party's respective activities or duties in any way in connection with the CCAA Proceeding and the Chapter 15 Proceedings, including for the avoidance of doubt: (i) the actions of the CRO, the Court-Appointed Mediator, the Monitors, the CCAA Plan Administrators and the Administrative Coordinator and their respective legal counsel and advisors in connection with the CCAA Proceeding and the Chapter 15 Proceedings, (ii) the business and affairs of JTIM whenever or however conducted, and (iii) any matter or transaction involving JTIM occurring in or in connection with the CCAA Proceeding and the Chapter 15 Proceedings, the CCAA Plan, or the development thereof (other than enforcement of Indemnified Parties' obligations under the CCAA Plan and the Definitive Documents). This indemnity shall survive the resignation or removal of the Indemnified Parties from any role, capacity, engagement, office or position relevant to its activities or duties in connection with the CCAA Plan. To the extent any Indemnified Party is not otherwise compensated by JTIM such Indemnified Party may resort to the JTIM CCAA Plan Administration Reserve for compensation.

18.1.9 Injunctions

From and after the Effective Time, all Persons will be permanently and forever barred, estopped, stayed and enjoined from:

(a) Commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties, the CRO, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives with respect to any and all Affected Claims and Released Claims;

(b) Enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties, the CRO, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, or their respective property with respect to any and all Affected Claims and Released Claims;

(c) Commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to an Affected Claim or a Released Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties, the CRO, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, unless such Claim of such other Person is itself an Affected Claim or a Released Claim;

(d) Creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties, the CRO, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, their respective Representatives or any of their respective property with respect to any and all Affected Claims and Released Claims, except for the exclusions in Article 18, Section 18.1.10 in relation to obligations arising from the Definitive Documents; and

(e) Taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Released Claims.

18.1.10 Released Parties' Fulfillment of Obligations pursuant to Definitive Documents

Notwithstanding any of the provisions herein, the Released Parties are not released from the due performance of their obligations arising from the Definitive Documents, and nothing in this Release shall prevent or restrict any of the Releasors or the CCAA Plan Administrators from pursuing any legal remedies against any of the Released Parties for non-performance of their obligations pursuant to the Definitive Documents, including the covenants of each Tobacco Company, its Parent and the relevant Affiliates within its Tobacco Company Group.

18.1.11 Releases are Final and Binding

The releases and injunctions in favour of the Released Parties, the CRO, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives shall be final and binding on all the Releasors, Released Parties, Affected Creditors and Unaffected Creditors (except to the extent of their Unaffected Claims) as applicable, including any Claims resulting, directly or indirectly, from the consequences and effects relating to the acceptance of the CCAA Plan, the sanction thereof by the CCAA Court, the recognition thereof by the US Bankruptcy Court, or its implementation. The aforesaid final and binding effect of the CCAA Plan on the Releasors, Released Parties, Affected Creditors and Unaffected Creditors (except to the extent of their Unaffected Claims) shall operate for all legal purposes as and from the Effective Time.

18.1.12 CCAA Meeting Orders and Sanction Orders

To facilitate the provision of the releases and the granting of the injunctions in favour of the Released Parties, the CRO, Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator:

(a) Pursuant to the Orders governing the conduct of the Meeting of the Affected Creditors to consider and vote on the CCAA Plan:

(i) Quebec Class Counsel will be appointed to act as proxy and vote on behalf of the Quebec Class Action Plaintiffs in respect of the CCAA Plan;

(ii) PCC Representative Counsel will be appointed to act as proxy and vote on behalf of the Pan-Canadian Claimants in respect of the CCAA Plan;

(iii) *Knight* Class Counsel will be appointed to act as proxy and vote on behalf of the *Knight* Class Action Plaintiffs in respect of the CCAA Plan; and

(iv) Counsel for the Tobacco Producers will be appointed to act as proxy and vote on behalf of the Tobacco Producers in respect of the CCAA Plan; and

(b) The Sanction Order will:

(i) Authorize Quebec Class Counsel, PCC Representative Counsel, *Knight* Class Counsel and Counsel for the Tobacco Producers to execute and deliver the Claimant Contractual Release on behalf of the Quebec Class Action Plaintiffs, the Pan-Canadian Claimants, the *Knight* Class Action Plaintiffs, and the Tobacco Producers and Ontario Flue-Cured Tobacco Growers' Marketing Board, respectively;

(ii) Confirm that each of (A) the affirmative vote in respect of the CCAA Plan and (B) the signing of the Claimant Contractual Release, by or on behalf of each Claimant, shall be evidence of the consent of the Claimant to the treatment of its Claims for the purposes of Section 5.1(2) and/or Section 19(2) of the CCAA to the extent that they apply; and

(iii) Order that no action, proceeding or enforcement process in any court or tribunal may be commenced or continued against (A) any Released Party, the CRO, the Monitor, the CCAA Plan Administrator, the Foreign Representative, the Court-Appointed Mediator, the Administrative Coordinator, or (B) any Person who claims or might reasonably be expected to claim in any manner or forum against any Released Party, the CRO, the Monitor, the CCAA Plan Administrator, the Foreign Representative, the Court-Appointed Mediator, or the Administrative Coordinator, in respect of the Affected Claims and Released Claims without the prior written consent of the Released Party, the CRO, the Monitor, the CCAA Plan Administrator, the Foreign Representative, the Court-Appointed Mediator, the Administrative Coordinator, as applicable, or leave of the CCAA Court obtained on notice to the Released Party, the CRO, the Monitor, the CCAA Plan Administrator, the Foreign Representative, the Court-Appointed Mediator and the Administrative Coordinator (as applicable), and the Tobacco Companies, including appropriate injunctive language with respect to same.

18.1.13 Future Legislation

The Released Parties and the Provinces and Territories recognize that a legislature's sovereign power to enact, amend and repeal legislation cannot be fettered. However, in the event that any legislation (including any regulations promulgated thereunder) similar or analogous to the HCCR Legislation may be enacted or amended by a Province or Territory at any time after the Effective Time, the Released Parties and the Provinces and Territories are *ad idem* that the enactment of such future legislation shall not render unenforceable or otherwise make ineffective any of the terms of the Claimants Contractual Release or of this Article 18.

18.2 Treatment of Miscellaneous Claims

18.2.1 Miscellaneous Claims Fund

From the Upfront Contributions deposited into the Global Settlement Trust Account, the one-time aggregate sum of **$25.0 million** ("**Miscellaneous Claims Amount**") shall be transferred to and deposited into a segregated interest-bearing trust account held in the Bank ("**Miscellaneous Claims Fund**"). The Miscellaneous Claims Amount, and interest accrued thereon, shall be held in the Miscellaneous Claims Fund for a period of three years from the Effective Time, or for such other period of time as the CCAA Plan Administrators are of the view is necessary and appropriate to permit the completion of the adjudication of any Miscellaneous Claims ("**Miscellaneous Claims Fund Period**").

The Tobacco Companies may unanimously elect to increase the Miscellaneous Claims Amount from $25.0 million to $60.0 million provided that:

(a) The $35.0 million top-up of the Miscellaneous Claims Amount shall be paid by the Tobacco Companies and shall be on top of the $32.5 billion Global Settlement Amount;

(b) The Tobacco Companies are in unanimous agreement regarding how they shall apportion payment of the $35.0 million among themselves and the source of the top-up funds; and

(c) The sourcing of the additional sum of $35.0 million shall not affect the amount nor the timing of the payments of the Upfront Contributions and the Global Settlement Amount.

If the Tobacco Companies make such election as aforesaid, this Section 18.2.1 shall be deemed to stipulate that the Miscellaneous Claims Amount is $60.0 million.

18.2.2 Determination of Miscellaneous Claims

The determination of all Miscellaneous Claims shall be governed by this Section 18.2 and the Claims Procedure Order, the Meeting Order and any other further Order of the CCAA Court, as applicable. A Putative Miscellaneous Claimant shall not be permitted to commence a proceeding in any other forum except the CCAA Court with leave and, if any such proceeding is commenced, it shall be a nullity.

18.2.3 Leave required from CCAA Court to bring a Miscellaneous Claim Proceeding

Except for (i) an application for leave to commence a proceeding brought in the CCAA Court pursuant to this Section, and (ii) any subsequent proceeding commenced with leave of the CCAA Court, any proceeding commenced in any court relating to a Miscellaneous Claim shall be a nullity.

A Putative Miscellaneous Claimant shall bring an application to the CCAA Court seeking leave to commence a proceeding relating to the Miscellaneous Claim.

On the application for leave, the Putative Miscellaneous Claimant shall serve on JTIM and file with the CCAA Court:

(a) An affidavit setting out a concise statement of the material facts upon which the Putative Miscellaneous Claimant intends to rely; and

(b) An affidavit of documents disclosing, to the full extent of the Putative Miscellaneous Claimant's knowledge, information and belief, all documents relevant to any matter in issue in the proceeding relating to the Miscellaneous Claim that are or have been in the Putative Miscellaneous Claimant's possession, control or power.

On the application for leave, JTIM may serve on the Putative Miscellaneous Claimant and file an affidavit setting out a concise statement of the material facts on which JTIM intends to rely for the defence of the Miscellaneous Claim, but is not required to do so.

The CCAA Court shall not grant leave unless it finds that:

(a) The application for leave has been brought before the CCAA Court either prior to or no later than two years after the issuance of the Sanction Order;

(b) The Miscellaneous Claim was not fully, finally, irrevocably and unconditionally released and forever discharged, and permanently barred and enjoined pursuant to the terms of the CCAA Plan, Claims Procedure Order, Sanction Order, the Claimant Contractual Release and/or any other orders made in the CCAA Proceeding;

(c) The Miscellaneous Claim is being brought in good faith; and

(d) There is a reasonable possibility that the Miscellaneous Claim will be resolved in the Putative Miscellaneous Claimant's favour.

The Putative Miscellaneous Claimant shall bear the onus of establishing that leave should be granted.

If leave is granted, the CCAA Court shall have exclusive jurisdiction to adjudicate and determine the proceeding relating to the Miscellaneous Claim on its merits. Notwithstanding the foregoing, the CCAA Court in its discretion may decide how the Miscellaneous Claim will be heard and determined.

Either the Putative Miscellaneous Claimant or JTIM may appeal from the decision of the CCAA Court on the application for leave or, if leave is granted, from any order or decision of the CCAA Court made in the proceeding relating to the Miscellaneous Claim, in accordance with Sections 13, 14 and 15 of the CCAA.

Both the Putative Miscellaneous Claimant and JTIM shall bear their own costs of the application for leave and any appeal from the decision of the CCAA Court on the application for leave.

If by final decision of the CCAA Court leave is not granted, and any appeal from such decision is dismissed, the Putative Miscellaneous Claimant shall be permanently and forever barred, estopped, stayed and enjoined from commencing any proceeding in any court relating to or arising from the Miscellaneous Claim.

18.2.4 Payment from Miscellaneous Claims Fund

Any judgments or awards made, or other amounts ordered to be paid in regard to Miscellaneous Claims shall be paid solely from the Miscellaneous Claims Fund.

18.2.5 Distribution of any Residual Monies from Miscellaneous Claims Fund

After the expiry of the Miscellaneous Claims Fund Period, to the extent that there remains any residual funds in the Miscellaneous Claims Fund after the payment of all judgments, awards and any other amounts ordered to be paid in regard to proven Miscellaneous Claims, any such residual funds shall be apportioned among the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

18.2.6 Sole Recourse for Miscellaneous Claims

All Putative Miscellaneous Claimants shall only have recourse to the Miscellaneous Claims Fund in regard to any Miscellaneous Claims and shall have no recourse in relation to any Miscellaneous Claims as against the Released Parties, the Claimants or their Representatives, or any other funds paid, held or administered pursuant to the CCAA Plan and all other Definitive Documents.

18.3 Disposition of Pending Proceedings

18.3.1 Termination of Pending Litigation other than Quebec Class Actions

As soon as possible after the Plan Implementation Date, the Parties shall take all steps and actions that are necessary and appropriate to dismiss with prejudice and without costs to any party or counsel the following proceedings pending in courts in the Provinces and Territories against the Tobacco Companies, certain members of their respective Tobacco Company Groups and the Canadian Tobacco Manufacturers' Council ("**Pending Litigation**"):

(a) The actions which the Provinces commenced pursuant to the HCCR Legislation claiming the recovery of expenditures for Health Care Benefits provided for Insured Persons resulting from Tobacco-related Disease or the risk of Tobacco-related Disease caused by the Tobacco Companies' tobacco-related wrongs, including any related motions,

applications, leave applications or appeals, that are listed in Schedule "X" to the CCAA Plan;

(b) The *Knight* Class Action;

(c) The actions commenced by Individuals under the class proceedings legislation in British Columbia (other than the *Knight* Class Action), Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, and Newfoundland and Labrador, that are listed in Schedule "Y" to the CCAA Plan;

(d) The Tobacco Producers' Actions; and

(e) Any action, other than the Quebec Class Actions, regardless of whether the statement of claim was served, commenced by Individuals in Ontario, Quebec and Nova Scotia, or any other Province or Territory relating to Tobacco Claims or the subject matter of the CCAA Plan, that are listed in Schedule "Z" to the CCAA Plan.

JTIM and the Claimants shall consent to the inclusion of orders in the Sanction Order providing that:

(a) Effective from Plan Implementation Date, all parties to the Pending Litigation, including each plaintiff, class representative, class member and defendant therein, shall be deemed to have given all consents necessary to effect the termination with prejudice and without costs of the Pending Litigation,

(b) The Sanction Order shall have full force and effect in all Provinces and Territories, the United States and elsewhere, and as against all Persons against whom it may apply; and

(c) Each applicable court in the Provinces and Territories in which the Pending Litigation was commenced is requested to:

(i) Aid, recognize and assist the CCAA Court to confirm that, effective as and from the Plan Implementation Date, the CCAA Plan has fully and finally resolved and definitively settled the Pending Litigation,

(ii) Provide such assistance to JTIM and its CCAA Plan Administrator, as an officer of the CCAA Court, as may be necessary or desirable to give effect to the Sanction Order or to assist JTIM and its CCAA Plan Administrator in carrying out the terms of the Sanction Order and CCAA Plan, and

(iii) Issue such orders as may be necessary to terminate all of the Pending Litigation by a with prejudice dismissal without costs. Such dismissals shall be effected by the filing of the appropriate documents with each applicable court in each jurisdiction.

18.3.2 Disposition of Quebec Class Actions

As soon as possible after the Plan Implementation Date, JTIM and the QCAPs shall take all steps and actions that are necessary and appropriate to, if applicable, dismiss with prejudice and without

costs to any party or counsel any leave applications or appeals from the judgments in the Quebec Class Actions or any related motions pending in the Quebec Superior Court, the Court of Appeal of Quebec and/or the Supreme Court of Canada.

After the QCAP Claims Process has ended and the Eligible *Blais* Class Members have been paid their Compensation Payments, JTIM and the QCAPs shall consent to motions seeking the Closing Judgment to be brought in the Quebec Superior Court by the Quebec Class Counsel in the *Blais* Class Action and the *Létourneau* Class Action.

JTIM and the QCAPs shall consent to the inclusion in the Sanction Order of orders providing that:

(a) The *Blais* Judgment and the *Létourneau* Judgment are fully and finally satisfied, resolved, compromised and settled;

(b) The Sanction Order shall have full force and effect in Quebec as against all Persons against whom it may apply; and

(c) The Quebec Superior Court is requested to:

(i) Aid, recognize and assist the CCAA Court to confirm that, effective as and from the Plan Implementation Date, the CCAA Plan has fully and finally resolved and definitively settled the Quebec Class Actions;

(ii) Provide such assistance to JTIM and the CCAA Plan Administrator, as an officer of the CCAA Court, as may be necessary or desirable to give effect to the Sanction Order or to assist JTIM and its CCAA Plan Administrator in carrying out the terms of the CCAA Plan Sanction Order and the CCAA Plan; and

(iii) Upon the completion of the QCAP Claims Process and the payment of Compensation Payments thereunder, issue such orders, including the Closing Judgment, as may be necessary to terminate with prejudice and without costs the Quebec Class Actions.

ARTICLE 19. COURT SANCTION, CONDITIONS PRECEDENT AND CCAA PLAN IMPLEMENTATION

19.1 Application for Sanction Order

If the CCAA Plan is approved by the Required Majority of the Affected Creditor Class at the Meeting, the Court-Appointed Mediator and the Monitor shall apply for the Sanction Order on or before the date set for the Sanction Order hearing or such later date as the CCAA Court may set.

19.2 Sanction Order

The Court-Appointed Mediator and the Monitor will apply for a Sanction Order that shall, among other things:

(a) Order that: (i) the CCAA Plan has been approved by the Required Majority of the Affected Creditor Class in conformity with the CCAA; (ii) the activities of JTIM and the Monitor have been in compliance with the provisions of the CCAA and the Orders of the CCAA Court made in this CCAA Proceeding in all respects; (iii) neither JTIM nor the Monitor has done or purported to do anything that is not authorized by the CCAA; and (iv) the CCAA Plan and the transactions contemplated thereby are fair and reasonable;

(b) Order that the CCAA Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are sanctioned and approved, and at the Effective Time will be binding and effective upon and with respect to JTIM, all Affected Creditors, the Released Parties and all other Persons named or referred to in, or subject to, the CCAA Plan or the Sanction Order;

(c) Confirm that the CCAA Court is satisfied that: (i) the hearing regarding the Sanction Hearing was open to all of the Affected Creditors and all other Persons, including Putative Miscellaneous Claimants, with an interest in JTIM and that such Affected Creditors and other Persons were permitted to be heard at the Sanction Hearing; and (ii) all of the Affected Creditors and all other Persons on the Common Service List were given adequate notice thereof;

(d) Approve and authorize the Restructuring Steps;

(e) Approve the Quebec Administration Plan;

(f) Approve the PCC Compensation Plan;

(g) Approve the appointment of the Monitor as the CCAA Plan Administrator as set out in the CCAA Plan Administrators' Order;

(h) Approve the appointment of the Court-Appointed Mediator to provide services with respect to the implementation of the CCAA Plan and perform such other functions as may be requested by the CCAA Plan Administrator or the CCAA Court;

(i) Approve the appointment of Epiq as the Claims Administrator;

(j) Approve the appointment of Daniel Shapiro, K.C. as the Administrative Coordinator;

(k) Approve the appointment of Dr. Robert Bell as the initial Chair of the Cy-près Foundation;

(l) Order that any Affected Claim for which a Miscellaneous Claimant Proof of Claim or Notice of Dispute of Negative Notice Claim has not been filed by the Miscellaneous Claims Bar Date or the Negative Notice Bar Date, as applicable, in accordance with the Claims Procedure Order is forever barred and extinguished, and all such Affected Claims are released and discharged;

(m) Order that, as of the Effective Time, any and all Released Claims are and are deemed to be fully, finally, irrevocably and forever compromised, released, discharged and barred, and the ability of any Person to proceed against any of the Released Parties in respect of or

relating to any Released Claims, whether directly, indirectly, derivatively or otherwise is forever barred, estopped, stayed and enjoined, and all proceedings with respect to, in connection with or relating to such Released Claims are permanently stayed, subject only to the right of the Affected Creditors to receive distributions pursuant to the CCAA Plan in respect of their Affected Claims and to exercise their rights under the CCAA Plan;

(n) Order that, as of the Effective Time, no action, proceeding or enforcement process in any court or tribunal may be commenced or continued against any Released Party, or any Person who claims or might reasonably be expected to claim in any manner or forum against any Released Party, in respect of the Released Claims without the prior written consent of the Released Party or leave of the CCAA Court obtained on notice to the Released Party and the Tobacco Companies, including appropriate injunctive language with respect to same;

(o) Authorize and approve the releases and injunctions set forth in Article 18, Sections 18.1.1 to 18.1.11 herein and order that such releases and injunctions shall become effective at the Effective Time;

(p) Authorize Quebec Class Counsel, PCC Representative Counsel, Knight Class Counsel and Counsel for the Tobacco Producers to execute and deliver the Claimant Contractual Release on behalf of the Quebec Class Action Plaintiffs, the Pan-Canadian Claimants, the Knight Class Action Plaintiffs, and the Tobacco Producers and Ontario Flue-Cured Tobacco Growers' Marketing Board, respectively;

(q) Confirm that each of (i) the affirmative vote in respect of the CCAA Plan and (ii) the signing of the Claimant Contractual Release, by or on behalf of each Claimant, shall be evidence of the consent of the Claimant to the treatment of its Claims for the purposes of Section 5.1(2) and/or Section 19(2) of the CCAA to the extent that they apply;

(r) Grant the Monitor, in addition to its rights and obligation under the CCAA, the powers, duties and protections contemplated by and required under the CCAA Plan and authorize and direct the Monitor to perform its duties and fulfil its obligations under the CCAA Plan as the CCAA Plan Administrator for JTIM to facilitate the implementation of the CCAA Plan;

(s) Authorize JTIM and Deloitte, either in its capacity as the Monitor or the CCAA Plan Administrator, to take all steps and actions, and to do all things, necessary or appropriate to implement the CCAA Plan in accordance with and subject to its terms and conditions, and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, payments, deliveries, allocation, instruments and agreements contemplated by, and subject to the terms and conditions of, the CCAA Plan;

(t) Order that in no circumstance will the Monitor have any liability for any of JTIM's tax or other liabilities regardless of how or when such liability may have arisen;

(u) Approve the form of the Monitor's Plan Implementation Date Certificate, and order that the Monitor, in its capacity as Monitor, following the fulfilment or waiver of the conditions precedent to implementation of the CCAA Plan as set out in Article 19, Sections 19.3 and

19.4 of the CCAA Plan, shall deliver the Monitor's Plan Implementation Date Certificate to JTIM and serve a copy thereof on the Common Service List;

(v) Order that upon completion by Deloitte of its duties as the Monitor and the CCAA Plan Administrator in respect of JTIM pursuant to the CCAA and any Order of the CCAA Court made in connection with the CCAA Proceeding or the CCAA Plan, Deloitte may file with the CCAA Court a certificate ("**Certificate of Plan Completion**") stating that all of its duties in respect of JTIM pursuant to the CCAA, the CCAA Plan and any Orders of the CCAA Court in respect thereof, have been completed and thereupon, Deloitte shall be deemed to be discharged from its duties as the Monitor and as the CCAA Plan Administrator and released of all claims relating to its activities as the Monitor and as the CCAA Plan Administrator;

(w) Approve the form of the Certificate of Plan Completion, and order that Deloitte, in its capacities as the Monitor and the CCAA Plan Administrator has completed its duties to fully and finally effect all distributions, disbursements and payments in accordance with the CCAA Plan, shall file the Certificate of Plan Completion with the CCAA Court;

(x) Order that, in carrying out the terms of the Sanction Order and the CCAA Plan, (i) Deloitte, in its capacities as the Monitor and the CCAA Plan Administrator, shall benefit from all the protections given to it by the CCAA, the Initial Order and any other Order in the CCAA Proceeding, and as an officer of the CCAA Court, (ii) Deloitte shall incur no liability or obligation as a result of carrying out the provisions of the Sanction Order and/or CCAA Plan, and (iii) Deloitte shall be entitled to rely on the books and records of JTIM and any information provided by JTIM without independent investigation and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;

(y) Order that each Putative Miscellaneous Claimant will be limited to recovering from the Miscellaneous Claims Fund in respect of all Miscellaneous Claims in accordance with the CCAA Plan and any other Definitive Documents, and such Putative Miscellaneous Claimant will have no right to and shall not make any claim against or seek any recovery from any Released Party in respect of such Miscellaneous Claim;

(z) Order that each of the Sales and Excise Tax Charge and Directors' Charge will be terminated, discharged, expunged and released at the applicable time set out in the Sanction Order upon receipt by JTIM of an acknowledgement of payment in full and in the appropriate currency of the claims secured thereby;

(aa) Approve the CCAA Plan Administration Reserve;

(bb) Approve the PCC Compensation Plan Reserve;

(cc) Order that, notwithstanding: (i) the pendency of the CCAA Proceeding or the Chapter 15 Proceedings; (ii) any applications for a bankruptcy, receivership or other order now or hereafter issued pursuant to the BIA, the CCAA, the US Bankruptcy Code or otherwise in respect of JTIM and any bankruptcy, receivership or other order issued pursuant to any such applications; and (iii) any assignment in bankruptcy made or deemed to be made in

respect of JTIM, the transactions contemplated by the CCAA Plan shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect JTIM or its assets and shall not be void or voidable by creditors of JTIM, nor shall the CCAA Plan or the payments and distributions contemplated pursuant thereto constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA, CCAA or any other applicable federal or provincial legislation, nor shall the CCAA Plan constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation;

(dd) Order that, subject to the performance by JTIM of its obligations under the CCAA Plan, all obligations, contracts, leases, agreements and other arrangements to which JTIM is a party at the Effective Time, and that have not been terminated or disclaimed pursuant to the applicable paragraph of the Initial Order and related provision of the CCAA will be and remain in full force and effect, unamended as of the Effective Time, and no Person who is a party to any such obligation, contract, lease, agreement or other arrangement shall at or following the Effective Time accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(i) any event that occurred at or prior to the Effective Time and is not continuing thereafter, or which is or continues to be suspended or waived under the CCAA Plan, that would have entitled such Person to enforce those rights or remedies (including defaults or events or default arising as a result of the insolvency of JTIM);

(ii) the insolvency of JTIM or the fact that JTIM sought or obtained relief under the CCAA;

(iii) any compromises or arrangements effected pursuant to the CCAA Plan, or any action taken or transaction effected pursuant to the CCAA Plan; or

(iv) the fact that JTIM has sought or obtained relief or taken steps as part of the CCAA Proceedings.

(ee) Approve all conduct of the Directors of JTIM and the CRO during the CCAA Proceeding and the Chapter 15 Proceedings;

(ff) Approve all conduct of the Monitor and the Monitor's Representatives in relation to JTIM and its Tobacco Company Group and bar all claims against them arising from or relating to the services provided to JTIM and its Tobacco Company Group up to and including the date of the Sanction Order;

(gg) Order that, in regard to the services that it provides after the date of the Sanction Order, Deloitte, whether in its capacity as the Monitor and/or the CCAA Plan Administrator, shall have the benefit of all the protections afforded to the Monitors as officers of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation and any Orders

made in the CCAA Proceedings or the Chapter 15 Proceedings. For greater certainty, Deloitte, whether in its capacity as the Monitor, and/or the CCAA Plan Administrator, shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Monitor or its respective Affiliates, shareholders, Affiliates' shareholders, employees, advisors, legal counsel, representatives or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document;

(hh) Approve all conduct of the Court-Appointed Mediator and the Court-Appointed Mediator's Representatives in relation to JTIM and its Tobacco Company Group and bar all claims against them arising from or relating to the services provided during the pendency of the Court-supervised mediation up to and including the date of the Sanction Order;

(ii) Order that in the event that the Court-Appointed Mediator provides any services after the date of the Sanction Order, as requested by either the CCAA Plan Administrators or the CCAA Court, and approved by the CCAA Court, the Court-Appointed Mediator shall have the benefit of all the protections afforded to the Court-Appointed Mediator as an officer of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any Orders made in the CCAA Proceedings, including the orders appointing the Court-Appointed Mediator. In particular, the Court-Appointed Mediator shall not be liable to any Party, participant in the mediation, or any other Person, for any act or omission in connection with the mediation process and/or in connection with any services provided after date of the Sanction Order, and shall have the immunity of a Judge of a Superior Court in Canada. For greater certainty, the Court-Appointed Mediator shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Court-Appointed Mediator's heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document;

(jj) Order that, in regard to the services that the Administrative Coordinator provides after the date of the Sanction Order, the Administrative Coordinator shall have the benefit of all the protections afforded to him as an officer of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings. For greater certainty, the Administrative Coordinator shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Administrative Coordinator's heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document;

(kk) Authorize JTIM to seek an order of any court of competent jurisdiction to recognize the CCAA Plan and the Sanction Order and to confirm the CCAA Plan and the Sanction Order as binding and effective in any appropriate foreign jurisdiction, including in the Chapter 15 Proceedings;

(ll) Order that any obligation of JTIM to provide financial reporting pursuant to any Order or agreement shall cease at the Effective Time and be replaced with the obligations set forth in Article 10, Section 10.1 to Section 10.10 of the CCAA Plan;

(mm) Order that the CCAA stay of proceedings provided for in the Initial Order shall be extended until the Effective Time; and

(nn) Order that JTIM, the Court-Appointed Mediator or Deloitte, whether in its capacity as the Monitor and/or the CCAA Plan Administrator, may apply to the CCAA Court for advice and direction in respect of any matters arising from or in relation to the CCAA Plan.

19.3 Conditions Precedent to Implementation of CCAA Plan

The implementation of the CCAA Plan shall be conditional upon the satisfaction, prior to or at the Effective Time, of the following conditions precedent ("**Plan Implementation Conditions**"):

(a) The CCAA Plan will have been approved by the Required Majority of the Affected Creditors at the Meeting;

(b) The CCAA Plans of RBH and Imperial will have been approved by the Required Majority of the Affected Creditors of RBH and Imperial at the Meetings in respect of the CCAA Plans of RBH and Imperial;

(c) The Sanction Order will have been granted by the CCAA Court, consistent with the terms of Article 19, Section 19.2 herein, and will have become a final Order;

(d) The Sanction Orders in respect of the CCAA Plans of RBH and Imperial will have been granted by the CCAA Court and will have become final Orders;

(e) All applicable appeal periods in respect of the Sanction Order will have expired and any appeals or motions for leave to appeal therefrom will have been finally disposed of by the applicable appellate court;

(f) The Sanction Recognition Order shall have been entered by the US Bankruptcy Court and will have become a final Order;

(g) The Plan Implementation Date will have occurred by no later than a date to be set by the Court-Appointed Mediator and the Monitors, unless otherwise ordered by the CCAA Court;

(h) The Effective Time of the CCAA Plans of RBH and Imperial shall become effective at the same time or immediately prior or immediately subsequent to the Effective Time of the CCAA Plan;

(i) The with prejudice dismissal of all Pending Litigation will have occurred by no later than a date to be set by the Court-Appointed Mediator and the Monitors, unless otherwise ordered by the CCAA Court;

(j) The CCAA Plan Administrators will have established the Global Settlement Trust Account, the PCC Trust Account, the Cy-près Trust Account and the QCAP Trust Account;

(k) JTIM shall have deposited its share of the Upfront Contributions into the Global Settlement Trust Account;

(l) The amount of $25.0 million in respect of the CCAA Plan of each Tobacco Company shall have been paid out of the Upfront Contributions and deposited into the CCAA Plan Administration Reserve Account to establish the CCAA Plan Administration Reserve;

(m) The amount of $5.0 million shall have been paid out of the Upfront Contributions and deposited into the PCC Compensation Plan Reserve Account to establish the PCC Compensation Plan Reserve;

(n) Imperial's and RBH's Cash Security Deposits will have been released from suretyship and deposited into the Global Settlement Trust Account;

(o) All relevant Persons will have executed, delivered and filed all documents and other instruments that, in the opinion of the Court-Appointed Mediator and the Monitor, acting reasonably, are necessary to implement the provisions of the CCAA Plan and the Sanction Order, including the Contribution Security Agreement, the Deeds of Hypothec and the JTIM Subordination Agreement;

(p) The Claimant Contractual Release will have been executed, delivered and become effective in accordance with its terms, subject only to the occurrence of the Plan Implementation Date, on terms satisfactory to each Claimant, to the extent that JTIM and such Claimant are parties receiving or giving the applicable releases;

(q) No action or proceeding will be pending by any third party to enjoin or prohibit the implementation of the CCAA Plan and the transactions contemplated by the CCAA Plan;

(r) There shall not exist or have occurred any Material Adverse Effect upon JTIM;

(s) Except as expressly set out in the CCAA Plan, JTIM shall not have (i) issued or authorized the issuance of any shares, notes, options, warrants or other securities of any kind, (ii) become subject to any Encumbrance with respect to its assets or property, (iii) acquired any assets or become liable to pay any Indebtedness or liability of any kind (other than as expressly set out in the CCAA Plan), or (iv) entered into any agreement for any of the foregoing; and

(t) All applicable approvals and orders of, and all applicable submissions and filings with, Governmental Authorities having jurisdiction for the completion of the steps and transactions contemplated by the CCAA Plan (including the steps and transactions which are Plan Implementation Conditions) will have been obtained or made, as the case may be, in each case to the extent deemed necessary or advisable by the Court-Appointed Mediator and the Monitor, in form and substance satisfactory to the Court-Appointed Mediator and the Monitor.

Except in the case of Article 19, Sections 19.3 (a), (b), (c), (d), (f) and (h) which may not be waived, the Plan Implementation Conditions may be waived in whole or in part only with the consent, in writing, of the Court-Appointed Mediator and Monitor provided that the waiver relates to matters of a non-material nature. In the event that the Court-Appointed Mediator and the Monitor seek to waive any material Plan Implementation Conditions, they shall provide notice to the Provinces and Territories, the Impacted Claimants and the Tobacco Company and will bring the issue before the CCAA Court for determination. In respect of Article 19, Section 19.3(p), the obligation of the Claimants to execute the Claimant Contractual Release cannot be waived without JTIM's consent.

19.4 Monitor's Certificate – Plan Implementation

As soon as practicable following fulfilment of the Plan Implementation Conditions, the Monitor shall deliver to JTIM, serve on the Common Service List, post on the Monitor's website and file with the CCAA Court a certificate confirming that the Plan Implementation Date has occurred ("**Plan Implementation Date Certificate**").

ARTICLE 20. GENERAL

20.1 Binding Effect

At the Effective Time, the CCAA Plan will become effective and binding on and enure to the benefit of the Released Parties and any other Person named or referred to in or subject to the CCAA Plan and their Representatives. Without limiting the generality of the foregoing, at the Effective Time:

(a) The treatment of Affected Claims, Released Claims and Miscellaneous Claims under the CCAA Plan will be final and binding for all purposes and enure to the benefit of the Released Parties, the Affected Creditors and all other Persons named or referred to in or subject to the CCAA Plan and their Representatives;

(b) All Affected Claims shall be and shall be deemed to be forever compromised, released, discharged and barred, excepting only the obligations to make distributions in respect of such Affected Claims in the manner and to the extent provided for in the CCAA Plan;

(c) All Released Claims will be forever discharged, released, enjoined and barred;

(d) Each Affected Creditor and each Person holding a Released Claim or Miscellaneous Claim and all other Persons named or referred to in or subject to the CCAA Plan will be deemed to have:

  (i) Consented and agreed to all of the provisions of the CCAA Plan in its entirety,

  (ii) Executed and delivered to JTIM and to the other Released Parties, as applicable, all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the CCAA Plan in its entirety,

(iii) Waived any default by or rescinded any demand for payment against JTIM that has occurred on or prior to the Effective Time pursuant to, based on, or as a result of any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Affected Creditor, Person or Putative Miscellaneous Claimant and JTIM with respect to an Affected Claim, Released Claim or Miscellaneous Claim (as the case may be), and

(iv) Agreed that, if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing as at the moment before the Effective Time between an Affected Creditor or a Person holding a Released Claim or Miscellaneous Claim and JTIM with respect to an Affected Claim, Released Claim or Miscellaneous Claim (as the case may be) and the provisions of the CCAA Plan, then the provisions of the CCAA Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly; and

(e) Each Person named or referred to in, or subject to, the CCAA Plan shall be deemed to have received from the Released Parties, all statements, notices, declarations and notifications, statutory or otherwise, required to implement and carry out the CCAA Plan in its entirety.

20.2 Deeming Provisions

In the CCAA Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

20.3 Interest and Fees

Interest shall not accrue or be paid on Affected Claims after the Filing Date, and no holder of an Affected Claim, Released Claim or Miscellaneous Claim shall be entitled to interest accruing nor to fees and expenses incurred in respect of an Affected Claim, Released Claim or Miscellaneous Claim on or after the Filing Date, and any Claim in respect of interest accruing or fees and expenses incurred on or after the Filing Date shall be deemed to be forever extinguished and released.

20.4 Modification of the CCAA Plan

(a) The Court-Appointed Mediator and the Monitor reserve the right, at any time and from time to time (including prior to, at or following the Meeting), to amend, restate, modify and/or supplement the CCAA Plan, provided that any such amendment, restatement, modification or supplement is contained in a notice which is filed with the CCAA Court and posted on the Monitor's website and,

(i) If made prior to the Meeting Order, such amendment, restatement, modification or supplement is communicated to the Affected Creditors and JTIM; or

(ii) If made following the Meeting Order, such amendment, restatement, modification or supplement shall be subject to approval by the CCAA Court following notice to the Affected Creditors and JTIM.

(b) Notwithstanding Article 20, Section 20.4(a), any amendment, restatement, modification or supplement to the CCAA Plan may be made by the Court-Appointed Mediator and the Monitor, at any time and from time to time, provided that it: (i) concerns a matter which is of an administrative nature required to better give effect to the implementation of the CCAA Plan; or (ii) is to cure any errors, omissions or ambiguities, and in either case is not materially adverse to the financial or economic interests of the Affected Creditors or the Unaffected Creditors.

(c) Any amended, restated, modified or supplementary CCAA Plan filed with the CCAA Court and, if required by this Section, approved by the CCAA Court, will for all purposes be and be deemed to be a part of and incorporated in the CCAA Plan.

20.5 Paramountcy

From and after the Effective Time, any conflict between any of:

(a) The CCAA Plan;

(b) The Sanction Order; and/or

(c) The covenants, warranties, representations, terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Affected Creditors and JTIM as at the moment before the Effective Time,

will be deemed to be governed by the terms, conditions and provisions of the Sanction Order, which will take precedence and priority.

20.6 Severability of CCAA Plan Provisions

If, prior to the Plan Implementation Date, any term or provision of the CCAA Plan is held by the CCAA Court to be invalid, void or unenforceable, the CCAA Court, at the request of the Court-Appointed Mediator, the Monitor or JTIM, will have the power to either: (a) sever such term or provision from the balance of the CCAA Plan and provide the Court-Appointed Mediator and the Monitor with the option to proceed with the implementation of the balance of the CCAA Plan, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as so altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that the Court-Appointed Mediator and the Monitor are authorized by the CCAA Court to proceed with implementation of the CCAA Plan, the remainder of the terms and provisions of the CCAA Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

20.7 Transition Period - Responsibilities and Protections of Deloitte as Monitor and CCAA Plan Administrator

Deloitte is acting and will continue to act in all respects in its capacity as Monitor in the CCAA Proceedings with respect to JTIM (and not in its personal capacity). Subject to the approval by the CCAA Court of Deloitte's appointment as the CCAA Plan Administrator pursuant to Article 14, Section 14.1, subsequent to the Effective Time Deloitte will transform from the Monitor into the CCAA Plan Administrator and will fulfill the duties and responsibilities of the CCAA Plan Administrator set forth in the CCAA Plan, any other Definitive Documents and any Order made in the CCAA Proceeding. Notwithstanding the foregoing, during the period of time subsequent to the Effective Time during which Deloitte transitions from its capacity as Monitor to its capacity as CCAA Plan Administrator, from time to time as required and applicable, Deloitte may act in both its capacities as the Monitor and the CCAA Plan Administrator depending upon the duties and responsibilities that it is fulfilling.

In both its capacities as the Monitor and the CCAA Plan Administrator, Deloitte shall not be responsible or liable for any obligations of JTIM and its Tobacco Company Group. Deloitte will have the powers and protections granted to it by the Initial Order, the CCAA Plan, the CCAA, the Sanction Order and any other Order made in the CCAA Proceeding and the Chapter 15 Proceedings, including the protections expressly set forth in Article 18, Sections 18.1.1 to 18.1.11 of the CCAA Plan. Deloitte and its Affiliates, shareholders, Affiliates' shareholders, employees, legal counsel, advisors, representatives and agents will incur no personal liability whatsoever whether on their own part or in respect of any failure on the part of JTIM and its Tobacco Company Group to observe, perform or comply with any of their obligations under the CCAA Plan. Any release, discharge or other benefit conferred upon Deloitte pursuant to the CCAA Plan will enure to the benefit of Deloitte and its Affiliates, shareholders, Affiliates' shareholders, employees, legal counsel, advisors, representatives and agents. Deloitte in its personal capacity, and each of its Affiliates, shareholders, Affiliates' shareholders, employees, legal counsel, advisors, representatives and agents, will be third party beneficiaries to the CCAA Plan entitled to enforce such releases, discharges and other benefits in accordance with the terms of the CCAA Plan.

20.8 Transition Period - Responsibilities and Protections of the Court-Appointed Mediator

The Court-Appointed Mediator is acting and will continue to act in all respects in his capacity as the Court-Appointed Mediator in the CCAA Proceeding with respect to JTIM (and not in his personal capacity). Subsequent to the Effective Time, if (i) requested by Deloitte in its capacity as the Monitor or the CCAA Plan Administrator, or (ii) directed by the CCAA Court, the Court-Appointed Mediator will perform such duties and provide such services as may arise from or relate to the fulfillment of his mandate to mediate and give effect to the global settlement of all Tobacco Claims.

The Court-Appointed Mediator shall not be responsible or liable for any obligations of JTIM and its Tobacco Company Group. The Court-Appointed Mediator will have the powers and protections granted to him by the Initial Order, the CCAA Plan, the CCAA, the Sanction Order and any other Order made in the CCAA Proceeding, including the protections expressly set forth in Article 18, Sections 18.1.1 to 18.1.11 of the CCAA Plan. The Court-Appointed Mediator and his heirs, successors, assigns, representatives, advisors, legal counsel, consultants and agents will incur no

personal liability whatsoever whether on their own part or in respect of any failure on the part of JTIM and its Tobacco Company Group to observe, perform or comply with any of their obligations under the CCAA Plan. Any release, discharge or other benefit conferred upon the Court-Appointed Mediator pursuant to the CCAA Plan will enure to the benefit of the Court-Appointed Mediator and his heirs, successors, assigns, representatives, advisors, legal counsel, consultants and agents. The Court-Appointed Mediator and his heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents, will be third party beneficiaries to the CCAA Plan entitled to enforce such releases, discharges and other benefits in accordance with the terms of the CCAA Plan.

20.9 Miscellaneous Claims Bar Date

Nothing in the CCAA Plan extends or shall be interpreted as extending or amending the Miscellaneous Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order and the Meeting Order.

20.10 Different Capacities

Persons who are impacted by the CCAA Plan may be impacted in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not impact such Person in any other capacity, unless otherwise provided in the Meeting Order expressly agreed by the Court-Appointed Mediator, the Monitor and the Person in writing, or unless its Claims overlap or are otherwise duplicative.

20.11 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the CCAA Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by email addressed to the respective parties as follows:

(a) If to JTIM:

JTI-Macdonald Corp.
1 Robert Speck Parkway
Suite 1601
Mississauga ON L4Z 0A2

With a copy to (which will not constitute notice):

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200, TD West Tower
Toronto ON M5K 1K7

Attention: Robert Thornton and Mitch Grossell
Email: rthornton@tgf.ca and mgrossell@tgf.ca

(b) If to an Affected Creditor: to the mailing address or email address provided on such Affected Creditor's Statement of Negative Notice Claim or other proof of claim, or such more recent address particulars of an Affected Creditor as noted in the files of JTIM or the Monitor.

(c) If to the Monitor:

Deloitte Restructuring Inc.
Bay Adelaide East
8 Adelaide Street West, Suite 200
Toronto ON M5H 0A9

Email: jtim@deloitte.ca

With a copy to (which will not constitute notice):

Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9

Email: jtim@blakes.com

or to such other address as any party may from time to time notify the others in accordance with this Section, or, in the case of an address change for JTIM or the Monitor or CCAA Plan Administrator, by posting notice of such address change on the Monitor's website (www.insolvencies.deloitte.ca/en-ca/JTIM). Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of sending by means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered or sent before 5:00 p.m. (Eastern time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

20.12 Further Assurances

Each of the Persons named or referred to in, or subject to, the CCAA Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the CCAA Plan and to give effect to the transactions contemplated by the CCAA Plan and the Definitive Documents notwithstanding any provision of the CCAA Plan that deems any event or transaction to occur without further formality.

20.13 Language

The CCAA Plan, as well as any notices, schedules or other documents related thereto, have been and will be prepared in the English and French languages. To the extent a French language or other translation is prepared, any such translation will be for informational purposes only, it being intended that the English language version will govern and prevail in all respects.

20.14 Acts to Occur on Next Business Day

If any distribution, payment or act under the CCAA Plan is required to be made or performed on a date that is not a Business Day, then the making of such distribution, payment or the performance of such act may be completed on the next succeeding Business Day, but will be deemed to have been completed as of the required date.

20.15 Non-Consummation of the CCAA Plan

The Court-Appointed Mediator and the Monitor reserve the right to revoke or withdraw the CCAA Plan at any time prior to the date on which the CCAA Court grants the Sanction Order. If the Court-Appointed Mediator and the Monitor revoke or withdraw the CCAA Plan, or if the Sanction Order is not issued or if the Plan Implementation Date does not occur, (a) the CCAA Plan and all transactions contemplated in the CCAA Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the CCAA Plan, or any document or agreement executed pursuant to or in connection with the CCAA Plan shall be deemed to be null and void, and (c) nothing contained in the CCAA Plan, and no acts taken in preparation for consummation of the CCAA Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against JTIM or any member of its Tobacco Company Group or any other Person, (ii) prejudice in any manner the rights of JTIM or any member of its Tobacco Company Group or any other Person in any further proceedings involving any of JTIM or any member of its Tobacco Company Group, or (iii) constitute an admission of any sort by JTIM or any member of its Tobacco Company Group or any other Person.

20.16 Deemed Waiver of Defaults from Plan Implementation Date

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of JTIM then existing or previously committed by JTIM, or caused directly or indirectly by JTIM, the commencement of the CCAA Proceeding or the Chapter 15 Proceedings, any matter pertaining to the CCAA Proceeding or the Chapter 15 Proceedings, any of the provisions in the CCAA Plan or the Definitive Documents or steps or transactions contemplated in the CCAA Plan or the Definitive Documents, or any non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and JTIM and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect; provided that, nothing herein shall be deemed to limit or excuse JTIM from performing their obligations thereunder and under the CCAA Plan or be a waiver of any defaults by JTIM under the CCAA Plan or the other Definitive Documents.

DATED as of the 27th day of February, 2025.

Court File No.: CV-19-616077-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

APPLICANTS

THIRD AMENDED AND RESTATED COURT-APPOINTED MEDIATOR'S AND MONITOR'S CCAA PLAN OF COMPROMISE AND ARRANGEMENT

PURSUANT TO THE
COMPANIES' CREDITORS ARRANGEMENT ACT

concerning, affecting and involving

IMPERIAL TOBACCO CANADA LIMITED AND
IMPERIAL TOBACCO COMPANY LIMITED

FEBRUARY 27, 2025

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Schedule "B": Claims Package comprised of Miscellaneous Claims Instruction Letter (Schedule "A-1") and the Miscellaneous Claimant Proof of Claim (Schedule "A-2")

Schedule "C": Omnibus Notice

Schedule "D": Omnibus Notice Program comprised of condensed version of the Omnibus Notice (Appendix "A") and the list of the regional newspapers in which the Omnibus Notice will be published (Appendix "B")

Schedule “E”:	Contribution Security Agreement
Schedule “F”:	Deed of Moveable Hypothec
Schedule “G”:	Harrison Report
Schedule “H”:	Curriculum vitae of Dr. Glenn Harrison
Schedule “I”:	Jha Report
Schedule “J”:	Curriculum vitae of Dr. Prabhat Jha
Schedule “K”:	Quebec Class Action Administration Plan
Schedule “L”:	Overview of Epiq’s complex claims administration experience
Schedule “M”:	Curriculum vitae of Daniel Shapiro, K.C.
Schedule “N”:	Pan-Canadian Claimants’ Compensation Plan: Methodology and Analysis dated December 5, 2024
Schedule “O”:	Analysis of Limitations Law applicable to Pan-Canadian Claimants dated September 2, 2020
Schedule “P”:	Pan-Canadian Claimants’ Compensation Plan dated December 5, 2024
Schedule “Q”:	Resume of Dr. Robert Bell
Schedule “R”:	Curriculum vitae of Dr. Robert Bell
Schedule “S”:	The Cy-près Fund: Methodology and Analysis dated December 5, 2024
Schedule “T”:	Claimant Contractual Release – ITCAN and ITCO
Schedule “U”:	List of Health Care Costs Recovery Actions of the Provinces and HCCR Claims asserted by Territories
Schedule “V”:	List of Actions commenced under Provincial Class Proceedings Legislation
Schedule “W”:	List of Actions commenced by Individuals
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THIRD AMENDED AND RESTATED COURT-APPOINTED MEDIATOR'S AND MONITOR'S CCAA PLAN OF COMPROMISE AND ARRANGEMENT CONCERNING, AFFECTING AND INVOLVING IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

WHEREAS Imperial Tobacco Canada Limited ("**ITCAN**") and Imperial Tobacco Company Limited ("**ITCO**") (collectively, "**Imperial**") are insolvent;

AND WHEREAS Imperial was granted protection from its creditors under the CCAA pursuant to the initial Order of the Honourable Justice McEwen of the CCAA Court dated March 12, 2019 ("**Initial Order**");

AND WHEREAS by the Initial Order the CCAA Court appointed FTI Consulting Canada Inc. ("**FTI**") as an officer of the CCAA Court and the monitor of Imperial ("**Monitor**");

AND WHEREAS by an Order dated April 5, 2019, the CCAA Court appointed the Honourable Warren K. Winkler, K.C. ("**Court-Appointed Mediator**") as an officer of the CCAA Court to, as a neutral third party, mediate a global settlement of the Tobacco Claims;

AND WHEREAS by an Order dated September 27, 2023, the Honourable Chief Justice Geoffrey B. Morawetz directed the Monitor to work with the Court-Appointed Mediator to develop a plan of compromise and arrangement concerning Imperial;

NOW THEREFORE, set out herein is the third amended and restated plan of compromise and arrangement of Imperial developed by the Court-Appointed Mediator and Monitor pursuant to the Order dated September 27, 2023 and in accordance with the CCAA.

ARTICLE 1. INTERPRETATION

1.1 Definitions

In the CCAA Plan, including all Schedules hereto, unless otherwise stated or the context otherwise requires:

"**Administration Charge**" means the charge over the Property for the benefit of the Monitor, counsel to the Monitor, the PCC Representative Counsel and counsel to Imperial, created by paragraph 38 of the Initial Order, and having the priority provided in paragraphs 45 and 47 of such Order.

"**Administrative Coordinator**" means Daniel Shapiro, K.C., in his capacity as the Court-appointed administrative coordinator in respect of the administration of both the PCC Compensation Plan and the Quebec Administration Plan. Daniel Shapiro's appointment as the Administrative Coordinator will be upon the recommendation of the Court-Appointed Mediator and the Monitors and subject to the approval of the CCAA Court.

"**Affected Claim**" means any Claim, other than an Unaffected Claim, against Imperial. For greater certainty, all Tobacco Claims, including the Provincial HCCR Claims, Territorial HCCR Claims, QCAP Claims, PCC Claims, *Knight* Claims, Tobacco Producers Claims and Miscellaneous Claims are Affected Claims.

"**Affected Creditor**" means a creditor who holds an Affected Claim.

"**Affected Creditor Class**" means the single class of creditors comprised solely of Affected Creditors grouped for the purposes of considering and voting on the CCAA Plan.

"**Affiliate**" means a Person is an affiliate of another Person if,

(a) one of them is the subsidiary of the other, or

(b) each of them is controlled by the same Person.

For the purpose of this definition,

(i) "subsidiary" means a Person that is controlled directly or indirectly by another Person and includes a subsidiary of that subsidiary, and

(ii) a Person (first Person) is considered to control another Person (second Person) if,

(A) the first Person beneficially owns or directly or indirectly exercises control or direction over securities of the second Person carrying votes which, if exercised, would entitle the first Person to elect a majority of the directors of the second Person, unless that first Person holds the voting securities only to secure an obligation,

(B) the second Person is a partnership, other than a limited partnership, and the first Person holds more than 50% of the interests of the partnership, or

(C) the second Person is a limited partnership and the general partner of the limited partnership is the first Person.

"**Aggrieved Parties**" has the meaning given in Article 12, Section 12.1.

"**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.

"**Alternative Product Claim**" means any Claim of any Person, against or in respect of Imperial or any member of its Tobacco Company Group, excluding any part of any such Claim that constitutes a Tobacco Claim, that has been advanced (including, without limitation, in any

outstanding or pending litigation), that could have been advanced or that could be advanced, and whether such Claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced by a Government, agency, insurer, employer or otherwise, under or in connection with Applicable Law, or under any current or future statute to recover damages or any other remedy or costs in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Alternative Products, the use of or exposure (whether directly or indirectly) to Alternative Products or their emissions, the development of any disease related to the use of Alternative Products or any representation or omission in respect of Alternative Products, including any misrepresentations, breach of duty or fraud in respect thereof by any member of Imperial's Tobacco Company Group or its Representatives in Canada or, in the case of Imperial, anywhere else in the world, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place before or after the Effective Time.

"**Alternative Products Business**" has the meaning given in Article 2, Section 2.1(f).

"**Annual Amount**" has the meaning given in the definition of Reserved Amount.

"**Annual Contributions**" has the meaning given in Article 5, Section 5.6, and "**Annual Contribution**" means any one of them.

"**Annual Financial Statement**" has the meaning given in Article 10, Section 10.2.1(a).

"**Applicable Law**" means any law, statute, order, decree, judgment, rule, regulation, ordinance or other pronouncement having the effect of law, whether in Canada or any other country, or any domestic or foreign state, county, province, city or other political subdivision of any Government.

"**Arbitrator**" means the arbitrator who is appointed pursuant to Article 13, Section 13.4.2.

"**Bank**" has the meaning given in Article 5, Section 5.3.

"**Bankruptcy Action**" means, with respect to Imperial, where:

(a) An Order of a court of competent jurisdiction is entered adjudging Imperial bankrupt or insolvent, or subject to the CCAA or the BIA, or any other bankruptcy, insolvency or analogous laws;

(b) Imperial admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;

(c) Imperial makes an assignment in bankruptcy or makes any other assignment for the benefit of creditors, gives notice of intention to make a proposal or makes a proposal under the BIA, or any comparable law, or seeks relief under the CCAA, or any other bankruptcy, insolvency or analogous law of any relevant jurisdiction;

(d) A creditor delivers notice of its intention to enforce its security on Imperial's property pursuant to the BIA, or a creditor brings an application seeking, or the court or a creditor

appoints, or Imperial consents to or acquiesces in, the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of Imperial's assets, or a creditor otherwise exercises any of its rights or remedies under any of the PPSAs over all or any substantial portion of Imperial's assets;

(e) Imperial files a petition, application or otherwise commences any proceeding seeking any reorganization, arrangement, composition, or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar insolvency law affecting creditors' rights, or consents to, or acquiesces in, such proceedings; or

(f) Imperial files a petition, application or otherwise commences any proceeding seeking any reorganization, arrangement, composition, or readjustment, whether or not affecting creditors' rights, under any applicable corporate statute, or consents to, or acquiesces in, such proceedings.

"**BIA**" means the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.

"***Blais* Class Action**" means the class action commenced on November 20, 1998 by Conseil Québécois sur le tabac et la santé and Jean-Yves Blais against ITCAN, RBH and JTIM in the Superior Court of Quebec, District of Montreal, bearing Court File No. 500-06-000076-980.

"***Blais* Class Members**" means individuals who meet the criteria of the following certified class definition in the *Blais* Class Action:

All persons residing in Quebec who satisfy the following criteria:

(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 to or greater than 87,600 cigarettes).

For example, 12 pack/years equals:

20 cigarettes a day for 12 years (20 X 365 X 12 = 87,600) or

30 cigarettes a day for 8 years (30 X 365 X 8 = 87,600) or

10 cigarettes a day for 24 years (10 X 365 X 24 = 87,600);

(2) To have been diagnosed before March 12, 2012 with:

(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.

The group also includes the Heirs of the persons deceased after November 20, 1998 who satisfied the criteria mentioned herein.

"***Blais* Eligibility Criteria**" means the criteria set out in the certified class definition in the *Blais* Class Action which a person must meet to be eligible to receive a Compensation Payment as a Blais Class Member.

"***Blais* Judgment**" means the judgment rendered by the Honourable Justice Brian Riordan on May 27, 2015 as rectified on June 9, 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. 500-06-00076-980 (*Conseil québécois sur le tabac et la santé et Jean-Yves Blais* c. *Imperial Tobacco Ltée, Rothmans, Benson & Hedges Inc. et JTI-MacDonald Corp.*).

"**Breach**" has the meaning given in Article 12, Section 12.4.

"**Business Day**" means a day other than a Saturday, Sunday, or statutory or civic holiday in the Province of Ontario.

"**Business Plan**" has the meaning given in Article 10, Section 10.1.

"**Canada**" means His Majesty in right of Canada.

"**Canada Newco**" has the meaning given in Article 11, Section 11.1(h).

"**CapEx**" has the meaning given in Article 10, Section 10.1(b).

"**CapEx Thresholds**" has the meaning given in Article 11, Section 11.3.

"**Carry Amount**" has the meaning given in the definition of Reserved Amount.

"**Cash**" means cash, certificates of deposit, bank deposits, term deposits, guaranteed investment certificates, cheques, commercial paper, treasury bills and other cash equivalents.

"**Cash Management Bank**" means any Person that is providing cash management services to Imperial under the Cash Management System, as defined in the Initial Order.

"**Cash Management Bank Claim**" means the Claim of any Cash Management Bank in connection with the provision of cash management services to Imperial under the Cash Management System pursuant to the Initial Order.

"**Cash Security Deposits**" means, collectively, (i) in the case of Imperial, the cash and interest, if any, deposited by ITCAN as suretyship pursuant to the Order of the Quebec Court of Appeal dated October 27, 2015; and (ii) in the case of RBH, the cash and interest, if any, deposited by RBH as suretyship pursuant to the Order of the Quebec Court of Appeal dated October 27, 2015, and "**Cash Security Deposit**" means any of them.

"**CCAA**" means the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.

"**CCAA Charges**" means, collectively, the Administration Charge, Court-Appointed Mediator Charge, Sales and Excise Tax Charge and Directors' Charge, as each term is defined in the Initial Order, as amended and restated, or any subsequent order in the CCAA Proceeding.

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

"**CCAA Plan**", or "**Plan**", means the Court-Appointed Mediator's and Monitor's plan of compromise and arrangement pursuant to the CCAA concerning, affecting and involving Imperial, including all Schedules thereto.

"**CCAA Plan Administration Reserve**" means the Cash reserve to be established on the Plan Implementation Date prior to any distributions to Affected Creditors as authorized by the CCAA Court pursuant to the Sanction Order, in the amount of $25.0 million in respect of the CCAA Plan of each Tobacco Company (Imperial, RBH and JTIM), and to be paid out of the Upfront Contributions and deposited into the separate CCAA Plan Administration Reserve Account for each Tobacco Company for the purpose of paying the CCAA Plan Administration Reserve Costs for that Tobacco Company. The CCAA Plan Administrator shall hold the CCAA Plan Administration Reserve in trust for those Persons entitled to such funds pursuant to the CCAA Plan in respect of the CCAA Proceeding.

"**CCAA Plan Administration Reserve Account**" means a segregated interest-bearing trust account established by the CCAA Plan Administrator to hold the CCAA Plan Administration Reserve on behalf of the beneficiaries thereof.

"**CCAA Plan Administration Reserve Costs**" means Costs incurred and payments to be made on or after the Plan Implementation Date, including Costs incurred prior to the Plan Implementation Date which remain outstanding as of the Plan Implementation Date, in respect of:

(a) The Costs of the services which FTI (including its legal, financial, investment or other advisors) provides in connection with the performance of its duties as both the Monitor and the CCAA Plan Administrator under the CCAA Plan and in the CCAA Proceeding, including the fulfillment of its duties and responsibilities enumerated in Article 14, Section 14.4 herein; and

(b) The Costs of the services which the Court-Appointed Mediator (including his legal counsel and other consultants and advisors) may provide after the date of the Sanction Order, as requested by FTI acting as either the Monitor or the CCAA Plan Administrator, or by the CCAA Court, and approved by the CCAA Court.

"**CCAA Plan Administrators**" has the meaning given in Article 14, Section 14.1, and "**CCAA Plan Administrator**" means FTI in respect of Imperial.

"**CCAA Plan Administrators' Order**" means the order or orders of the CCAA Court appointing FTI to serve, as an officer of the CCAA Court, in the capacity of CCAA Plan Administrator of the CCAA Plan in respect of Imperial and, among other things, setting out the rights, powers and obligations of the CCAA Plan Administrator in connection with such appointment.

"**CCAA Plans**" means, collectively, the Court-Appointed Mediator's and Monitor's plans of compromise and arrangement pursuant to the CCAA concerning, affecting and involving each of Imperial, RBH and JTIM, including all Schedules to each 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 of Plan Completion**" has the meaning given in Article 19, Section 19.2(w).

"**Chapter 15 Proceedings**" means the foreign recognition proceedings of ITCAN pursuant to Chapter 15 of the US Bankruptcy Code pending before the US Bankruptcy Court (Case No. 19-10771(SCC)).

"**Claimant Allocation**" has the meaning given in Article 16, Section 16.1.

"**Claimant Contractual Release**" means the release, in the form attached to the CCAA Plan as Schedule "T", which the Claimants shall provide to the Released Parties that will fully, finally, irrevocably and unconditionally release and forever discharge the Released Parties of and from the Claimants' respective Released Claims, provided that such Claimant Contractual Release shall not release any of the Non-Released Claims.

"**Claimants**" means the Provinces and Territories, Quebec Class Action Plaintiffs, Pan-Canadian Claimants, *Knight* Class Action Plaintiffs and Tobacco Producers, and "**Claimant**" means any one of them.

"**Claimants' Representatives**" means:

(a) Counsel for the Provinces and Territories identified on the Common Service List;

(b) Quebec Class Counsel;

(c) PCC Representative Counsel;

(d) Knight Class Counsel; and

(e) Counsel for the Tobacco Producers.

"**Claims**" means any and all manner of requests, demands, complaints, claims (including claims for contribution or indemnity), rights, 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, whether asserted or unasserted, 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 or civil 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, including acting as agent for the PCCs, 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.

"**Claims Package**" means the documents attached to the Claims Procedure Order as Schedule "A", including the Instruction Letter and the Miscellaneous Claimant Proof of Claim form which are attached as Schedule "B" to the CCAA Plan.

"**Claims Procedure**" means the claims procedure contemplated by the Claims Procedure Order for (i) disputing the value and number of votes attributed to the Affected Claims of the Claimants, and (ii) identifying Miscellaneous Claims for the purpose of voting on the CCAA Plan.

"**Claims Procedure Order**" means the order of the CCAA Court (including all schedules and appendices thereto) made in the CCAA Proceeding establishing and approving the Claims Procedure in respect of Imperial, and as may be further amended, restated or varied from time to time.

"**Closing Judgment**" means the judgment terminating the *Blais* Class Action and the *Létourneau* Class Action which will be requested on a motion brought by the Quebec Class Counsel after all Eligible Blais Class Members have been paid their Compensation Payments.

"**Collateral Agent**" means the collateral agent and hypothecary representative which shall act on behalf and for the benefit of the Claimants under and in relation to the Contribution Security. The Collateral Agent will be engaged prior to the Effective Time.

"**Common Service List**" means the service list posted on the Monitor's website, as may be amended from time to time.

"**Compensation Payment**" means the amount determined by the Claims Administrator to be payable to an Eligible *Blais* Class Member under the Quebec Administration Plan in satisfaction of their QCAP Claim.

"**Contribution**" means, in respect of a Tobacco Company, each of its Upfront Contribution and Annual Contributions, excluding any applicable Reserved Amounts retained in the Supplemental Trust Account. A Contribution shall also include any Reserved Amount (including any income therefrom) following release of such Reserved Amount (or income therefrom) from the Supplemental Trust Account to the Global Settlement Trust Account, but exclude any Reserved Amount released from the Supplemental Trust Account to a Tax Authority or a Tobacco Company.

"**Contribution Period**" has the meaning given in Article 5, Section 5.8.

"**Contribution Security**" has the meaning given in Article 5, Section 5.13.

"**Contribution Security Agreement**" has the meaning given in Article 5, Section 5.13 and is attached to the CCAA Plan as Schedule "E".

"**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.

"**Cost of Health Care Benefits**" means the sum of (a) the present value of the total expenditure by a Province or Territory 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 a Province or Territory 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.

"**Cost of Health Care Benefits Percentages**" has the meaning given in Section 4 of the PTLC Terms which are Schedule "X" to the CCAA Plan.

"**Costs**" has the meaning given in Article 14, Section 14.9.

"**Counsel for the Tobacco Producers**" means the law practice of Strosberg Sasso Sutts LLP.

"**Counsel for the Tobacco Producers' Fee**" means the amount to be determined and approved by the CCAA Court that will be payable from the Tobacco Producers Settlement Amount to the Counsel for the Tobacco Producers in respect of their fees, disbursements and costs as Counsel for the Tobacco Producers, and any applicable Sales and Excise Taxes payable thereon. The retainer agreement respecting fees and disbursements between the Counsel for the Tobacco Producers and the representative plaintiffs, as well as the Counsel for the Tobacco Producers' Fee, are subject to the approval of the CCAA Court.

"**Court-Appointed Mediator**" means the Honourable Warren K. Winkler, K.C., in his capacity as the Court-appointed mediator in the CCAA Proceedings of the Tobacco Companies.

"**Court-Appointed Mediator Charge**" means the charge over the Property for the benefit of the Court-Appointed Mediator created by paragraph 42 of the Initial Order, and having the priority provided in paragraphs 45 and 47 of such Order.

"**CRA**" means the Canada Revenue Agency.

"**Cy-près Foundation**" has the meaning given in Article 9, Section 9.1.

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

"**Cy-près Trust Account**" has the meaning given in Article 9, Section 9.2.

"**Deed of Moveable Hypothec**" has the meaning given in Section 1.2 of the Contribution Security Agreement which is Schedule "E" to the CCAA Plan.

"**Definitive Documents**" means the CCAA Plan, the Sanction Order, the Contribution Security Agreement, the Deed of Hypothec, the documents required to implement and give effect to the PCC Compensation Plan and the Cy-près Foundation, and all other agreements, documents and orders contemplated by, or necessary to implement the transactions contemplated by, any of the foregoing.

"**Deliberation Meetings**" has the meaning given in Section 14(b) of the PTLC Terms which are Schedule "X" to the CCAA Plan.

"**Deliberation Phase**" has the meaning given in Section 14(b) of the PTLC Terms which are Schedule "X" to the CCAA Plan.

"**Deliberation Phase Secretariat**" has the meaning given in Section 25 of the PTLC Terms which are Schedule "X" to the CCAA Plan.

"**Deloitte**" means Deloitte Restructuring Inc.

"**Director**" means any Person who, as at the Effective Time, is a former or present director or officer of ITCAN or ITCO or any other Person of a similar position or who by Applicable Law is deemed to be or is treated similarly to a director or officer of ITCAN or ITCO or who currently manages or supervises the management of the business and affairs of ITCAN or ITCO or did so in the past.

"**Directors' Charge**" means the charge over the Property for the benefit of the Directors created by paragraph 28 of the Initial Order, and having the priority provided in paragraphs 45 and 47 of such Order.

"**Disposition**" means, with respect to any Person, the sale, lease, license, transfer, assignment or other disposition of, or the expropriation, condemnation, destruction or other loss of, all or any portion of its business, assets, rights, revenues or property, real, personal or mixed, tangible or intangible, whether in one transaction or a series of transactions, and "**Dispose**" shall have a correlative meaning thereto.

"**Dispute**" has the meaning given in Article 13, Section 13.1.

"**Dispute Resolution Procedure**" has the meaning given in Article 13, Section 13.1.

"**Distribution Record Date**" means the date that is seven Business Days prior to the date that any distribution is made under the CCAA Plan.

"**Effective Time**" means such time on the Plan Implementation Date as the Court-Appointed Mediator and the Monitor may determine and designate.

"**Eligible *Blais* Class Members**" means the Tobacco-Victim Claimants and Succession Claimants whom the Claims Administrator has determined meet all the *Blais* Eligibility Criteria such that

their Tobacco-Victim Claims and Succession Claims are approved to receive a Compensation Payment in accordance with the terms of the Quebec Administration Plan, and "**Eligible *Blais* Class Member**" means any one of them.

"**Eligible Pan-Canadian Claimants**" means the Individuals whom the Claims Administrator has determined meet all the PCC Eligibility Criteria such that their PCC Claims are approved for an Individual Payment in accordance with the terms of the PCC Compensation Plan, and "**Eligible Pan-Canadian Claimant**" means any one of them.

"**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 and the Quebec Administration Plan, "Emphysema" includes COPD (GOLD Grade III or IV).

"**Employee Priority Claim**" means any Claim for (a) accrued and unpaid wages and vacation pay owing to an employee of Imperial whose employment was terminated between the Filing Date and the Plan Implementation Date; and (b) unpaid amounts provided for in sections 6(5)(a) and 6(6)(a) of the CCAA.

"**Encumbrance**" means a mortgage, floating charge, deed of trust, lien, pledge, hypothecation, assignment, security interest, right of offset or any other encumbrance, charge, or transfer of, on or affecting the property or assets of any Person or any interest therein, including any conditional sale contract or other title retention agreement or arrangement of any kind or character intended to create a security interest in substance, regardless of whether the Person creating the interest retains the equity of redemption, any financing lease having substantially the same economic effect as any of the foregoing, any rights of way, any easements and any construction, builder's, mechanic's, materialmen's or other similar liens, encumbrances and any trust imposed or deemed to exist by law.

"**Epiq**" means Epiq Class Actions Services Canada, Inc.

"**Event of Default**" has the meaning given in Article 12, Section 12.2.

"**Extended Cure Period**" has the meaning given in Article 12, Section 12.3(c).

"**EY**" means Ernst & Young Inc.

"**Filing Date**" means March 12, 2019.

"**Final Information Request**" has the meaning given in Article 10, Section 10.5(c).

"**Financially Viable**", or "**Financial Viability**", means the ability of Imperial to meet its obligations to creditors in the Ordinary Course of Business as they come due.

"**First Notice**" means the initial notice which the Claims Administrator shall publish regarding the PCC Compensation Plan.

"**First Notice Date**" means the date on which the Claims Administrator publishes the First Notice.

"**FTI**" means FTI Consulting Canada Inc.

"**Foreign Representative**" means, with respect to the Chapter 15 Proceedings, FTI in its capacity as the foreign representative for ITCAN within the meaning of section 101(24) of the US Bankruptcy Code.

"**GAAS**" means Generally Accepted Auditing Standards.

"**Global Settlement Amount**" has the meaning given in Article 5, Section 5.1.

"**Global Settlement Trust Account**" has the meaning given in Article 5, Section 5.3.

"**Government**" means any government, including the Provinces, Territories and Canada, and any person, body or entity within such government having or purporting to have jurisdiction on behalf of any nation, province, territory, municipality or state or any other geographic or political subdivision of any of them.

"**Government Priority Claim**" means any Claim of any Government against Imperial in respect of amounts that are outstanding, if any, provided for in section 6(3) of the CCAA.

"**Governmental Authority**" means any government (including the Provinces, Territories and Canada), regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"**Harrison Report**" means the report of Dr. Glenn Harrison dated March 14, 2024 entitled "The Provincial and Territorial Present Value of Smoking Attributable Expenditures" that is attached to the CCAA Plan as Schedule "G".

"**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.

"**Health Care Benefits**" means "health care benefits", "health services" or "health care services" as such terms, as applicable, are defined in each of the statutes enumerated in the definition of "HCCR Legislation".

"**Hypopharynx**" means the laryngeal part of the pharynx extending from the hyoid bone to the lower margin of the cricoid cartilage.

"**Impacted Claimants**" means, at any given time during the Contribution Period, all Claimants, other than the Provinces and Territories, who have not yet been paid their full share of the Global Settlement Amount, and "**Impacted Claimant**" means any one of them.

"**Imperial**" means, collectively, ITCAN and ITCO.

"**Indebtedness**" means for ITCAN or ITCO or any Material Subsidiary, at a particular time, the sum (without duplication) at such time of all:

(a) Indebtedness or liability of ITCAN or ITCO (including amounts for borrowed money and mezzanine debt and preferred equity that would be considered to be debt under relevant generally accepted accounting principles);

(b) Obligations evidenced by bonds, debentures, notes or other similar instruments;

(c) Obligations for the deferred purchase price of property or services (including trade obligations);

(d) Amounts drawn or available to be drawn under letters of credit or under guaranties or similar obligations;

(e) Face amounts outstanding under acceptance or letter of credit facilities;

(f) Guaranties, endorsements (other than for collection or deposit in the Ordinary Course of Business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person, or otherwise to assure a creditor against loss; and

(g) Obligations secured by any Encumbrances, whether or not the obligations have been assumed.

"**Indemnified Parties**" has the meaning given in Article 18, Section 18.1.7.

"**Individual Claimants**" means all individuals who have asserted or may be entitled to assert a Tobacco Claim, which individuals are either Pan-Canadian Claimants or Quebec Class Action Plaintiffs and are represented in this CCAA Proceeding by either the PCC Representative Counsel or the Quebec Class Counsel respectively.

"**Individual Payment**" means the amount determined by the Claims Administrator to be payable to an Eligible Pan-Canadian Claimant under the PCC Compensation Plan.

"**Individuals**" means all individuals residing in a Province or Territory of Canada, and "**Individual**" means any one of them.

"**Information Request**" has the meaning given in Article 10, Section 10.5.

"**Initial Order**" means the initial order commencing the CCAA Proceedings of Imperial, as amended and restated from time to time.

"**Instruction Letter**" means the letter included in the Claims Package which is attached to the CCAA Plan as Schedule "B".

"**Insured Person**" means (a) a Person, including a deceased Person, for whom Health Care Benefits have been provided by a Province or Territory directly or through one or more agents or other intermediate bodies, or (b) a Person for whom Health Care Benefits could reasonably be expected will be provided by a Province or Territory directly or through one or more agents or other intermediate bodies.

"Intercompany Claim" means any Claim, other than an Intercompany Services Claim, that may be asserted against Imperial by or on behalf of any member of Imperial's Tobacco Company Group and, for greater certainty, includes all arrears of royalty and license fees as well as principal and interest due on loans made by any member of Imperial's Tobacco Company Group to Imperial, and any claim held or asserted by British American Tobacco Mexico S.A. de C.V. ("**BAT Mexico**") against ITCAN under the Finished Goods Supply Agreement dated July 2, 2015 between BAT Mexico and ITCAN in respect of costs or other amounts related to changes to BAT Mexico's manufacturing and packaging of ITCAN's tobacco products in order to adhere to the *Tobacco Products Regulations (Plain and Standardized Appearance)*, SOR/2019-107, which came into force November 9, 2019.

"**Intercompany Services**" has the meaning given in Article 5, Section 5.14.

"**Intercompany Services Claim**" means any Claim that may be asserted by or on behalf of Imperial's Parent or the relevant Affiliates within its Tobacco Company Group in accordance with Article 5, Section 5.14 in respect of the provision of Intercompany Services to Imperial.

"**Intercompany Transaction**" means any transaction in the Ordinary Course of Business between ITCAN or ITCO and any member(s) of their Tobacco Company Group to buy and sell goods and/or services, licences, intellectual property and/or allocate, collect and pay any costs, expenses and other amounts from and to the members of their Tobacco Company Group, including in relation to:

(a) Head office, shared or supplied services and operational support (including information technology and marketing services);

(b) Finished, unfinished (including tobacco leaf purchases) and semi-finished goods and materials;

(c) Manufacturing of goods;

(d) Distribution and sale of goods;

(e) Equipment purchases;

(f) Personnel, administrative, technical and professional services;

(g) Royalties and fees in respect of trademark licenses;

(h) Treasury and debt; and

(i) Imperial's central Cash Management System and all related transactions and intercompany funding policies and procedures between Imperial and its Tobacco Company Group which are described in the Thauvette Affidavit,

collectively, "**Intercompany Transactions**".

"**Interface Meetings**" has the meaning given in Section 14(a) of the PTLC Terms which are Schedule "X" to the CCAA Plan.

"**Interface Phase**" has the meaning given in Section 14(a) of the PTLC Terms which are Schedule "X" to the CCAA Plan.

"**Interface Phase Secretariat**" has the meaning given in Section 24 of the PTLC Terms which are Schedule "X" to the CCAA Plan.

"**ITA**" means the *Income Tax Act* (Canada), as amended from time to time.

"**ITCAN**" means Imperial Tobacco Canada Limited.

"**ITCAN Subsidiaries**" means Imperial Tobacco Services Inc., Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., Imperial Brands Ltd., 2004969 Ontario Inc., Construction Romir Inc., Genstar Corporation, Imasco Holdings Group, Inc., ITL (USA) Limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., and Liggett & Myers Tobacco Company of Canada Limited.

"**ITCO**" means Imperial Tobacco Company Limited.

"**Jha Report**" means the report of Dr. Prabhat Jha dated March 24, 2021 entitled "Analyses to quantify smoking-attributable conditions that could be compensable and quantification of these conditions for each province and over time from 2003-2019", that is attached to the CCAA Plan as Schedule "I".

"**JTIM**" means JTI-Macdonald Corp.

"**JTIM TM**" means JTI-Macdonald TM Corp.

"***Knight* Claim**" means any Claim that has been advanced, could have been advanced or could be advanced in the following class action, whether before or after the Effective Time: *Kenneth Knight*

v. *Imperial Tobacco Canada Limited* (Supreme Court of British Columbia, Court File No. L031300), including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"***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.

"***Knight* Class Action Plaintiffs Settlement Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable to the *Knight* Class Action Plaintiffs as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein.

"***Knight* Class Counsel**" means Klein Lawyers LLP.

"***Knight* Class Counsel Fee**" means the amount to be determined and approved by the CCAA Court that will be payable from the *Knight* Class Action Plaintiffs Settlement Amount to the *Knight* Class Counsel in respect of their fees, disbursements and costs as *Knight* Class Counsel and any applicable Sales and Excise Taxes payable thereon. The retainer agreement respecting fees and disbursements between the *Knight* Class Counsel and the representative plaintiffs, as well as the *Knight* Class Counsel Fee, are subject to the approval of the CCAA Court.

"**Larynx**" means the upper part of the respiratory passage that is bounded above by the glottis and is continuous below with the trachea.

"**Legal Representative**" means an Individual who establishes through the submission to the Claims Administrator of one of the documents listed in the Claim Form for the Legal Representative of a PCC-Claimant that they have the right and are authorized to make a Submitted PCC-Claim on behalf of the PCC-Claimant.

"***Létourneau* Class Action**" means the class action commenced on September 30, 1998 by Cecilia Létourneau against ITCAN, RBH and JTIM in the Superior Court of Quebec, District of Montreal, bearing Court File No. 500-06-000070-983.

"***Létourneau* Class Members**" means Persons who meet the criteria of the following certified class definition in the *Létourneau* Class Action:

> 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:
>
> (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.

"***Létourneau* Judgment**" means the judgment rendered by the Honourable Justice Brian Riordan on May 27, 2015 as rectified on June 9, 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.*).

"**Lung Cancer**" has the meaning given in Article 8, Section 8.1(d)(i).

"**Material Adverse Effect**" means an event or condition that caused or would reasonably be expected to cause a material adverse effect on:

(a) The assets and liabilities of ITCAN or ITCO considered as a whole or the use or operation thereof;

(b) The business, profits, operations or condition (financial or otherwise) of ITCAN or ITCO;

(c) The ability of ITCAN or ITCO to perform their obligations in any material respect under any of the Definitive Documents to which they are parties or by which they are bound; or

(d) The Contribution Security.

"**Material Subsidiary**" means, in relation to ITCAN:

(a) Any of its Subsidiaries that holds 5% or more of the consolidated assets of ITCAN or contributes 5% or more of the consolidated revenues or net income of ITCAN, or

(b) Any of its Subsidiaries that are material to the conduct of ITCAN's business and operations,

provided that, without limiting the generality of Subsections (a) and (b), it includes Imperial Tobacco Company Limited.

"**MD&A**" has the meaning given in Article 10, Section 10.2.2.

"**Meeting**" means the meeting of Affected Creditors to be called and held pursuant to the Meeting Order for the purpose of considering and voting on the CCAA Plan, and includes any adjournment, extension, postponement or other rescheduling of such meeting.

"**Meeting Date**" means the date fixed for the Meeting pursuant to the Meeting Order subject to any adjournment or postponement or further order of the CCAA Court.

"**Meeting Order**" means the order of the CCAA Court directing the calling and holding of the Meeting of Affected Creditors to consider and vote on the CCAA Plan, as such order may be amended, restated or varied from time to time.

"**Metric**" has the meaning given in Article 5, Section 5.6.

"**Miscellaneous Claimant Proof of Claim**" means the proof of claim form included as part of the Claims Package which is attached to the CCAA Plan as Schedule "B".

"**Miscellaneous Claims**" means, collectively:

(a) any Pre-Implementation Miscellaneous Claim;

(b) any Section 5.1(2) Claim, in respect of which the Person holding such Claim, or an authorized Person on their behalf, has not executed and delivered, or will not execute and deliver, a Claimant Contractual Release;

(c) any Section 19(2) Claim in regard to which the compromise or arrangement in respect of Imperial explicitly provides for the Section 19(2) Claim's compromise, and the Person holding such Claim, or an authorized Person on their behalf, has not voted, or will not vote, for the acceptance of the compromise or arrangement, or otherwise execute and deliver a Claimant Contractual Release; and

(d) any other Claim in respect of Imperial (excluding any Unaffected Claim) which is received by the Monitor and asserted against any Released Party based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter, or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) by a Person who asserts that such Claim will not be or, if asserted after the Effective Time, has not been compromised and fully, finally and irrevocably and unconditionally released and forever discharged, and permanently barred and enjoined pursuant to the terms of the CCAA Plan, the Claims Procedure Order, the Sanction Order or any other Order made in the CCAA Proceeding, and in accordance with Article 18, Section 18.2.3 of the CCAA Plan, the CCAA Court grants leave for such Person to bring such Claim for determination on its merits by the CCAA Court.

The existence of any such Miscellaneous Claims is not admitted but is expressly denied by Imperial, its Tobacco Company Group and the Claimants. For greater certainty, no Claimant or Individual Claimant may assert a Miscellaneous Claim.

"**Miscellaneous Claims Amount**" has the meaning given in Article 18, Section 18.2.1.

"**Miscellaneous Claims Bar Date**" means 5:00 pm (Eastern Time) on December 5, 2024.

"**Miscellaneous Claims Fund**" has the meaning given in Article 18, Section 18.2.1.

"**Miscellaneous Claims Fund Period**" has the meaning given in Article 18, Section 18.2.1.

"**Miscellaneous Claims Procedure**" means the procedure pursuant to which a Putative Miscellaneous Claimant can assert a Miscellaneous Claim as established in Article 18, Section 18.2 of the CCAA Plan.

"**Monetary Cure Period**" has the meaning given in Article 12, Section 12.3(b).

"**Monitor**" means FTI Consulting Canada Inc. in its capacity as the Court-appointed monitor appointed pursuant to the Initial Order in the CCAA Proceeding.

"**Monitors**" means, collectively, the Court-appointed monitors of the Tobacco Companies in the CCAA Proceedings.

"**NDA**" means a confidentiality, non-disclosure and non-use agreement between Imperial and another Person in the form already agreed to by the Parties.

"**Negative Notice Bar Date**" means 5:00 p.m. (Eastern Time) on the date that is twenty-one (21) days following the Negative Notice Issuance Date.

"**Negative Notice Claim**" means the value (for voting purposes only) of the Affected Claims of each Claimant and the number of votes associated therewith as set forth in a Statement of Negative Notice Claim to be sent to each Claimant in accordance with the following:

Claimant	Number of Votes for Voting Purposes	Value of Claim for Voting Purposes
Quebec Class Action Plaintiffs (QCAPs)	99,958	$13,706,891,279
Pan-Canadian Claimants (PCCs)	186,003	$5,041,088,110
Knight Class Action Plaintiffs	1	$484,000,000
Tobacco Producers	3,930	$29,043,876
British Columbia	1	$136,681,344,490
Alberta	1	$119,266,303,168
Saskatchewan	1	$27,189,868,453
Manitoba	1	$42,741,373,788
Ontario	1	$271,795,731,959
Quebec	1	$253,365,332,712
New Brunswick	1	$22,778,964,723
Nova Scotia	1	$29,979,033,060
Prince Edward Island	1	$6,238,547,995
Newfoundland and Labrador	1	$20,279,767,449
Yukon	1	$3,752,573,987
Northwest Territories	1	$6,865,708,611
Nunavut	1	$3,584,449,605
Canada	1	$333,535,110

"**Negative Notice Claims Package**" means the Claimant's Statement of Negative Notice Claim and the form of Notice of Dispute of Negative Notice Claim to be used in the event that the Claimant wishes to raise a dispute in accordance with paragraph 8 of the Claims Procedure Order, which are attached as Schedule "A" to the CCAA Plan.

"**Negative Notice Issuance Date**" means the date that the Statement of Negative Notice Claim is sent to a Claimant.

"**Net After-Tax Income**" is as described in Article 5, Section 5.6.

"**Newco**" has the meaning given in Article 2, Section 2.1(f) and refers to the new corporation to be incorporated pursuant to Article 4, Section 4.1.

"**Non-Monetary Cure Period**" has the meaning given in Article 12, Section 12.3(c).

"**Non-Released Claims**" means all Claims that are not Released Claims and, for greater certainty, includes all Unaffected Claims.

"**Normal Reassessment Period**" has the meaning ascribed by subsection 152(3.1) of the ITA (and any analogous provisions of provincial or territorial law), taking into account any applicable extension under the *Taxation Act* (Quebec) resulting from a reassessment made by the CRA or another Provincial Tax Authority, except that in the case of a Tax Refund Cash Payment, the extended period provided by subparagraph 152(4)(b)(i) of the ITA (and any analogous provisions of provincial or territorial law) will apply, and where the CCAA Plan Administrators and Imperial have agreed to file a waiver, the extended period provided by subparagraph 152(4)(a)(ii) of the ITA (or the relevant analogous provisions of provincial or territorial law) shall apply.

"**Notice of Breach**" has the meaning given in Article 13, Section 13.3.

"**Notice of Default**" has the meaning given in Article 12, Section 12.3.

"**Notice of Dispute of Negative Notice Claim**" means the notice, substantially in the form included in the Negative Notice Claims Package and attached to the CCAA Plan as Schedule "A", which may be delivered to the Monitor by a Claimant disputing a Statement of Negative Notice Claim and providing reasons for such dispute.

"**Omnibus Notice**" means the notice which the Monitor shall cause to be published regarding the Claims Procedure Order and the Meeting, in accordance with the Omnibus Notice Program, a copy of which notice is attached as Schedule "C" to the Claims Procedure Order and as Schedule "C" to the CCAA Plan.

"**Omnibus Notice Program**" means the plan to publish comprehensive legal notice regarding the Claims Procedure Order and the Meeting to Persons, including Putative Miscellaneous Claimants, situated in all the Provinces and Territories, as set forth on the document attached as Schedule "D" to the Claims Procedure Order and as Schedule "D" to the CCAA Plan.

"**Omnibus Sanction Hearing Notice**" means the notice which the Monitor shall cause to be published regarding the Sanction Hearing in accordance with the Omnibus Sanction Hearing Notice Program.

"**Omnibus Sanction Hearing Notice Program**" means the plan to publish comprehensive legal notice regarding the Sanction Hearing to Persons, including Putative Miscellaneous Claimants, situated in all the Provinces and Territories.

"**Ordinary Course Divestitures**" has the meaning given in Article 11, Section 11.4.

"**Ordinary Course Divestitures Thresholds**" has the meaning given in Article 11, Section 11.4.

"**Ordinary Course of Business**" means, in relation to Imperial or a member of its Tobacco Company Group, the ordinary course of day-to-day business activities and operations of that company consistent with past practices, as such practices may change from time to time in the tobacco industry in response to regulatory, market or industry developments or changes, and materially similar in nature and magnitude to actions customarily taken in the normal course of day-to-day operations.

"**Ordinary Course Operational Activities**" has the meaning given in Article 11, Section 11.2.

"**Oropharynx**" means the part of the pharynx that is below the soft palate and above the epiglottis and is continuous with the mouth. It includes the back third of the tongue, the soft palate, the side and back walls of the throat, and the tonsils.

"**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, in the case of Imperial, British American Tobacco p.l.c.

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

"**PCC Claim**" means any Claim of any Pan-Canadian Claimant that has been made or may in the future be asserted or made in whole or in part against or in respect of the Released Parties, or any one of them (either individually or with any other Person), that has been advanced, could have been advanced or could be advanced, whether on such Pan-Canadian Claimant's own account, or on their behalf, or on behalf of a certified or proposed class, to recover damages or any other remedy in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, including any representations or omissions in respect thereof, the historical or ongoing use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions and the development of any disease or condition as a result thereof, whether existing or hereafter arising, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) including, all Claims that have been advanced, could have been advanced or could be advanced in the following actions commenced by Individuals under provincial class proceedings legislation and actions commenced by Individuals, or in any other similar proceedings:

(a) *Barbara Bourassa* v. *Imperial Tobacco Canada Limited et al.* (Supreme Court of British Columbia, Court File No. 10-2780 and Court File No. 14-4722);

(b) *Roderick Dennis McDermid* v. *Imperial Tobacco Canada Limited et al.* (Supreme Court of British Columbia, Court File No. 10-2769);

(c) *Linda Dorion* v. *Canadian Tobacco Manufacturers' Council et al*. (Alberta Court of Queen's Bench, Court File No. 0901-08964);

(d) *Thelma Adams* v. *Canadian Tobacco Manufacturers' Council et al.* (Saskatchewan Court of Queen's Bench, Court File No. 916 of 2009);

(e) *Deborah Kunta* v. *Canadian Tobacco Manufacturers' Council et al.* (Manitoba Court of Queen's Bench, Court File No. CI09-01-61479);

(f) *Suzanne Jacklin* v. *Canadian Tobacco Manufacturers' Council* (Ontario Superior Court of Justice, Court File No. 53794/12);

(g) *Ben Semple* v. *Canadian Tobacco Manufacturers' Council et al.* (Supreme Court of Nova Scotia, Court File No. 312869);

(h) *Victor Todd Sparkes* v. *Imperial Tobacco Canada Limited* (Newfoundland and Labrador Supreme Court - Trial Division, Court File No. 200401T2716 CP);

(i) *Peter Stright* v. *Imperial Tobacco Canada Limited* (Supreme Court of Nova Scotia, Court File No. 177663);

(j) *Ljubisa Spasic as estate trustee of Mirjana Spasic* v. *Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.* (Ontario Superior Court of Justice, Court File No. C17773/97);

(k) *Ljubisa Spasic as estate trustee of Mirjana Spasic* v. *B.A.T. Industries P.L.C.* (Ontario Superior Court of Justice, Court File No. C18187/97);

(l) *Ragoonanan* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 00-CV-183165-CP00);

(m) *Scott Landry* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 1442/03);

(n) *Joseph Battaglia* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 21513/97);

(o) *Roland Bergeron* v. *Imperial Tobacco Canada Limited* (Quebec Superior Court, Court File No. 750-32-700014-163);

(p) *Paradis, in personal capacity and on behalf of estate of Lorraine Trepanier* v. *Rothmans, Benson & Hedges Inc.* (Quebec Small Claims Court);

(q) *Couture* v. *Rothmans, Benson & Hedges Inc.* (Quebec Superior Court); and

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"PCC Claim Package" means all of the documents that a PCC-Claimant or a PCC-Claimant's Legal Representative, as applicable, is required to complete and submit to the Claims

Administrator including the Claim Form for PCC-Claimant, Claim Form for the Legal Representative of a PCC-Claimant, Physician Form (only if a pathology report in respect of Lung Cancer or Throat Cancer, or a spirometry report in respect of Emphysema/COPD (GOLD Grade III or IV), is not available), and all medical and other documents requested in the Claim Forms and the Physician Form. The aforesaid forms are Appendices "C", "D" and "E" to the PCC Compensation Plan which is attached as Schedule "P" to the CCAA Plan.

"**PCC-Claimants**" means the Pan-Canadian Claimants who are all Individuals resident in a Province or Territory of Canada, excluding the Quebec Class Action Plaintiffs in relation to QCAP Claims but including the Pan-Canadian Claimants' respective heirs, successors, assigns and representatives, who assert a PCC Claim by submitting a PCC Claim Package to the Claims Administrator pursuant to the PCC Compensation Plan, and "**PCC-Claimant**" means any one of them.

"**PCC Claims Application Deadline**" means the date twenty-four months after the First Notice Date by which all PCC-Claimants are required to submit their completed PCC Claim Packages to the Claims Administrator. The PCC Claims Application Deadline may be extended by the CCAA Court if it is deemed necessary and expedient to do so as the implementation of the PCC Compensation Plan unfolds.

"**PCC Claims Period**" has the meaning given in Article 8, Section 8.1(d).

"**PCC Compensable Diseases**" has the meaning given in Article 8, Section 8.1(d)(iii).

"**PCC Compensation Plan**" has the meaning given in Article 8, Section 8.1 and is attached as Schedule "P".

"**PCC Compensation Plan Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable into the PCC Trust Account in respect of compensation for Eligible Pan-Canadian Claimants as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein.

"**PCC Compensation Plan Reserve**" means the Cash reserve to be established on the Plan Implementation Date prior to any distributions to Affected Creditors as authorized by the CCAA Court pursuant to the Sanction Order, in the amount of $5.0 million, and to be paid out of the total Upfront Contributions from the Tobacco Companies and deposited into the PCC Compensation Plan Reserve Account for the purpose of paying the PCC Compensation Plan Reserve Costs. The CCAA Plan Administrators for Imperial, RBH and JTIM shall hold the PCC Compensation Plan Reserve in trust for those Persons entitled to such funds pursuant to the CCAA Plan.

"**PCC Compensation Plan Reserve Account**" means a segregated interest-bearing trust account established by the CCAA Plan Administrators to hold the PCC Compensation Plan Reserve on behalf of the beneficiaries thereof.

"**PCC Compensation Plan Reserve Costs**" means Costs incurred and payments to be made on or after the Plan Implementation Date, including Costs incurred prior to the Plan Implementation Date which remain outstanding as of the Plan Implementation Date, in respect of:

(a) The Costs of the services which the Claims Administrator (including its advisors) provides in relation to the PCC Compensation Plan;

(b) The Costs of the services which the Administrative Coordinator (including his advisors) provides in connection with the performance of his duties under the CCAA Plan; and

(c) The Costs of the services which the PCC Representative Counsel (including their advisors) provide in connection with the performance of their duties under the CCAA Plan and in the CCAA Proceeding.

"**PCC Eligibility Criteria**" has the meaning given in Article 8, Section 8.1.

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

"**PCC Trust Account**" has the meaning given in Article 8, Section 8.3.

"**Pending Litigation**" has the meaning given in Article 18, Section 18.3.1.

"**Permitted Encumbrance**" in regard to ITCAN or any Material Subsidiary means:

(a) Encumbrances in favour of ITCAN or any Material Subsidiary existing on the date of the Contribution Security Agreement;

(b) Subject to the covenants set forth in Article 11, Section 11.1(g) and Article 11, Section 11.1(k) herein, Encumbrances on property, or on capital stock or Indebtedness, of a Person existing at the time such Person is merged with or into, amalgamated with, or consolidated with ITCAN or any Material Subsidiary, provided that such Encumbrances were in existence prior to the contemplation of such merger, amalgamation or consolidation and do not extend to any assets other than those of the Person merged into, amalgamated with, or consolidated with ITCAN or any Material Subsidiary;

(c) Encumbrances on property (including capital stock) existing at the time of acquisition of the property by ITCAN or any Material Subsidiary, provided that such Encumbrances were in existence prior to, and not incurred in contemplation of, such acquisition;

(d) Encumbrances to secure the performance of bids, tenders, leases, statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the Ordinary Course of Business;

(e) Encumbrances existing on the Plan Implementation Date;

(f) Encumbrances for Taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, provided that any reserve or other appropriate provision as is required in conformity with generally accepted accounting principles has been established therefor;

(g) Encumbrances imposed by law, such as carriers', warehousemen's, landlord's, construction and mechanics' liens, in each case incurred in the Ordinary Course of Business;

(h) Survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate constitute a Material Adverse Effect on the value of such property or materially impair their use in the operation of the business of such Person;

(i) Encumbrances created for the benefit of or to secure the obligations created in the Definitive Documents; and

(j) Encumbrances incurred in the Ordinary Course of Business of ITCAN or any Material Subsidiary with respect to obligations that do not cause a Material Adverse Effect.

"**Permitted Transfers**" has the meaning given in Article 11, Section 11.1(h).

"**Person**" means an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated association, a Government, or any other group, entity or body.

"**Plan Implementation Conditions**" has the meaning given in Article 19, Section 19.3.

"**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 Plan, the Sanction Order and the other Definitive Documents are to be implemented, as evidenced by the Monitor's Plan Implementation Date Certificate to be delivered to Imperial and filed with the CCAA Court.

"**Plan Implementation Date Certificate**" has the meaning given in Article 19, Section 19.4.

"**PPSAs**" means, collectively, *Personal Property Security Act*, RSBC 1996, c. 359, *Personal Property Security Act*, RSA 2000, c. P-7, *The Personal Property Security Act, 1993*, SS 1993, c. P-6.2, *The Personal Property Security Act*, RSM 1987, c. P35, *Personal Property Security Act*, RSO 1990, c. P.10, *Personal Property Security Act*, SNB 1993, c. P-7.1, *Personal Property Security Act*, SNS 1995-96, c. 13, *Personal Property Security Act*, RSPEI 1988, c. P-3.1, *Personal Property Security Act*, SNL 1998, c. P-7.1, *Personal Property Security Act*, RSY 2002, c. 169, *Personal Property Security Act*, SNWT (Nu) 1994, c. 8, as amended, and the relevant provisions of the Civil Code of Quebec, CQLR c. CCQ-1991.

"**Pre-Implementation Miscellaneous Claim**" means an Affected Claim by a Person who is not an Individual Claimant and which Affected Claim is not a: (a) Provincial HCCR Claim, (b) Territorial HCCR Claim, (c) QCAP Claim, (d) PCC Claim, (e) Tobacco Producers Claim, or (f) *Knight* Claim.

"**Property**" means all current and future assets, undertakings and properties of Imperial of every nature and kind whatsoever, and wherever situate, including all Cash and other proceeds thereof.

"**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**"), and "**Province**" means any one of them.

"**Provinces and Territories Settlement Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable to the Provinces and Territories to settle the Provincial HCCR Claims and Territorial HCCR Claims, as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein.

"**Provincial and Territorial Liaison Committee**", or "**PTLC**", means the committee that shall be established by the Provinces and Territories in accordance with the PTLC Terms set out in Schedule "X".

"**Provincial and Territorial Liaison Committee Terms**", or "**PTLC Terms**", are attached to the CCAA Plan as Schedule "X".

"**Provincial HCCR Claim**" means any Claim that has been advanced, could have been advanced or could be advanced in any of the following actions or in any other similar proceedings, whether before or after the Effective Time and whether under the HCCR Legislation or otherwise:

(a) *Her Majesty the Queen in right of British Columbia* v. *Imperial Tobacco Canada Limited* (Supreme Court of British Columbia, Court File No. S010421);

(b) *Her Majesty in right of Alberta* v. *Altria Group, Inc.* (Alberta Court of Queen's Bench, Court File No. 1201-07314);

(c) *The Government of Saskatchewan* v. *Rothmans, Benson & Hedges Inc.* (Saskatchewan Court of Queen's Bench, Court File No. 8712012);

(d) *Her Majesty the Queen in right of the Province of Manitoba* v. *Rothmans, Benson & Hedges Inc.* (Manitoba Court of Queen's Bench, Court File No. CI 12-01-78127);

(e) *Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.* (Ontario Superior Court of Justice, Court File No. CV-09-387984);

(f) *Procureur général du Québec* v. *Impérial Tobacco Canada Limitée* (Quebec Superior Court, Court File No. 500-17-072363-123);

(g) *Her Majesty the Queen in right of the Province of New Brunswick* v. *Rothmans Inc.* (New Brunswick Court of Queen's Bench, Court File No. F/C/88/08);

(h) *Her Majesty the Queen in right of the Province of Nova Scotia* v. *Rothmans, Benson & Hedges Inc.* (Supreme Court of Nova Scotia, Court File No. 434868/737686);

(i) *Her Majesty the Queen in right of the Province of Prince Edward Island* v. *Rothmans, Benson & Hedges Inc.* (Prince Edward Island Supreme Court, Court File No. S1 GS-25019);

(j) *Attorney General of Newfoundland and Labrador* v. *Rothmans Inc.* (Supreme Court of Newfoundland and Labrador, Court File No. 201101G0826); and

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"**PTLC Chair**" has the meaning given in Section 8 of the PTLC Terms which are Schedule "X" to the CCAA Plan.

"**PTLC Members**" has the meaning given in Section 5 of the PTLC Terms which are Schedule "X" to the CCAA Plan.

"**PTLC Vice-Chair**" has the meaning given in Section 11 of the PTLC Terms which are Schedule "X" to the CCAA Plan.

"**Putative Miscellaneous Claimant**" means a Person, other than a Claimant or an Individual Claimant, who asserts a Miscellaneous Claim.

"**QCAP Claim**" means any Claim that has been advanced, could have been advanced or could be advanced in the following class actions, 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 Claims Process**" means the process established pursuant to the Quebec Administration Plan for *Blais* Class Members to assert claims for direct monetary compensation.

"**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 herein.

"**QCAP Trust Account**" means the segregated interest-bearing 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 Action Plaintiffs**", or "**QCAPs**", means individuals who meet the criteria of the certified class definitions in the Quebec Class Actions.

"**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 Counsel**" means, collectively, the law practices of Trudel Johnston & Lespérance s.e.n.c., Kugler Kandestin s.e.n.c.r.l., L.L.P., De Grandpré Chait s.e.n.c.r.l., L.L.P., and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P.

"**Quebec Class Counsel Fee**" means the amount to be determined subject to the approval of the CCAA Court that will be payable from the QCAP Settlement Amount to Quebec Class Counsel, and to any legal counsel or other advisors of any nature or kind whatsoever who have provided, are providing or may in the future provide services to the Quebec Class Counsel in connection with the CCAA Proceedings, the Quebec Class Actions and/or any other proceedings on behalf of the *Blais* Class Members and/or *Létourneau* Class Members both before and after the Plan Implementation Date, in respect of their fees, disbursements and costs as Quebec Class Counsel, and any applicable Sales and Excise Taxes payable thereon. All Costs incurred in respect of the services provided by Raymond Chabot (as agent for the Quebec Class Counsel on behalf of the QCAPs) both before and after the Plan Implementation Date shall be paid by Quebec Class Counsel out of the Quebec Class Counsel Fee.

"**Quebec Superior Court**" means the Superior Court of Quebec, Class Action Division, at Montreal.

"**Raymond Chabot**" means Raymond Chabot Administrateur Provisoire Inc. and its Affiliates.

"**RBH**" means Rothmans, Benson & Hedges Inc.

"**RBH Retained Amount**" has the meaning given in Article 5, Section 5.4.

"**Release**" has the meaning given in Article 18, Section 18.1.1.

"**Released Claims**" means, collectively, any and all of the following Claims, excluding Unaffected Claims:

(a) any Tobacco Claims; and

(b) any Claims:

(i) in respect of the assets, obligations, business or affairs of the Released Parties in Canada or, in the case of Imperial, anywhere else in the world, relating to Tobacco Products, which are based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter);

(ii) in respect of the CCAA Proceedings and the Chapter 15 Proceedings up to the Effective Time, provided that such Released Party is not determined by (A) a final order of the CCAA Court to have committed fraud in the CCAA Proceedings, or (B) a final order of the US Bankruptcy Court to have committed fraud in the Chapter 15 Proceedings;

(iii) existing at or prior to the Effective Time that have been advanced, that could have been advanced or could be advanced in the CCAA Proceeding; and

(iv) released as against the Monitors, CCAA Plan Administrators, Foreign Representative, Court-Appointed Mediator and Administrative Coordinator pursuant to Article 18, Sections 18.1.4, 18.1.5 and 18.1.6 herein.

For greater certainty, Released Claims include all Tobacco Claims in respect of fraud, misrepresentation or omission that have been or could have been asserted in any proceeding initiated prior to the Effective Time, including all Claims released by the Release and the Claimant Contractual Release.

"**Released Parties**", collectively, means:

(a) ITCAN,

(b) ITCO,

(c) RBH,

(d) JTIM,

(e) British American Tobacco p.l.c.,

(f) Philip Morris International Inc.,

(g) JT International Holding B.V.,

(h) the ITCAN Subsidiaries,

(i) B.A.T. Investment Finance p.l.c.,

(j) B.A.T Industries p.l.c.,

(k) British American Tobacco (Investments) Limited,

(l) Carreras Rothmans Limited,

(m) Philip Morris U.S.A. Inc.,

(n) Philip Morris Incorporated,

(o) Philip Morris Global Brands Inc.,

(p) Philip Morris S.A.,

(q) Rothmans Inc.,

(r) Ryesekks p.l.c.,

(s) Altria Group, Inc.,

(t) R.J. Reynolds Tobacco Company,

(u) R.J. Reynolds Tobacco International Inc.,

(v) RJR Nabisco, Inc.,

(w) JT International SA,

(x) JT Canada LLC Inc.,

(y) Japan Tobacco Inc.,

(z) JTIM TM,

(aa) Canadian Tobacco Manufacturers' Council, and

(bb) every other current or former Affiliate of any of the companies listed in subparagraphs (a) to (z) herein, and each of their respective indemnitees,

and "**Released Party**" means any of them. Each Released Party includes their respective Representatives.

"**Releasors**", collectively, means:

(a) the Provinces and Territories,

(b) the Quebec Class Action Plaintiffs,

(c) the Pan-Canadian Claimants,

(d) the *Knight* Class Action Plaintiffs,

(e) the Tobacco Producers, and

(f) every other Person having an Affected Claim or a Released Claim,

and "**Releasor**" means any one of them. "**Releasors**" and "**Releasor**" shall include their respective Representatives.

"Representatives" means, in respect of a Person, as may be applicable, such Person's past, present or future representatives, predecessors, successors, executors, trustees, heirs, dependents, children, siblings, parents, administrators, executors, directors, officers, shareholders, partners, employees, servants, agents, consultants, legal counsel and advisers, including their respective successors and assigns, and each of their respective directors, officers, partners and employees.

"**Request for Particulars**" has the meaning given in Article 13, Section 13.2.

"**Required Majority**" means, in respect of the Affected Creditor Class, a majority in number of the Affected Creditors holding Voting Claims representing at least two-thirds in value of the Voting Claims of the Affected Creditors, in each case who are entitled to vote at the Meeting in accordance with the Meeting Order and who are present and voting in person or by proxy at the Meeting.

"**Reserved Amount**" of a Tobacco Company means: (i) any Tax Refund attributable to the carryback of a Tax Attribute to a preceding taxation year (other than the taxation year in which the Upfront Contribution is made) (a "**Tax Refund Cash Payment**"); (ii) in respect of an Annual Contribution, the reduction in income tax payable by the Tobacco Company in respect of its taxation year in which the Annual Contribution is made attributable to the deduction in computing income for tax purposes of the Annual Contribution and any resulting Tax Refund Cash Payment (the "**Annual Amount**"); and (iii) the reduction in income tax payable by the Tobacco Company in respect of a subsequent taxation year attributable to the carryforward of a Tax Attribute to the subsequent taxation year (the "**Carry Amount**").

"**Response**" has the meaning given in Article 13, Section 13.3.

"**Sales and Excise Tax Charge**" means the charge over the Property for the benefit of a Tax Authority that is entitled to receive payments or collect monies from ITCAN and ITCO in respect of Sales and Excise Taxes (including for greater certainty the Canada Border Services Agency), created by paragraph 25 of the Initial Order, and having the priority provided in paragraphs 45 and 47 of such Order.

"**Sales and Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales or use taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes.

"**Sanction Hearing**" means the hearing before the CCAA Court in respect of the Sanction Order.

"**Sanction Hearing Objection Notice**" means the notice, substantially in the form attached as a schedule to the Sanction Hearing Order, which may be submitted or delivered to the Monitor by a Putative Miscellaneous Claimant objecting to the Sanction Order and providing reasons for such objection.

"**Sanction Hearing Order**" means the Order of the CCAA Court (including all schedules and appendices thereto) made in the CCAA Proceeding approving the Omnibus Sanction Hearing Notice, the Omnibus Sanction Hearing Notice Program and the timetable and procedure for the Sanction Hearing, as such Order may be amended, restated or varied from time to time.

"**Sanction Order**" means the Order of the CCAA Court, among other things, sanctioning and approving the CCAA Plan and granting, approving and declaring the settlements, compromises and releases, as applicable, contemplated by the CCAA Plan.

"**Sanction Recognition Order**" means the Order entered by the US Bankruptcy Court recognizing and enforcing the Sanction Order in the Chapter 15 Proceedings, which shall be in form and substance acceptable to Imperial.

"**Section 5.1(2) Claims**" means any Claims against the Directors that:

(a) arose before the commencement of the CCAA Proceeding;

(b) relate to the obligations of Imperial where the Directors are by law liable in their capacity as Directors for the payment of such obligations; and

(c) either relate to contractual rights of one or more creditors, or are based on allegations of misrepresentations made by Directors to creditors, or of wrongful or oppressive conduct by Directors.

"**Section 19(2) Claims**" means any Claims against Imperial that relate to any of the following debts or liabilities, present or future, to which Imperial is subject on the day on which the CCAA Proceeding commenced, or to which Imperial may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by Imperial before the day on which the CCAA Proceeding commenced, unless the compromise or arrangement in respect of Imperial explicitly provides for the Claim's compromise, and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(b) any award of damages by a court in civil proceedings in respect of:

  (i) bodily harm intentionally inflicted, or sexual assault, or

  (ii) wrongful death resulting from an act referred to in subparagraph (i);

(c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).

"**Secured Claim**" means any Claim of a creditor to the extent that it is secured by a valid Encumbrance that is duly and properly registered or otherwise perfected in accordance with Applicable Law in the appropriate jurisdiction as of the Filing Date or thereafter pursuant to an Order, to the extent of the value of such Encumbrance as at the Filing Date (having regard to the value of the assets subject to such Encumbrance and the priority of such Encumbrance) and which Claim is entitled to be proven as a secured claim pursuant to the provisions of the CCAA.

"**Statement of Negative Notice Claim**" means the respective statements to be prepared by the Monitor, each of which shall contain, for voting purposes, the amount and number of votes ascribed to the Negative Notice Claim of each Claimant. The Statement of Negative Notice Claim is included in Schedule "A" to the CCAA Plan.

"**Stay Period**" has the meaning ascribed to such term in the Initial Order.

"**Submitted PCC-Claims**" means the claims made by the PCC-Claimants by submitting a PCC Claim Package to the Claims Administrator, and "**Submitted PCC-Claim**" means any one of them.

"**Subsidiary**" has the meaning attributed thereto in Section 2(5) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended.

"Succession Claim" means the QCAP Claim of a Succession Claimant which is submitted to the Claims Administrator using the Succession Claim Form.

"**Succession Claimant**" means a person who asserts a Succession Claim pursuant to the Quebec Administration Plan.

"**Supplemental Trust Account**" has the meaning given in Article 5, Section 5.3.

"**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.

"**Tax Attribute**" means, with respect to Imperial, any tax attribute resulting from the deductibility of an Upfront Contribution, Annual Contribution or applicable Reserved Amount that is available for carryforward or carryback to another taxation year, including a non-capital loss, capital loss, credit, and other balance.

"**Tax Authority**" means the CRA, the Receiver General for Canada, any other federal Governmental Authority (such as the Canada Border Services Agency) and any corresponding provincial or territorial Governmental Authority.

"**Tax Matter**" has the meaning given in Article 10, Section 10.2.2(m).

"**Tax Refund Cash Payment**" has the meaning given in the definition of Reserved Amount.

"**Tax Refund**" means any income tax refund received from a Tax Authority in cash or cash equivalent by Imperial during the Contribution Period. For greater certainty, any tax instalment overpayment shall not be considered a Tax Refund.

"**Taxes**" means all federal, state, provincial, territorial, county, municipal, local or foreign taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Tax Authority including those levied on, or measured by, or referred to as, income, net income, gross income, gross receipts, business, royalty, capital, capital gains, goods and services, harmonized sales, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, profits, windfall profits, withholding, environmental, payroll, employment, employer health, pension plan, anti-dumping, countervail, excise, severance, stamp, occupation, or premium tax, all employment insurance premiums, Canada, Québec and any other pension plan contributions or premiums.

"**Territorial HCCR Claim**" means any Claim that:

(a) Northwest Territories has advanced, could have advanced or could advance pursuant to the *Tobacco Damages and Health Care Costs Recovery Act*, SNWT 2011, c 33 (proclaimed but not yet in force), whether before or after the Effective Time, and whether under the HCCR Legislation or otherwise;

(b) Nunavut has advanced, could have advanced or could advance pursuant to the *Tobacco Damages and Health Care Costs Recovery Act*, SNu 2010, c 31 (proclaimed but not yet in force), whether before or after the Effective Time, and whether under the HCCR Legislation or otherwise;

(c) Yukon has advanced, could have advanced or could advance, whether before or after the Effective Time, in relation to the recovery of (i) the present value of the total expenditure by Yukon for health care benefits provided for Insured Persons resulting from Tobacco-related Disease or the risk of Tobacco-related Disease, and (ii) the present value of the estimated total expenditure by Yukon 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, including pursuant to any legislation that may be enacted by Yukon in the future which could result in a Claim against any of the Released Parties relating to such expenditures; and

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"**Territories**" means, collectively, the Government of Yukon ("**Yukon**"), the Government of the Northwest Territories ("**Northwest Territories**") and the Government of Nunavut ("**Nunavut**"), and "**Territory**" means any one of them.

"**Thauvette Affidavit**" means the affidavit sworn on March 12, 2019 by Eric Thauvette, Vice President and Chief Financial Officer of Imperial Tobacco Canada Limited, in *Imperial Tobacco Canada Limited (Re)* bearing Application No. CV-19-616077-00CL.

"**Throat Cancer**" has the meaning given in Article 8, Section 8.1(d)(ii).

"**Tobacco Claim**" means any Claim of any Person against or in respect of a Tobacco Company and/or any Director thereof, or any member of its Tobacco Company Group and/or any Director thereof, that has been advanced (including, without limitation, in any outstanding or pending litigation), that could have been advanced or that could be advanced, and whether such Claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced by a Government, or an agency, insurer, employer or otherwise, under or in connection with Applicable Law, or under any current or future statute to recover damages or any other remedy or costs in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products, the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions, the development of any disease related to the use of Tobacco Products, or any representation or omission in respect of Tobacco Products, including any misrepresentations, breach of duty or fraud in respect thereof by any member of the Tobacco Company Group or its Representatives in Canada or, in the case of the Tobacco Company, anywhere else in the world, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) and including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim. For greater certainty, Tobacco Claim includes:

(a) Any Provincial HCCR Claim;

(b) Any Territorial HCCR Claim;

(c) Any QCAP Claim;

(d) Any PCC Claim;

(e) Any *Knight* Claim; and

(f) Any Tobacco Producers Claim.

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

"**Tobacco Company Group**" means, in respect of Imperial, its Parent and all other current or former Affiliates, direct or indirect Subsidiaries or parents, of Imperial, and their respective indemnitees.

"**Tobacco Producers**" means, collectively, the Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler, Arpad Dobrentey and all other tobacco growers and producers, including any successors or assigns, who sold their tobacco through the Ontario Flue-Cured Tobacco Growers' Marketing Board pursuant to the annual Heads of Agreement made with ITCAN, RBH and JTIM from January 1, 1986 to December 31, 1996, and "**Tobacco Producer**" means any one of them.

"**Tobacco Producers' Actions**" means the uncertified class actions enumerated in the definition of "Tobacco Producers Claim" in the CCAA Plan.

"**Tobacco Producers 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) *The Ontario Flue-Cured Tobacco Growers' Marketing Board* v. *JTI-Macdonald Corp.* (Ontario Superior Court of Justice, Court File No. 1056/10CP);

(b) *The Ontario Flue-Cured Tobacco Growers' Marketing Board* v. *Rothmans, Benson & Hedges Inc.* (Ontario Superior Court of Justice, Court File No. 64462 CP); and

(c) *The Ontario Flue-Cured Tobacco Growers' Marketing Board* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 64757 CP);

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"**Tobacco Producers Settlement Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable to the Ontario Flue-Cured Tobacco Growers' Marketing Board for the benefit of the Tobacco Producers, as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein. The Counsel for the Tobacco Producers' Fee is subject to the approval of the CCAA Court and shall be paid out of the Tobacco Producers Settlement Amount.

"**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-Victim**" means any Individual who suffers or suffered from a Tobacco-related Disease.

"Tobacco-Victim Claim" is the QCAP Claim of a Tobacco-Victim which is submitted to the Claims Administrator using the Tobacco-Victim Claim Form.

"**Tobacco-Victim Claimant**" means a person who asserts a Tobacco-Victim Claim pursuant to the Quebec Administration Plan.

"**Twelve Pack-Years**" means 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 to or greater than 87,600 cigarettes. For example, Twelve Pack-Years equals:

(a) 20 cigarettes a day for 12 years (20 X 365 X 12 = 87,600); or

(b) 30 cigarettes a day for 8 years (30 X 365 X 8 = 87,600); or

(c) 10 cigarettes a day for 24 years (10 X 365 X 24 = 87,600).

"**Unaffected Claims**" means, collectively:

(a) any Alternative Product Claim;

(b) any Claim by a Person relating to the right to enforce against any Released Party its obligations under any of the Definitive Documents;

(c) any Claim secured by the CCAA Charges;

(d) any Cash Management Bank Claim;

(e) any Employee Priority Claim;

(f) any Government Priority Claim;

(g) any Claim in respect of CCAA Plan Administration Reserve Costs;

(h) any Claim in respect of the PCC Compensation Plan Reserve Costs;

(i) any Secured Claim that is not a Tobacco Claim;

(j) any Claim for Costs by the Monitor, the CCAA Plan Administrator, the Claims Administrator, the Administrative Coordinator, the Court-Appointed Mediator, including their respective legal or other advisors, or counsel to Imperial, subject to the applicable terms in connection therewith under the CCAA Plan;

(k) any Claim by any Director under any directors' or officers' indemnity policy or agreement with Imperial to the extent not otherwise covered by the CCAA Charges;

(l) any Intercompany Services Claim;

(m) any Intercompany Claim, subject to the terms of Article 5, Section 5.15;

(n) any Claim by a supplier against Imperial for the supply of goods or services other than a Tobacco Claim;

(o) any Claim against Imperial relating to environmental remediation pursuant to Applicable Law;

(p) any Claim by Canada or any Province or Territory against any Released Party relating in any manner to:

(i) except as otherwise contemplated in the CCAA Plan, any applicable Taxes of any kind whatsoever applicable to any Released Party, and

(ii) such Released Party's compliance with any Applicable Law and statutes and the regulations made thereunder, except for liability for actions or omissions occurring prior to the Effective Time in respect of a Tobacco Claim;

(q) any Claim in respect of ITCAN's obligation to pay the balance owed under the Comprehensive Agreement dated July 31, 2008 between ITCAN, Canada and the Provinces which settled the claims by Canada and the Provinces against ITCAN regarding the trade of contraband products in Canada and related tax collection matters; and

(r) any Claim by any Person under any contract with Imperial that has not been disclaimed and which Claim is not a Tobacco Claim;

and, for greater certainty, shall include any Unaffected Claim arising through subrogation.

"**Unaffected Creditor**" means a Person who has an Unaffected Claim.

"**Upfront Contributions**" has the meaning given in Article 5, Section 5.4, and "**Upfront Contribution**" means any one of them.

"**US Bankruptcy Code**" means title 11 of the United States Bankruptcy Code 11 U.S.C. §§ 101 – 1532, as amended.

"**US Bankruptcy Court**" means the United States Bankruptcy Court, Southern District of New York.

"**Virtual Data Room**" has the meaning given in Article 10, Section 10.10.

"**Voting Claim**" means the amount of the Affected Claim of an Affected Creditor as finally determined for voting purposes in accordance with the Statements of Negative Notice Claims, the Claims Procedure Order and the Meeting Order entitling such Affected Creditor to vote at the Meeting in accordance with the provisions of the Meeting Order, the CCAA Plan and the CCAA.

1.2 Certain Rules of Interpretation

For the purposes of the CCAA Plan:

(a) Any reference in the CCAA Plan to an Order or an existing document or exhibit filed or to be filed means such Order, document or exhibit as it may have been or may be amended, modified, or supplemented;

(b) Unless otherwise specified, all references to currency are in Canadian dollars;

(c) The division of the CCAA Plan into "articles" and "sections" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the CCAA Plan, nor are the descriptive headings of "articles" and "sections" intended as complete or accurate descriptions of the content thereof;

(d) The use of words in the singular or plural, or with a particular gender, including a definition, will not limit the scope or exclude the application of any provision of the CCAA Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;

(e) The words "includes" and "including" and similar terms of inclusion will not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather will mean "includes but is not limited to" and "including but not limited to", so that references to included matters will be regarded as illustrative without being either characterizing or exhaustive;

(f) Unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day means prior to 5:00 p.m. (Eastern Time) on such Business Day;

(g) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

(h) Unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;

(i) References to a specified "article" or "section" will, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article or section of the CCAA Plan, whereas the terms "the CCAA Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions will be deemed to refer generally to the CCAA Plan and not to any particular article, section or other portion of the CCAA Plan and includes any documents supplemental hereto; and

(j) When a capitalized term used in the CCAA Plan references a definition in any other document, the CCAA Plan shall be interpreted as if the definition in that other document is included in the CCAA Plan.

1.3 Governing Law and Jurisdiction

The CCAA Plan and all Definitive Documents shall be governed and construed in accordance with the laws of the Province of Ontario and the Applicable Laws of Canada, save for the Chapter 15 Proceedings which shall be subject to the jurisdiction of the US Bankruptcy Court, and the administration of the QCAP Claims Process pursuant to the Quebec Administration Plan which shall be governed by the laws of the Province of Quebec and the Applicable Laws of Canada.

1.4 Schedules

The following are the Schedules to the CCAA Plan, which are incorporated by reference into the CCAA Plan and form an integral part of it:

Schedule "A": Negative Notice Claims Package comprised of Statement of Negative Notice Claim (Schedule "B-1") and the Notice of Dispute of Negative Notice Claim (Schedule "B-2")

Schedule "B": Claims Package comprised of Miscellaneous Claims Instruction Letter (Schedule "A-1") and the Miscellaneous Claimant Proof of Claim (Schedule "A-2")

Schedule "C": Omnibus Notice

Schedule "D": Omnibus Notice Program comprised of condensed version of the Omnibus Notice (Appendix "A") and the list of the regional newspapers in which the Omnibus Notice will be published (Appendix "B")

Schedule "E": Contribution Security Agreement

Schedule "F": Deed of Moveable Hypothec

Schedule "G": Harrison Report

Schedule "H": Curriculum vitae of Dr. Glenn Harrison

Schedule "I": Jha Report

Schedule "J": Curriculum vitae of Dr. Prabhat Jha

Schedule "K": Quebec Class Action Administration Plan

Schedule "L": Overview of Epiq's complex claims administration experience

Schedule "M": Curriculum vitae of Daniel Shapiro, K.C.

Schedule "N": Pan-Canadian Claimants' Compensation Plan: Methodology and Analysis dated December 5, 2024

Schedule "O": Analysis of Limitations Law applicable to Pan-Canadian Claimants dated September 2, 2020

Schedule "P": Pan-Canadian Claimants' Compensation Plan dated December 5, 2024

Schedule "Q": Resume of Dr. Robert Bell

Schedule "R": Curriculum vitae of Dr. Robert Bell

Schedule "S": The Cy-près Fund: Methodology and Analysis dated December 5, 2024

Schedule "T": Claimant Contractual Release – ITCAN and ITCO

Schedule "U": List of Health Care Costs Recovery Actions of the Provinces and HCCR Claims asserted by Territories

Schedule "V": List of Actions commenced under Provincial Class Proceedings Legislation

Schedule "W": List of Actions commenced by Individuals

Schedule "X": Provincial and Territorial Liaison Committee Terms

ARTICLE 2. PURPOSE AND EFFECT OF THE CCAA PLAN

2.1 Purpose

The purposes of the CCAA Plan are to:

(a) Effect a full and final settlement and irrevocable compromise of all Tobacco Claims;

(b) Effect a release, discharge and bar of all Released Claims;

(c) Eliminate liability for all Tobacco Claims for actions up to the Effective Time;

(d) Effect the distributions of the Global Settlement Amount to the Claimants as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein;

(e) Provide for the disposition and resolution of all Pending Litigation;

(f) Effect the transfer of all of Imperial's assets, Indebtedness, liabilities and business relating to its current and future Alternative Products ("**Alternative Products Business**") to an unrelated company, a Canadian Affiliate of its Parent, or a Canadian Subsidiary of any other company within its Tobacco Company Group ("**Newco"**); and

(g) Permit Imperial to exit this CCAA Proceeding and continue to carry on its business as a going concern.

2.2 Exclusion of Alternative Products from CCAA Plan

Alternative Products are excluded from the CCAA Plan. The CCAA Plan shall not be applicable to any right or claim against Imperial or any member of its Tobacco Company Group relating to its development, manufacture, production, marketing, advertising, distribution, purchase or sale of Alternative Products, use of or exposure to Alternative Products, representations in respect of Alternative Products or otherwise in connection with Alternative Products. For greater certainty, the CCAA Plan shall not release any such rights or claims relating to Alternative Products against Imperial or members of its Tobacco Company Group.

ARTICLE 3. CLAIMS PROCEDURE, CLASSIFICATION OF AFFECTED CREDITORS, VOTING, PROCEDURE FOR SANCTION HEARING AND RELATED MATTERS

3.1 Claims Procedure

3.1.1 CCAA Court Hearing regarding Claims Procedure

The procedure for determining the validity and quantum of the Affected Claims for voting purposes shall be governed by the Statements of Negative Notice Claims, the Claims Procedure Order, the Meeting Order, the CCAA, the CCAA Plan and any other Order of the CCAA Court, as applicable.

The Court-Appointed Mediator and the Monitor will make a motion to the CCAA Court for Orders:

(a) Approving the filing of the CCAA Plan;

(b) Approving the Claims Procedure set forth in the Claims Procedure Order;

(c) Approving the Omnibus Notice and the Omnibus Notice Program which shall include the timetable for the implementation of the Omnibus Notice Program; and

(d) Approving the Meeting Order, including setting the Meeting Date, approving the classification of the Affected Creditors into one single class for the purpose of considering and voting on the CCAA Plan at the Meeting, and authorizing the Claimants' Representatives to vote on the CCAA Plan in person or by proxy at the Meeting.

3.1.2 Claims Procedure for Negative Notice Claims

The procedure for addressing Negative Notice Claims shall be governed by the terms of the Claims Procedure Order including the schedules thereto. Notwithstanding the foregoing, the Monitor, in consultation with the Court-Appointed Mediator, may make minor non-substantive changes to the Negative Notice Claims Package as they may consider necessary or desirable.

As soon as practicable after the date of the Claims Procedure Order, the Monitor shall cause to be sent to each Claimant's Representative a Negative Notice Claims Package which will contain a Statement of Negative Notice Claim that specifies, for voting purposes, the amount and number of

votes ascribed to such Claimant's Negative Notice Claim. Attached to the CCAA Plan as Schedule "A" is the Negative Notice Claims Package comprised of the Statement of Negative Notice Claim (Schedule "B-1") and the Notice of Dispute of Negative Notice Claim (Schedule "B-2"). The Negative Notice Claims Package shall be deemed to have been received by each Claimant's Representative on the Negative Notice Issuance Date.

If a Claimant wishes to dispute the amount of its Affected Claim for voting purposes and the number of votes associated therewith as set forth in the relevant Statement of Negative Notice Claim, the Claimant's Representative shall deliver to the Monitor a Notice of Dispute of Negative Notice Claim by no later than the Negative Notice Bar Date, failing which the Claimant shall be conclusively and irrevocably deemed to have accepted the Statement of Negative Notice Claim and the value and number of votes associated with its Affected Claim solely for the purpose of voting on the CCAA Plan at the Meeting.

The Monitor, in consultation with the Court-Appointed Mediator, shall review any Notice of Dispute of Negative Notice Claim received and shall attempt to resolve such dispute with the relevant Claimant following receipt of the Notice of Dispute of Negative Notice Claim. In the event that the dispute is not settled, the Monitor shall refer the dispute to the CCAA Court, and provide timely notice of such hearing date to the disputing Claimant's Representative.

Unless any dispute of a Statement of Negative Notice Claim results in a revision to the value or number of votes associated with the relevant Affected Claim pursuant to the terms of the Claims Procedure Order, each of the Claimants shall be entitled to vote at the Meeting in accordance with the value and number of votes set forth on the applicable Statements of Negative Notice Claim.

Except as may be required by the Meeting Order, no further steps shall be required to be taken by any of the Claimants in order for them to be able to be present and vote at the Meeting.

3.1.3 Claims Procedure for Persons, other than Claimants or Individual Claimants, to assert a Claim

The Claims Procedure for Persons, other than Claimants or Individual Claimants, to file a Claim and assert the right to attend at the Meeting and vote on the CCAA Plan shall be governed by the terms of the Claims Procedure Order and schedules thereto. Save for establishing the entitlement of certain Persons to vote on the CCAA Plan, the Claims Procedure shall not constitute, nor may it be construed as, an acceptance by the CCAA Court, the Court-Appointed Mediator, the Monitor and/or Imperial of the existence, validity or value of any Claim asserted in a Miscellaneous Claimant Proof of Claim filed thereunder, including for distribution purposes under the CCAA Plan which shall be determined in accordance with the Miscellaneous Claims Procedure.

The solicitation of Miscellaneous Claimant Proofs of Claim, and the filing by any Person of any Miscellaneous Claimant Proof of Claim, shall not grant such Person any rights, including without limitation, in respect of the nature, quantum and priority of its Claims or its standing in the CCAA Proceedings, except the rights specifically set out in the Claims Procedure Order.

3.1.3.1 Notification Procedure

Attached to the CCAA Plan are the following schedules relating to the notification procedure for the Claims Procedure:

(a) Schedule "B" is the Claims Package comprised of the Miscellaneous Claims Instruction Letter (Schedule "A-1") and the Miscellaneous Claimant Proof of Claim (Schedule "A-2");

(b) Schedule "C" is the Omnibus Notice; and

(c) Schedule "D" is the Omnibus Notice Program which includes a condensed version of the Omnibus Notice (Appendix "A" to Schedule "D") and the list of the regional newspapers in which the Omnibus Notice will be published (Appendix "B" to Schedule "D").

The Monitor shall cause the Claims Procedure Order, the Omnibus Notice and the Claims Package to be posted to the Monitor's website within five Business Days following the date of the Claims Procedure Order. The Monitor shall also cause the Omnibus Notice, the Claims Package and the Claims Procedure Order to be sent to: (i) each Person that appears on the Common Service List within five Business Days following the date of the Claims Procedure Order; and (ii) any Person that has identified itself in writing to the Monitor prior to the Miscellaneous Claims Bar Date as a Putative Miscellaneous Claimant, as soon as reasonably practicable thereafter.

Reasonable compliance with the notice program set forth in the Omnibus Notice Program shall constitute good and sufficient service and delivery of notice of the Claims Procedure Order and the Miscellaneous Claims Bar Date on all Persons that may be entitled to receive notice, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of the Claims Procedure Order.

3.1.3.2 Miscellaneous Claims Bar Date

In order for a Person, other than a Claimant or an Individual Claimant, to assert a Claim and be permitted to attend the Meeting and vote thereat, such Person must file a Miscellaneous Claimant Proof of Claim with the Monitor by the Miscellaneous Claims Bar Date. Only such Persons who have filed a Miscellaneous Claimant Proof of Claim by the Miscellaneous Claims Bar Date shall be entitled to attend and vote on the CCAA Plan at the Meeting as a Putative Miscellaneous Claimant.

If a Person holding any Pre-Implementation Miscellaneous Claim fails to file a Miscellaneous Claimant Proof of Claim by the Miscellaneous Claims Bar Date, in addition to being barred from attending the Meeting and voting on the CCAA Plan, such Person:

(a) shall be forever barred, estopped and enjoined from asserting any Pre-Implementation Miscellaneous Claim under the Miscellaneous Claims Procedure;

(b) shall not be entitled to receive any distribution under the CCAA Plan in respect of any such Pre-Implementation Miscellaneous Claim, including from the Miscellaneous Claims Fund; and

(c) shall be bound by and subject to the Release and injunctions set forth in Article 18, Section 18.1 of the CCAA Plan in respect of any such Pre-Implementation Miscellaneous Claim.

The filing by any Person of a Miscellaneous Claimant Proof of Claim shall not constitute a determination of the existence, validity or value of such Miscellaneous Claim and shall not entitle such Person to any distribution under the CCAA Plan, or otherwise. For certainty, subject to a Miscellaneous Claimant Proof of Claim being filed by the Miscellaneous Claims Bar Date, provided that the CCAA Plan is approved by the Affected Creditor Class, sanctioned by the CCAA Court, and implemented, any Person who purports to have a Miscellaneous Claim shall be obliged to follow the procedure set forth in the Miscellaneous Claims Procedure to prove the existence, validity and value of such Miscellaneous Claim.

Any Miscellaneous Claimant Proof of Claim in a foreign currency that is filed with the Monitor shall be converted by the Monitor to Canadian dollars at the applicable Bank of Canada exchange rate at 12:00 pm on March 8, 2019.

3.1.3.3 Monitor's Role for Purposes of the Meeting and the Vote

In addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other Orders of the CCAA Court in the CCAA Proceeding, the Monitor shall administer the Claims Procedure and take such other actions and fulfill such other roles as are authorized by the Claims Procedure Order or incidental thereto. The Monitor shall seek such assistance as may be reasonably required from the Court-Appointed Mediator, Imperial and the Claimants, as applicable, to carry out the terms of the Claims Procedure Order.

Subject to the approval of the CCAA Court, the Monitor, in consultation with the Court-Appointed Mediator, will be authorized pursuant to the Claims Procedure Order to use its reasonable discretion as to the adequacy of compliance with respect to the manner and timing in which forms delivered pursuant to the Claims Procedure Order are completed and executed, and may, where it is satisfied that a Miscellaneous Claimant Proof of Claim has been adequately filed, waive strict compliance with the requirements of the Claims Procedure Order as to completion and execution of such forms. Notwithstanding any other provision of the Claims Procedure Order, any Miscellaneous Claimant Proof of Claim filed with the Monitor after the Miscellaneous Claims Bar Date but prior to the Meeting may, in the reasonable discretion of the Monitor or subject to further Order of the Court, be deemed to have been filed before the Miscellaneous Claims Bar Date, and may be treated by the Monitor in accordance with the Claims Procedure.

The Monitor shall receive and keep a record of all Miscellaneous Claimant Proofs of Claim filed in order to prepare a list of Persons, in addition to the Claimants, entitled to attend and vote at the Meeting, but the Monitor shall not be required to make any inquiry or assessment as to the validity or quantification of any such Miscellaneous Claimant Proofs of Claim that it may receive, provided that the Monitor shall be entitled, in its sole discretion, to seek further direction from the CCAA Court with respect to any Miscellaneous Claimant Proof of Claim filed if the Monitor considers such direction necessary, including for the conduct of the Meeting.

Notwithstanding the foregoing, the Monitor shall not take into consideration any Miscellaneous Claimant Proof of Claim filed either by an Individual Claimant or on behalf of any group of

Individual Claimants, as all Individual Claimants are represented by either the PCC Representative Counsel or the Quebec Class Counsel, as the case may be. For greater certainty, no Individual Claimant nor any Person purporting to represent any Individual Claimants (other than the PCC Representative Counsel and Quebec Class Counsel) shall be permitted to attend or vote at the Meeting.

At the Meeting, the Monitor shall keep distinct ledgers in order to tally the votes of all Persons that file a Miscellaneous Claimant Proof of Claim separately from the votes of the Claimants, and it shall report to the CCAA Court on the results recorded on each such ledger at the Sanction Hearing. Notwithstanding the foregoing, and without accepting the existence, validity or value of any Miscellaneous Claimant Proof of Claim received, any votes recorded by the Monitor for such Persons shall be deemed to be included in the Affected Creditor Class in accordance with the Meeting Order.

3.2 Classification of Creditors

In accordance with the Meeting Order, the Affected Creditors shall be placed into one single class for the purpose of considering and voting on the CCAA Plan at the Meeting.

3.3 Meeting of Affected Creditors

The Meeting shall be held in accordance with the CCAA Plan, the Meeting Order and any further Order of the CCAA Court. The only Persons entitled to attend and vote on the CCAA Plan at the Meeting are those specified in the Meeting Order and any further Order of the CCAA Court.

3.4 Approval by Creditors

In order to be approved, the CCAA Plan must receive the affirmative vote of the Required Majority of the Affected Creditor Class.

3.5 Voting of the Affected Creditor Class

The Affected Creditors in the Affected Creditor Class who are entitled to vote at the Meeting, pursuant to and in accordance with the Claims Procedure Order, the Meeting Order, the CCAA Plan and the CCAA, shall be entitled to the following number of votes representing the amount equal to their respective Voting Claims:

(a) The Quebec Class Action Plaintiffs shall be entitled to a total of 99,958 votes;

(b) The Pan-Canadian Claimants shall be entitled to a total of 186,003 votes;

(c) Each Province shall be entitled to a total of 1 vote;

(d) Each Territory shall be entitled to a total of 1 vote;

(e) Canada shall be entitled to a total of 1 vote;

(f) The Ontario Flue-Cured Tobacco Growers' Marketing Board plus the Tobacco Producers shall be entitled to a total of 3,930 votes; and

(g) The *Knight* Class Action Plaintiffs shall be entitled to a total of 1 vote.

In addition to the foregoing, any Putative Miscellaneous Claimant that files a Miscellaneous Claimant Proof of Claim in conformity with the Claims Procedure shall be entitled to a total of 1 vote.

3.6 Unaffected Creditors

No Unaffected Creditor, in respect of an Unaffected Claim, shall be entitled to:

(a) vote on the CCAA Plan;

(b) attend the Meeting; or

(c) receive any distributions pursuant to the CCAA Plan, other than its right to have its Unaffected Claim addressed in accordance with Article 3, Section 3.7 of the CCAA Plan.

3.7 Treatment of Unaffected Claims

Unaffected Claims are not compromised by the CCAA Plan and shall remain in full force and effect in accordance with their terms. Subject to Article 5, Section 5.15, Unaffected Claims shall be paid by Imperial in the Ordinary Course of Business as and when they become due, further subject only to Imperial's rights and defences, both legal and equitable, with respect to any Unaffected Claim, including any entitlement to set-off, compensation or recoupment.

3.8 Extinguishment of Claims

At the Effective Time, in accordance with the terms of the CCAA Plan and the Sanction Order, the treatment of Affected Claims and Released Claims will be final and binding on Imperial, the Affected Creditors, and any Person with an Affected Claim or a Released Claim. Save and except as set out in the CCAA Plan, the Released Parties will have no further obligation whatsoever in respect of the Affected Claims and the Released Claims, as applicable.

3.9 Guarantees and Similar Covenants

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Claim that is compromised and released under the CCAA Plan or who has any right to claim over in respect of, or to be subrogated to, the rights of any Person in respect of a Claim that is compromised under the CCAA Plan will be entitled to any greater rights as against Imperial than the Person whose Claim is compromised under the CCAA Plan.

3.10 Procedure for Sanction Hearing

3.10.1 CCAA Court Hearing regarding Procedure for Sanction Hearing

Subsequent to the Meeting, the Court-Appointed Mediator and the Monitor will report to the CCAA Court regarding the results of the vote on the CCAA Plan at the Meeting. If the CCAA Plan received the affirmative vote of the Required Majority of the Affected Creditor Class, then the Monitor will make a motion to the CCAA Court for Orders:

(a) Setting the date for the Sanction Hearing;

(b) Approving the Omnibus Sanction Hearing Notice and the Omnibus Sanction Hearing Notice Program, including the timetable for implementation of the Omnibus Sanction Hearing Notice Program;

(c) Setting the date for the filing of any Sanction Hearing Objection Notices with the Monitor which will be dealt with at the Sanction Hearing;

(d) Establishing the litigation timetable leading up to the Sanction Hearing, including the dates for the filing of motion records, factums and any reply motion materials; and

(e) Establishing the agenda and procedure for the Sanction Hearing.

3.10.2 Omnibus Sanction Hearing Notice

The form and content of the Omnibus Sanction Hearing Notice and the manner and extent of publication of such notice are subject to the approval of the CCAA Court. By no later than 5:00 p.m. (Eastern Time) on the 30th calendar day prior to the Sanction Hearing, the Monitor shall cause the Omnibus Sanction Hearing Notice to be sent in accordance with the Omnibus Sanction Hearing Notice Program:

(a) To each Person that appears on the Common Service List;

(b) To any Person known to Imperial or the Monitor as having a potential Affected Claim based on the books and records of Imperial that is not captured in any Statement of Negative Notice Claim or in any Miscellaneous Claimant Proof of Claim;

(c) To any Putative Miscellaneous Claimant who has identified itself to Imperial and/or the Monitor prior to the publication of the Omnibus Sanction Hearing Notice; and

(d) By way of general notice to any other Persons in Canada who may potentially be affected by the CCAA Plan as a Putative Miscellaneous Claimant.

The Omnibus Sanction Hearing Notice will:

(a) Include the CCAA Plan attached as a schedule;

(b) Specify the date, time and mode of hearing of the Sanction Hearing;

(c) Advise that at the Sanction Hearing the Court-Appointed Mediator and the Monitor will be seeking the granting of the Sanction Order sanctioning the CCAA Plan under the CCAA and ancillary relief relating to such sanction; and

(d) Advise that any Putative Miscellaneous Claimant who wishes to oppose the granting of the Sanction Order must serve on all Persons on the Common Service List and file with the CCAA Court a copy of the materials to be used to oppose the Sanction Order by no later than 5:00 p.m. (Eastern Time) 14 calendar days prior to the Sanction Hearing. The materials delivered by any Person desiring to oppose the granting of the Sanction Order shall specify their objection with particularity and the remedies, if any, that are sought.

3.10.3 Omnibus Sanction Hearing Notice Program

The Omnibus Sanction Hearing Notice Program is subject to the approval of the CCAA Court. It will be designed to effectively reach as many Persons across Canada as possible, including any Putative Miscellaneous Claimants, and capture their attention with notice of the Sanction Hearing communicated in clear, concise, plain language so that such Persons may fully understand their rights and options.

A pan-Canadian notice program will be implemented to widely communicate the Omnibus Sanction Hearing Notice throughout Canada using various mediums and platforms.

3.10.4 Sanction Hearing

If the CCAA Plan receives the affirmative vote of the Required Majority of the Affected Creditor Class at the Meeting in conformity with the Meeting Order and the CCAA, then the Monitor will make a motion to the CCAA Court for Orders:

(a) Approving and sanctioning the CCAA Plan and ordering the releases and injunctions necessary to implement the CCAA Plan and give effect to the settlement contemplated thereby;

(b) Authorizing and directing Imperial, the Monitor, the Claimants, the Claimants' Representatives and other Persons as applicable to take all steps and actions and to do all things necessary or appropriate to implement and give effect to the transactions contemplated by the CCAA Plan in accordance with and subject to its terms and conditions; and

(c) Granting such other relief as necessary, appropriate and the CCAA Court may allow to implement and give effect to the transactions contemplated by the CCAA Plan.

ARTICLE 4. RESTRUCTURING STEPS

4.1 Transfer of Alternative Products Business to Newco

On a date to be agreed between Imperial and the CCAA Plan Administrators, Imperial shall take actions as may be necessary or appropriate to effect the restructuring of its business by transferring its Alternative Products Business to Newco. Such actions may include: (i) the execution and

delivery of appropriate articles, agreements or other documents of incorporation, merger, amalgamation, consolidation, arrangement, continuation, restructuring or other transactions containing terms that are consistent with the terms of the CCAA Plan; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption including, where applicable, with respect to the assumption of liabilities upon the transfer or assignment of assets on terms consistent with the terms of the CCAA Plan in each case without the need to obtain any consent of any Person; (iii) the filing of appropriate articles, agreements or other documents of incorporation, merger, amalgamation, consolidation, arrangement, continuation, restructuring or other transaction with the appropriate Governmental Authorities under Applicable Laws; and (iv) all other actions that Imperial determines are necessary or appropriate to give effect to the transfer of its Alternative Products Business to Newco, including the making of filings or recordings in connection with such transactions.

The organization, incorporating documents, articles, by-laws and other constating documents of Newco (including any shareholders agreement, shareholders rights plan and classes of shares (voting and non-voting)) shall be in form and substance reasonably satisfactory to the Court-Appointed Mediator, the CCAA Plan Administrator and the Claimants.

All of the steps, terms, transactions and documents relating to the conveyance of the Alternative Products Business to Newco in accordance with the CCAA Plan shall be in form and in substance acceptable to the Court-Appointed Mediator, the CCAA Plan Administrator and the Claimants.

4.2 Restructuring Steps

At the Effective Time, the following will occur and be deemed to have occurred in the order set out below unless otherwise specified in this Article 4 and become effective without any further act or formality:

(a) Imperial shall deposit its Upfront Contribution into the Global Settlement Trust Account;

(b) The timing and details of the transfer of Imperial's Alternative Products Business to Newco are to be agreed between Imperial and the CCAA Plan Administrator;

(c) The Contribution Security Agreement and the Deed of Moveable Hypothec will become effective;

(d) The Sales and Excise Tax Charge and Directors' Charge will be terminated, discharged, expunged and released;

(e) The amount of $25.0 million shall be paid out of Imperial's Upfront Contribution and deposited into the CCAA Plan Administration Reserve Account to establish the CCAA Plan Administration Reserve;

(f) The amount of $5.0 million shall be paid out of the total Upfront Contributions from all of the Tobacco Companies and deposited into the PCC Compensation Plan Reserve Account to establish the PCC Compensation Plan Reserve;

(g) The distributions that are required to be paid to the Claimants on the Plan Implementation Date shall be paid in full as set forth in the CCAA Plan;

(h) All Affected Claims and Released Claims will be fully, finally, irrevocably and forever released, discharged, barred and enjoined in accordance with Article 3, Section 3.8 and Article 18, Sections 18.1 to 18.1.10, and all notes, certificates and other instruments evidencing Affected Claims and Released Claims (and all guarantees associated with each of the foregoing) will be deemed cancelled and extinguished and be null and void in accordance with Article 17, Section 17.9;

(i) The Claimant Contractual Release will become effective in accordance with its terms; and

(j) The Stay Period will terminate,

(collectively, the "**Restructuring Steps**"). The failure of the CCAA Plan to incorporate any provision of a document evidencing a Restructuring Step will not derogate from the enforceability of such provision.

4.3 Corporate Approvals

At the Effective Time, all corporate actions of Imperial contemplated by the CCAA Plan, including those required for the transfer of Imperial's Alternative Products Business to Newco, shall be deemed to have been authorized and approved in all respects (subject to the provisions of the CCAA Plan). All matters provided for in the CCAA Plan shall be deemed to have timely occurred, in accordance with Applicable Laws, and shall be effective, without any requirement of further action by the Affected Creditors, directors, officers, or managers of Imperial. On the Plan Implementation Date, the appropriate directors and officers of Imperial shall be authorized and directed to issue, execute and deliver the agreements, documents, securities and instruments contemplated by the CCAA Plan including with respect to the transfer of Imperial's Alternative Products Business to Newco, in the name of and on behalf thereof.

ARTICLE 5. CCAA PLAN CONSIDERATION

5.1 Global Settlement Amount

The global settlement amount under the CCAA Plan shall be **$32.5 billion** (the "**Global Settlement Amount**").

5.2 Intentionally deleted

5.3 Global Settlement Trust Account and Supplemental Trust Account

The Tobacco Companies shall deposit their respective Contributions, less applicable Reserved Amounts, into a segregated interest-bearing trust account or trust accounts ("**Global Settlement Trust Account**"). The Tobacco Companies shall deposit their respective Reserved Amounts into an interest-bearing trust account or trust accounts ("**Supplemental Trust Account**") (for greater certainty, a separate Supplemental Trust Account shall be established and maintained for each Tobacco Company). The Global Settlement Trust Account and Supplemental Trust Account shall

be held in Schedule I Chartered Banks designated by the CCAA Plan Administrators, or in a syndicate of Schedule I Chartered Banks which may include such financial institutions as may be approved and designated by the CCAA Plan Administrators ("**Bank**").

5.4 Upfront Contributions

On or before the Plan Implementation Date, each Tobacco Company shall make a cash contribution which shall be deposited into the Global Settlement Trust Account (collectively, the "**Upfront Contributions**"). The Upfront Contributions shall equal the aggregate of each Tobacco Company's cash and cash equivalents generated from all sources by each Tobacco Company as at the month end prior to the Plan Implementation Date, including all amounts pledged by the Tobacco Companies to cash collateralize any outstanding letters of credit, surety or bonding obligations to the issuers thereof, plus the Cash Security Deposits, less the sum of $750 million which shall be deducted from the aggregate amount and retained by RBH (the "**RBH Retained Amount**"). RBH shall be free to deal in its sole discretion with the RBH Retained Amount, including being free to transfer or distribute such monies outside of Canada in such manner as RBH may determine. For greater certainty, any such transfers or distributions of the RBH Retained Amount will be deemed to be a Permitted Transfer for the purposes of Article 11.

5.5 Reserved Amounts

Imperial shall make a cash payment equal to any Reserved Amounts into the Supplemental Trust Account at the times referred to in this Section 5.5. Imperial shall pay its Tax Refund Cash Payment into the Supplemental Trust Account within 30 days after its receipt of the applicable Tax Refund. If Imperial receives its Tax Refund Cash Payment in instalments, it shall pay for deposit into the Supplemental Trust Account 100% of each instalment received within 30 days after its receipt of each instalment. Imperial shall pay its respective Annual Amount into the Supplemental Trust Account on or before the 30th day following its tax filing due date for the relevant taxation year for which the Annual Contribution is made (or in the case of the final calendar year of the Contribution Period, on or before the 182nd day following the end of the Contribution Period). Imperial shall pay its respective Carry Amount into the Supplemental Trust Account within 30 days after its tax filing due date for the taxation year to which the relevant Tax Attribute is carried forward (or in the case of the final calendar year of the Contribution Period, on or before the 182nd day following the end of the Contribution Period).

For certainty and to avoid duplication, any Tax Refund Cash Payment will not be taken into account in the Metric used to compute the Annual Contributions. Reserved Amounts of Imperial shall be released from the Supplemental Trust Account in the following circumstances:

(a) in respect of Annual Amounts and Carry Amounts, consistent with the Annual Contribution percentage in respect of the relevant Annual Contributions (in the case of a Carry Amount, the Annual Contribution percentage in respect of the Annual Contribution for the tax year in which the Tax Attribute is utilized) provided for in this CCAA Plan and in the case of a Tax Refund Cash Payment, 85.0% to the Global Settlement Trust Account and 15.0% to Imperial, in each case, 30 days following the expiry of the last applicable Normal Reassessment Period (or, such earlier time as determined by Imperial with the concurrence of the CCAA Plan Administrator, acting reasonably) in respect of the relevant taxation year of Imperial

to which the Reserved Amount relates, being (i) in the case of an Annual Amount, the taxation year in which the relevant Annual Contribution is deducted in computing income for tax purposes, (ii) in the case of a Tax Refund Cash Payment, the taxation year to which the relevant Tax Refund relates and (iii) in the case of a Carry Amount, the taxation year to which the relevant Tax Attribute has been carried forward;

(b) to a relevant Tax Authority on account of a notice of assessment or reassessment of Taxes (including any related assessed interest or penalties) related to a Tax Matter of Imperial issued by a Tax Authority with the concurrence of the CCAA Plan Administrator (such concurrence not to be unreasonably withheld). Any amounts released to a Tax Authority on behalf of Imperial shall be excluded from the Contributions made by Imperial at any time. For greater certainty, should there be a dispute regarding a notice of assessment or reassessment of Taxes, interest or penalties, the CCAA Plan Administrator, at the request of Imperial, shall transfer the amount requested by Imperial (not exceeding 100% of any Taxes, interest and penalties assessed) to the relevant Tax Authority pending final resolution of the dispute; or

(c) to Imperial, following termination of the Contribution Period with the concurrence of the CCAA Plan Administrator (such concurrence not to be unreasonably withheld).

5.6 Annual Contributions

On or before the July 30th following each calendar year during the Contribution Period (or in the case of the final calendar year of the Contribution Period, on or before the 182nd day following the end of the Contribution Period), Imperial shall deposit into the Global Settlement Trust Account or the Supplemental Trust Account, as applicable, payments calculated in accordance with the Metric (collectively, the "**Annual Contributions**"), until such time as the total Contributions, in the aggregate, equal the Global Settlement Amount.

The CCAA Plan provides that net after-tax income is used in the calculation of the Annual Contributions in accordance with a metric ("**Metric**"). The Metric is the method by which, on an annual basis, the profits of the operating business of Imperial and any additional realization of assets are calculated, excluding the Alternative Products Business to be carved out in accordance with Section 5.7 ("**Net After-Tax Income")**. For greater certainty, the Metric will:

(a) Be based on the amount generated from all sources by Imperial, excluding Alternative Products;

(b) Include interest income;

(c) Include the proceeds of any disposition of any assets, including capital assets and intangible assets;

(d) Exclude one-time accounting adjustments that are non-operational in nature;

(e) Exclude one-time restructuring and global settlement related adjustments that are non-operational in nature (for greater certainty, this includes the recognition of any global settlement liability and/or associated expense of that liability). Subparagraph (e) is not

intended to exclude cash expenses associated with CCAA Plan implementation including: (i) the Costs for the services of the CCAA Plan Administrators; (ii) the Costs for the services of the Claims Administrator (both as administrator and agent) in respect of the administration of the PCC Compensation Plan; (iii) the Costs for the services of the Administrative Coordinator; and (iv) the Costs for the services of the PCC Representative Counsel;

(f) Exclude interest expense to related parties; and

(g) Exclude any penalties and fines imposed by taxing and/or regulatory authorities.

The Annual Contributions required to be made for deposit into the Global Settlement Trust Account by Imperial for each year during the Contribution Period shall be calculated as follows:

(a) In years 1-5 (adjusted to take into account any stub period as appropriate, including eliminating the portion of the first year that occurs prior to the Plan Implementation Date) following the Plan Implementation Date, **85.0%** of the amount calculated pursuant to the Metric;

(b) In years 6-10 following the Plan Implementation Date, **80.0%** of the amount calculated pursuant to the Metric;

(c) In years 11-15 following the Plan Implementation Date, **75.0%** of the amount calculated pursuant to the Metric; and

(d) In year 16 following the Plan Implementation Date, **70.0%** of the amount calculated pursuant to the Metric, and continuing thereafter until the aggregate of the Contributions totals the Global Settlement Amount.

For greater certainty, the percentage of the Annual Contributions payable by Imperial shall commence at 85.0% in years 1-5 (adjusted to take into account any stub period as applicable) following the Plan Implementation Date and, thereafter, shall be reduced in 5.0% increments every five years until the percentage reaches 70.0% in year 16, and shall continue fixed at 70.0% thereafter until such time as the Global Settlement Amount has been paid in full. Notwithstanding the foregoing and without limiting the Claimants' rights in respect of an Event of Default, Imperial shall only be permitted to reduce the percentage of the Annual Contributions by the next 5% increment provided that Imperial has made all of the payments of Annual Contributions due and owing for all prior periods.

The Annual Contributions to be made by Imperial for the first and final calendar years of the Contribution Period shall be pro-rated to ensure that the Global Settlement Amount is not exceeded.

5.7 Exclusion of Alternative Products from Metric

All revenues from Alternative Products and all proceeds from any disposition of any assets related to the Alternative Products shall be excluded from the Metric, and all capital expenditures, fees, costs, disbursements, indebtedness, liabilities, expenses and other expenditures of any kind

whatsoever, irrespective of whether they are made in the Ordinary Course of Business, that are made in respect of or relating to any Alternative Products shall be excluded from the Metric and shall not be charged against the revenue from Tobacco Products. Within sixty days before the Plan Implementation Date, Imperial shall provide to the CCAA Plan Administrators a list of all its Tobacco Products that shall be included in the Metric and a list of all its Alternative Products that shall be excluded from the Metric.

5.8 Contribution Period

The Tobacco Companies shall only be required to pay Annual Contributions and Reserved Amounts into the Global Settlement Trust Account and Supplemental Trust Account during the period from the Plan Implementation Date to the date that the aggregate amount of the Contributions paid into the Global Settlement Trust Account equals the Global Settlement Amount (the "**Contribution Period**"), and upon payment of the Global Settlement Amount in full, the Tobacco Companies' obligations in respect of the CCAA Plan shall terminate. For greater certainty, the Contribution Period shall include the period of time during which any debt collection or other enforcement proceedings are pursued by any of the Claimants.

5.9 Several Liability

The obligations of the Tobacco Companies under their CCAA Plans to pay their respective Upfront Contributions, Annual Contributions and Reserved Amounts for deposit into the Global Settlement Trust Account and Supplemental Trust Account, shall be several and not joint and several.

5.10 No Admission of Liability

Nothing in the CCAA Plan or in any other Definitive Document is or shall be deemed to be an admission of fact or liability of any kind by any member of the Tobacco Company Group.

5.11 Retention/Transfer of Cash

During the Contribution Period, in each year until the end of the Contribution Period, Imperial shall retain its cash, cash equivalents and investments in Canada until such time as the Annual Contribution and Reserved Amounts owing in respect of that fiscal year have been deposited into the Global Settlement Trust Account or Supplemental Trust Account. Each year, after such deposit has been made in respect of that year, and provided that the amounts of the Annual Contribution and Reserved Amounts are not in dispute between the Parties, Imperial shall be free to deal in its sole discretion with its respective share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to Imperial that remain with Imperial, including being free to transfer or distribute such monies outside of Canada in such manner as Imperial may determine. Notwithstanding the foregoing, in the event that there is a dispute regarding the amount of Imperial's share of the Annual Contributions and/or the relevant Reserved Amounts:

(a) Imperial shall preserve and retain in Canada the amount that is in dispute out of its share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to Imperial in respect of that year until such time as such dispute is fully and finally resolved and the balance of the Annual Contribution and any relevant Reserved Amounts, if any, determined to be owing by Imperial to the Claimants has been deposited

in full into the Global Settlement Trust Account and Supplemental Trust Account, as applicable, or as otherwise ordered by the CCAA Court; and

(b) Imperial shall be required to deposit into the Global Settlement Trust Account and the Supplemental Trust Account, as applicable, the amount of the Annual Contribution and/or Reserved Amounts, as applicable, that Imperial does not dispute is due and payable by it. After the dispute has been fully and finally resolved, Imperial shall be free to deal in its sole discretion with the balance remaining of its respective share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to Imperial, including being free to transfer or distribute such monies outside of Canada in such manner as Imperial may determine.

Provided that it is not alleged that RBH and JTIM are in any way implicated or involved in, or responsible for, the dispute regarding the amount of Imperial's share of the Annual Contributions and/or the amount of Imperial's Reserved Amounts, RBH and JTIM shall be free to deal in their sole discretion with their respective shares of the Net After-Tax Income and amounts released from the Supplemental Trust Account to RBH and/or JTIM that remain with RBH and JTIM, as applicable, including being free to transfer or distribute such monies outside of Canada in such manner as RBH and JTIM may determine.

5.12 Transparency of Payments by Tobacco Companies

The amounts of all Contributions and Reserved Amounts paid by Imperial pursuant to the terms of the CCAA Plan shall be fully disclosed to the Provinces and Territories and counsel for any Impacted Claimants, pursuant to and in accordance with the CCAA Plan Administrators' Order, to enable the Provinces and Territories and any Impacted Claimants to verify that the Contributions and Reserved Amounts have been calculated accurately in accordance with the Metric and all other applicable terms of the Definitive Documents. For greater certainty, the Tobacco Companies shall not merge their Contributions and Reserved Amounts and then blindly deposit them into the Global Settlement Trust Account.

5.13 Contribution Security

At least 10 Business Days prior to the Plan Implementation Date, Imperial and its Material Subsidiaries shall enter into an agreement ("**Contribution Security Agreement**") granting security, including a Deed of Moveable Hypothec, to the Collateral Agent for the exclusive benefit of the Claimants over all of its present and after acquired assets, undertakings and properties and otherwise as may be agreed, to secure the obligations of Imperial to make the Annual Contributions and Reserved Amounts (the "**Contribution Security**"). Recourse to the Contribution Security shall only be available upon the occurrence of an Event of Default which is not cured pursuant to Article 12, Section 12.3. The Collateral Agent shall have no rights to enforce the Contribution Security in the event of the occurrence of a Breach. The Contribution Security Agreement is attached to the CCAA Plan as Schedule "E", and the Deed of Moveable Hypothec as Schedule "F".

The Collateral Agent, to be engaged, shall agree pursuant to the terms of an intercreditor agreement on market terms to be agreed, to subordinate the Contribution Security to (i) any statutory deemed

trusts; and (ii) any security granted (or to be granted) by Imperial to any lender in connection with an operating facility on market terms with a principal amount that does not exceed an amount to be agreed in respect of Imperial.

Subject to the terms of an NDA entered into between Imperial and the Claimants, Imperial shall provide to the Claimants the full particulars regarding the assets, undertakings and properties over which Imperial and its Material Subsidiaries shall grant security.

5.14 Parent and Tobacco Company Group Support through Intercompany Transactions

During the Contribution Period, Imperial's Parent and the relevant Affiliates within its Tobacco Company Group shall continue to provide to Imperial and its Subsidiaries shared services and other operational support ("**Intercompany Services**") pursuant to the Intercompany Transactions that are in place on the Plan Implementation Date, or new Intercompany Services that are part of a broader operational restructuring among Imperial's Tobacco Company Group. The provision of such Intercompany Services shall be (a) consistent with existing arrangements or past practice, or as otherwise approved by the CCAA Plan Administrators, and (b) in compliance with Applicable Law and subject to the Tobacco Company Group's transfer pricing policies across global markets, and (c) subject to normal course market adjustments. Any adjustments to Intercompany Services within Imperial's Tobacco Company Group shall not affect Imperial in a manner that is materially less favourable as compared to the terms on which similar Intercompany Services are provided to any other members of Imperial's Tobacco Company Group. The chief financial officer of Imperial shall certify that any adjustments to the Intercompany Services are consistent with the treatment of the other companies within the Tobacco Company Group. Any such certification shall not give rise to any personal liability on the part of the applicable certifying officer.

Imperial, its Parent and the relevant Affiliates within its Tobacco Company Group shall:

(a) maintain and not make any revision to or variation of the terms of any Intercompany Transaction, including the withdrawal, termination or cessation of the Intercompany Transaction; and

(b) shall maintain and not make any material change to its related party Canadian trademark and other intellectual property licensing arrangements, together with the structure and pricing methodology currently used for carrying on business in Canada,

except in compliance with the requirements set out in this Section 5.14.

In the event that Imperial is no longer Financially Viable due to circumstances beyond the control of Imperial or its Tobacco Company Group, Imperial's Parent may give the CCAA Plan Administrators, the Provinces and Territories, the Impacted Claimants and the other Tobacco Companies one year's notice of its intention to discontinue its Canadian operations. If the CCAA Plan Administrators are satisfied, based on the financial information made available to them by Imperial pursuant to the CCAA Plan, that Imperial is no longer Financially Viable due to circumstances beyond the control of Imperial or its Tobacco Company Group, then they will communicate such position to the Provinces and Territories and the Impacted Claimants. If each of the Provinces and Territories and the Impacted Claimants accept such position, then Imperial's

Parent may discontinue the provision of shared services and other operational support on the date that the discontinuance takes effect.

The foregoing does not negate the prohibition against Imperial's Parent and relevant Affiliates within its Tobacco Company Group entering the market for Tobacco Products in Canada with any other company or entity in place of the discontinued business, or any other provision in the CCAA Plan except for the obligation to provide shared services and other operational support. For greater certainty, except through Imperial and its Material Subsidiary, Imperial's Parent and the relevant Affiliates within its Tobacco Company Group shall not directly or indirectly, including by (i) exporting or supplying Tobacco Products to Canada, (ii) licensing technology, trademarks and intellectual property, or (iii) providing services, engage in any business activity or have any direct or indirect involvement or participation in the market for Tobacco Products in Canada.

In the event that the CCAA Plan Administrators, the Provinces and Territories, the Impacted Claimants or other Tobacco Companies do not accept the position of Imperial and its Parent regarding the Financial Viability of Imperial's Canadian operation, Imperial and its Parent may bring the issue before the CCAA Court for determination.

5.15 Payment of Intercompany Claims

Any Intercompany Claim outstanding and due by Imperial as at the Effective Time may only be repaid by Imperial from its share of the Net After-Tax Income and amounts released from the Supplemental Trust Account, as applicable, that will remain with Imperial in each year after its Annual Contribution and any Reserved Amounts have been deposited into the Global Settlement Trust Account or Supplemental Trust Account, as applicable, the whole subject, however, to the terms of Article 5, Section 5.11 that govern the retention of its share of funds in the event that the amount of the Annual Contribution or Reserved Amount is in dispute.

ARTICLE 6. ADMINISTRATION OF THE GLOBAL SETTLEMENT AMOUNT

6.1 Allocation of the Global Settlement Amount

Set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein are the terms that will govern the allocation of the Global Settlement Amount and the timing of the distributions thereof to the:

(a) Quebec Class Action Plaintiffs;

(b) Pan-Canadian Claimants;

(c) Provinces and Territories;

(d) Cy-près Foundation;

(e) Tobacco Producers; and

(f) *Knight* Class Action Plaintiffs.

6.2 Expert Evidence supporting Provincial HCCR Claims and Territorial HCCR Claims and Provincial and Territorial Allocation

Expert evidence informing, in part, and supporting the quantification of the Provincial HCCR Claims and the Territorial HCCR Claims, and the allocation of the Provinces and Territories Settlement Amount among the Provinces and Territories, includes the Harrison Report that is attached to this Plan as Schedule "G". Dr. Harrison's curriculum vitae is attached to the CCAA Plan as Schedule "H". The Provinces and Territories Settlement Amount shall be apportioned among the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

6.3 Expert Evidence supporting the Pan-Canadian Claimants' Compensation Plan

Expert evidence informing, in part, and supporting the development, formulation and quantification of the PCC Compensation Plan includes the Jha Report that is attached to this Plan as Schedule "I". Dr. Jha's curriculum vitae is attached to the CCAA Plan as Schedule "J".

6.4 Consideration for Settlement of *Knight* Class Action

The consideration for the settlement of the *Knight* Class Action shall be the contribution to the Cy-près Fund and the payment of the *Knight* Class Counsel Fee.

6.5 Investment of Contributions and Reserved Amounts pending Disbursement

The Contributions and Reserved Amounts paid into the Global Settlement Trust Account and Supplemental Trust Account, PCC Trust Account, QCAP Trust Account and Cy-près Trust Account, as well as the monies deposited into the Miscellaneous Claims Fund, CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account, shall be invested in accordance with approved investment guidelines, pending disbursement to the Claimants and any other applicable payees.

ARTICLE 7. ESTABLISHMENT AND ADMINISTRATION OF QUEBEC CLASS ACTION ADMINISTRATION PLAN

7.1 Purpose of the Quebec Administration Plan

The Quebec Administration Plan will provide direct compensation in the form of monetary payments to QCAPs who meet the criteria to qualify as *Blais* Class Members pursuant to the judgments in the Quebec Class Actions. The Quebec Administration Plan is attached to the CCAA Plan as Schedule "K".

The Court-Appointed Mediator and the Monitors recommend that Epiq be approved by the CCAA Court for appointment as the Claims Administrator to manage the administration of the claims processes for both the Quebec Administration Plan and the PCC Compensation Plan. Attached to the CCAA Plan as Schedule "L" is an overview of Epiq's complex claims administration experience, an eleven page list of Epiq's legal administration projects, a description of Epiq's Tobacco Claims Pre-Settlement Support Program, and the resumes of the key professional

management personnel who will be assigned to the administration of the Quebec Administration Plan and the PCC Compensation Plan.

The Court-Appointed Mediator and the Monitors recommend that Daniel Shapiro, K.C. be approved for appointment as the Administrative Coordinator in respect of the administration of both the Quebec Administration Plan and the PCC Compensation Plan. Mr. Shapiro's curriculum vitae is attached to the CCAA Plan as Schedule "M".

The following table summarizes the compensation available to Eligible *Blais* Class Members under the Quebec Administration Plan:

Quebec Class Action Administration Plan		
Column 1 **Compensable Disease**	**Compensation 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 Payment for Eligible *Blais* Class Members who started to smoke before January 1, 1976**	**Column 3** **Compensation Payment for Eligible *Blais* Class Members who started to smoke on or after January 1, 1976 (80% of Column 2)**
Lung Cancer	$100,000	$80,000
Throat Cancer	$100,000	$80,000
Emphysema/COPD (GOLD Grade III or IV)	$30,000	$24,000

7.2 Quebec Administration Plan is subject to the Approval of the CCAA Court

The CCAA Court shall hear and determine the proceedings relating to the approval of the Quebec Administration Plan, including the approval of the retainer agreement respecting fees and disbursements between the Quebec Class Counsel and the representative plaintiffs in the Quebec Class Actions, and the approval of the Quebec Class Counsel Fee.

Matters relating to the ongoing supervision of the Quebec Administration Plan shall be heard and determined jointly by the CCAA Court and the Quebec Superior Court. In performing this function, the CCAA Court and the Quebec Superior Court may communicate with one another in accordance with a protocol to be worked out and established by them.

No changes, modifications or revisions shall be made to the Quebec Administration Plan without the joint approval of the CCAA Court and the Quebec Superior Court as set out in an Order issued by the CCAA Court.

7.3 Release of Cash Security Deposits

The Cash Security Deposits, which form part of the Upfront Contributions, shall be released from suretyship prior to the Plan Implementation Date and shall be deposited into the Global Settlement Trust Account.

7.4 QCAP Trust Account

The QCAP Settlement Amount, less the QCAP Cy-près Contribution, shall be paid from the Global Settlement Trust Account and deposited into the QCAP Trust Account for the benefit of the *Blais* Class Members.

From time to time, upon the submission of a requisition by the Claims Administrator, the CCAA Plan Administrators shall authorize the advancement of instalments of funds from the QCAP Trust Account to the Claims Administrator's trust account designated for the Quebec Administration Plan, which shall be held in the Bank for the benefit of the *Blais* Class Members, to enable the Claims Administrator to make Compensation Payments to Eligible *Blais* Class Members.

7.5 Payment of QCAP Cy-près Contribution to Cy-près Trust Account

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 constituting the indirect benefit to the *Létourneau* Class Members. 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.

7.6 No Solicitation of *Blais* Class Members

No Persons other than the Quebec Class Counsel, their agent Raymond Chabot, the Claims Administrator, or any Person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit *Blais* Class Members in order to assist them with the preparation or submission of their Proofs of Claim under the Quebec Administration Plan.

ARTICLE 8. ESTABLISHMENT AND ADMINISTRATION OF PAN-CANADIAN CLAIMANTS' COMPENSATION PLAN

8.1 Purpose of the PCC Compensation Plan

The Pan-Canadian Claimants' Compensation Plan ("**PCC Compensation Plan**") will provide direct compensation in the form of monetary payments to PCCs who fulfill all of the following criteria ("**PCC Eligibility Criteria**"):

(a) On the date that a PCC submits their claim to the PCC Compensation Plan:

  (i) If the PCC is alive, they must reside in a Province or Territory in Canada, or

(ii) If the PCC is deceased, they must have resided in a Province or Territory in Canada on the date of their death;

(b) The PCC was alive on March 8, 2019;

(c) Between January 1, 1950 and November 20, 1998, the PCC smoked a minimum of Twelve Pack-Years of cigarettes sold by the Tobacco Companies;

(d) Between March 8, 2015 and March 8, 2019 ("**PCC Claims Period**"), the PCC was diagnosed with:

(i) Primary lung cancer ("**Lung Cancer**"),

(ii) Primary cancer (squamous cell carcinoma) of the Larynx, Oropharynx or Hypopharynx ("**Throat Cancer**"), or

(iii) Chronic obstructive pulmonary disease (GOLD Grade III or IV only) (collectively, the "**PCC Compensable Diseases**"); and

(e) On the date of the diagnosis with a PCC Compensable Disease the PCC resided in a Province or Territory in Canada.

The following table summarizes the compensation which will be 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 following documents are attached as Schedules to the CCAA Plan:

(a) The document entitled "Pan-Canadian Claimants' Compensation Plan: Methodology and Analysis" dated December 5, 2024 is attached to the CCAA Plan as Schedule "N";

(b) The Jha Report is attached to the CCAA Plan as Schedule "I"; and

(c) The Analysis of Limitations Law applicable to Pan-Canadian Claimants dated September 2, 2020 is attached to the CCAA Plan as Schedule "O".

8.2 PCC Compensation Plan

The CCAA Court shall hear and determine the proceedings relating to the approval of the PCC Compensation Plan. The PCC Compensation Plan is attached to the CCAA Plan as Schedule "P". The Court-Appointed Mediator and the Monitors recommend that Epiq be approved by the CCAA Court for appointment as the Claims Administrator to manage the administration of the claims processes for both the Quebec Administration Plan and the PCC Compensation Plan.

Matters relating to the ongoing supervision of the PCC Compensation Plan shall be heard and determined solely by the CCAA Court.

8.3 PCC Trust Account

The PCC Compensation Plan Amount shall be paid from the Global Settlement Trust Account and deposited into a segregated interest-bearing trust account or trust accounts ("**PCC Trust Account**") held in the Bank for the benefit of the Pan-Canadian Claimants.

From time to time, upon the submission of a requisition by the Claims Administrator, the CCAA Plan Administrators shall authorize the advancement of instalments of funds from the PCC Trust Account to the Claims Administrator's trust account designated for the PCC Compensation Plan, which shall be held in the Bank for the benefit of the Pan-Canadian Claimants, to enable the Claims Administrator to make Individual Payments to Eligible Pan-Canadian Claimants.

8.4 No Solicitation of Pan-Canadian Claimants

No Persons other than the PCC Representative Counsel, their agent Epiq, the Claims Administrator, or any Person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit Pan-Canadian Claimants in order to assist them with the preparation or submission of their PCC Claim Packages under the PCC Compensation Plan.

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 Tobacco Products who have not yet or may never develop a tobacco-related harm.

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 tobacco-related diseases. The Cy-près Foundation will indirectly benefit users of Tobacco Products and their affected family members or estates who are <u>not</u> directly compensated through the Quebec Administration Plan or PCC Compensation Plan. The smokers who <u>are</u> 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 tobacco 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 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 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.

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 and is not reviewable once it has received approval by the CCAA Court.

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 the present structure for diagnosis, treatment and palliation of Persons suffering from tobacco-related cancers, Emphysema/COPD and other tobacco-related harms.

- 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, 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 diseases, 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 (in the period after the Sanction Hearing and prior to Final Approval of the Cy-près Foundation)

The establishment of the Cy-près Foundation will take place in two phases as set forth herein: the first occurring at the Sanction Hearing, and the second occurring at the hearing for the final approval by the CCAA Court of the Cy-près Foundation, so as to permit the finalization of the administrative aspects of the 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, including the Chair, 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 CCAA Plan Administrators 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.

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 CCAA Plan Administrators 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 CCAA Plan Administrators shall supply reports to the CCAA Court affirming the foregoing.

9.5 Appointment of Board of Directors and Chair of Cy-près Foundation (in the period after the Sanction Hearing and prior to Final Approval of the 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, including the Chair, to the Foundation Board shall be ratified by the CCAA Plan Administrators and be subject to the approval of the CCAA Court. 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 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;

(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.

The CCAA Plan Administrators shall be empowered to retain the services of such experts as they deem necessary to advise them in regard to the foregoing and in respect of any and all endeavours in connection with the establishment and operation of the Cy-près Foundation.

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.

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 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. 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.

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.

ARTICLE 10. INFORMATION TO BE PROVIDED DURING THE CONTRIBUTION PERIOD

10.1 Annual Business Plans

Notwithstanding any terms or conditions of any Definitive Documents, Imperial and any members of its Tobacco Company Group, as applicable, shall comply with all their obligations pursuant to Article 10 herein. On an annual basis during the Contribution Period, Imperial shall provide to the CCAA Plan Administrator a rolling five-year operating and capital business plan approved by Imperial's Canada leadership team (the "**Business Plan**") that shall be consistent with the Definitive Documents and, without limitation, shall include the following:

(a) The same schedules and level of detail as Imperial has provided to the Claimants during the pendency of the CCAA Proceedings including, for greater certainty, five-year projections for Imperial's income statement, balance sheet, cash flow statement, gross margin schedule, total margin schedule, Intercompany Transaction details, taxes and government levies schedule, operating costs schedule, statement of financial position, and summary of assumptions and trends, and, until such time as Imperial shall have transferred all of its assets, Indebtedness, liabilities and business relating to its current and future Alternative Products to an unrelated company, a Canadian Affiliate of its Parent, or a Canadian Subsidiary of any other company within its Tobacco Company Group pursuant to Article 4, Section 4.1 herein, the particulars of the determination of the net income attributable to the Alternative Products;

(b) Imperial's plans to make capital expenditures ("**CapEx**") that:

  (i) Are reasonably necessary for the preservation of its assets, undertakings and properties or its business (including payments on account of insurance, maintenance and security services),

  (ii) Are reasonably necessary to replace or supplement its assets, undertakings or properties, or

  (iii) Are otherwise of benefit to the business; and

(c) The framework, elements and pricing of the intercompany charges for the Intercompany Services which the Parent and relevant Affiliates of Imperial shall continue to provide to Imperial through Intercompany Transactions, subject to the provisions of the CCAA Plan and in accordance with the Definitive Documents.

The CCAA Plan Administrator shall review the Business Plan for Imperial on an annual basis, and may suggest non-binding revisions or amendments to Imperial. The CCAA Plan Administrator may advise the Provinces, Territories and any Impacted Claimants of such suggestions. The suggestions of the CCAA Plan Administrator shall be considered in good faith by Imperial.

10.2 Quarterly and Annual Information

10.2.1 Annual Financial Information

On or before the 90th day following the end of each fiscal year during the Contribution Period, Imperial shall provide the CCAA Plan Administrator with the following financial information:

(a) An audited financial statement ("**Annual Financial Statement**");

(b) A schedule providing the particulars by Affiliate of all receipts and disbursements in respect of all of Imperial's Intercompany Transactions;

(c) A report that identifies and discusses the differences between Imperial's financial performance forecast in its Business Plan and its actual financial performance in each fiscal year during the Contribution Period; and

(d) All other relevant assumptions, details and schedules that support the Annual Financial Statement.

10.2.2 Information to be provided by Imperial in Annual MD&A

The Business Plan which Imperial shall provide annually during the Contribution Period to the CCAA Plan Administrator shall be accompanied by a management discussion and analysis ("**MD&A**") which includes disclosure of information regarding the following matters that is of a similar level of disclosure as in the CCAA Proceedings to enable the CCAA Plan Administrator and the Claimants to understand and assess the impact on and associated risk to Imperial's performance of its obligations under the Definitive Documents:

(a) **Transfer Pricing Arrangements** - Any plan to change any of Imperial's existing intercompany transfer pricing arrangements;

(b) **Intercompany Transaction Changes** - Any plan to enter into a new Intercompany Transaction or amend the terms of an existing Intercompany Transaction which may only be undertaken in compliance with the requirements set out in Article 5, Section 5.14 herein;

(c) **Intercompany Transaction Terminations** - Any plan to not renew, not extend or otherwise terminate an Intercompany Transaction;

(d) **Change in Location** - Any plan to move Imperial's head office or other premises and/or terminate any lease of the premises housing such offices;

(e) **Disposition of Assets** - Any plan to dispose of and/or transfer material assets exceeding $5 million in any one transaction or $10 million in the aggregate, including manufacturing equipment, trademarks, intellectual property and any other intangible assets, that are material to Imperial's conduct of its Ordinary Course of Business;

(f) **Termination of Employees** - Any plan to terminate an operationally significant number of employees of Imperial;

(g) **Change in Executive Management Team -** Any planned or anticipated changes to Imperial's executive management team in regard to both complement and personnel;

(h) **CapEx** - Imperial's CapEx budget, including any plans to make material capital expenditures and dispose of and/or transfer assets;

(i) **Cash Security Arrangements -** Any planned new cash security arrangements or other treasury arrangements, or planned amendments to cash security arrangements or treasury arrangements including: the use of concentration accounts, cash sweeps, increased or new escrow, and deposit or pledged asset requirements;

(j) **Cash Commitments** - Any planned new or amended cash commitments or deposits required that are in excess of $10 million in the aggregate, whether occurring in any one situation, or series of related situations, or series of related transactions;

(k) **Financing Arrangements -** Any planned new or amended financing arrangements into which Imperial proposes to enter, that are in excess of $10 million in the aggregate, whether occurring in any one situation, or series of related situations, or series of related transactions, including full particulars regarding the anticipated security and financing costs;

(l) **Material Change in Business Operations -** Any plans to permanently or temporarily cease, downsize or shutdown any businesses or operations carried on by Imperial, or make any other material changes in Imperial's business or operations (other than in respect of Alternative Products);

(m) **Taxes** – All notices of assessment or reassessment in respect of any taxation year ending during the Contribution Period. Any rulings and any other written communications issued by a Tax Authority relating to the deductibility of the Upfront Contributions, Annual Contributions or Reserved Amounts for income tax purposes, the receipt of Reserved Amounts, or the availability, deductibility, carryforward or carryback of a Tax Attribute (any of which, a "**Tax Matter**");

(n) **Claims and Litigation** – All notices received by Imperial regarding claims or potential claims that may be brought against it, and copies of all originating processes commenced against Imperial;

(o) **Settlements** – All amounts paid to settle claims made and actions commenced against Imperial and whether such payments were made in whole or in part by Imperial's insurer(s); and

(p) **Penalties and Fines** – All penalties and fines, and any interest charged thereon, levied against Imperial by a Governmental Authority.

10.2.3 Information to be provided by Imperial in Quarterly MD&A

Quarterly during the Contribution Period, Imperial shall provide to the CCAA Plan Administrator:

(a) Financial statements which include the same schedules and level of detail as Imperial has provided to the Claimants during the pendency of the CCAA Proceedings including, for greater certainty, income statement, balance sheet, statement of profit and loss, cash flow statement, statement of Tobacco Product shipment volumes by brand, gross margin schedule, total margin schedule, Intercompany Transaction details, Taxes and government levies schedule, operating costs schedule, statement of financial position, and summary of assumptions and trends, and the particulars of the determination of the net income attributable to the Alternative Products; and

(b) An accompanying MD&A which includes disclosure of any new information or updates relating to the matters enumerated in Article 10, Section 10.2.2(a) through Article 10, Section 10.2.2(p) herein that is sufficiently detailed to enable the CCAA Plan Administrator and the Claimants to understand and assess the impact on and associated risk to Imperial's performance of its obligations under the Definitive Documents.

10.3 Other Information to be provided by Imperial

During the Contribution Period, within ten days of receipt of any communication from a Tax Authority relating to a Tax Matter, Imperial shall provide copies of same to the CCAA Plan Administrators. During the Contribution Period, Imperial shall also provide sufficiently detailed information and supporting data to the CCAA Plan Administrator in response to *ad hoc* requests which may be made from time to time in connection with the information produced by Imperial pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3 and 10.8 herein.

10.4 Access to Imperial's Management

During the Contribution Period, Imperial shall provide the CCAA Plan Administrators with reasonable access to its key management personnel to answer any reasonable questions they may have arising from or in connection with the financial records and information 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. The key management personnel of Imperial shall attend quarterly meetings and any meetings scheduled *ad hoc* with the CCAA Plan Administrators.

10.5 Procedure for Provinces and Territories to request Information from Imperial

If, in connection with the interpretation, implementation, application, compliance with, enforcement of, or alleged breach or violation of any terms of any of the Definitive Documents, a Province or Territory wishes to make a request for financial records or other data and information ("**Information Request**") to Imperial, the following procedure shall be followed:

(a) An Information Request from any public servant of, or financial, legal or other advisor to, a Province or Territory shall be delivered to the PTLC Member for the requesting Province or Territory. The Information Request shall be in writing and sufficiently particularized;

(b) The PTLC Member for the requesting Province or Territory shall submit the written Information Request to the PTLC Chair;

(c) The PTLC Chair shall review each Information Request received and, if necessary, confer with the requesting PTLC Member to clarify the particulars of the information sought, remove any duplication with other Information Requests received from other PTLC Members, and then prepare a final written Information Request ("**Final Information Request**"). Notwithstanding the foregoing responsibility, the PTLC Chair may, in their discretion, decline to send to the CCAA Plan Administrator an Information Request which, in the reasonable view of the PTLC Chair, is unreasonable, unnecessary, overly broad or imprecise. If the PTLC Chair declines to send an Information Request to the CCAA Plan Administrator, the PTLC Chair shall advise the requesting PTLC Member in writing of the reason for such decision;

(d) If the Information Request has not been declined, the PTLC Chair shall submit the Final Information Request to the CCAA Plan Administrator, and provide all PTLC Members and any Impacted Claimants with a copy of the Final Information Request;

(e) The CCAA Plan Administrator shall review and then may submit the Final Information Request to Imperial. Notwithstanding the foregoing responsibility, the CCAA Plan Administrator may, in its discretion, suggest revisions, add comments or decline to send to Imperial a Final Information Request which, in the reasonable view of the CCAA Plan Administrator, is unreasonable, unnecessary, overly broad or imprecise. If the CCAA Plan Administrator declines to send a Final Information Request to Imperial, the CCAA Plan Administrator shall advise the PTLC Chair in writing of the reason for such decision. In that event:

(i) The PTLC Chair may reconsider whether to revise or withdraw the Final Information Request; or

(ii) The PTLC Chair may require the CCAA Plan Administrator to provide Imperial with a copy of the Final Information Request, in which case the written reasons for the CCAA Plan Administrator's view that the Final Information Request is improper or irrelevant shall also be submitted to Imperial.

All Final Information Requests that are submitted to Imperial and any written comments or written reasons of the CCAA Plan Administrator shall be admissible in evidence in any arbitration or proceeding in the CCAA Court;

(f) Imperial shall provide to the CCAA Plan Administrator data, information and any documents responsive to the Final Information Request which the CCAA Plan Administrators shall use to prepare a written response to the Final Information Request. The CCAA Plan Administrator shall deposit the written response and any documents received from Imperial in the Virtual Data Room for Imperial, and then notify the PTLC Chair and any Impacted Claimants of such deposit;

(g) The PTLC Chair shall notify the PTLC Members that the written response and any documents responsive to the Final Information Request have been deposited into Imperial's Virtual Data Room; and

(h) The PTLC Chair, any Impacted Claimants or the CCAA Plan Administrator may request an *ad hoc* Interface Meeting to discuss Imperial's response to the Final Information Request.

Under no circumstances shall a PTLC Member, other public servant of, or a financial, legal or other advisor to, any Province or Territory contact Imperial or a member of Imperial's Tobacco Company Group directly to make an Information Request and thereby bypass the PTLC Chair or the CCAA Plan Administrator.

10.6 Procedure for Impacted Claimants to request Information from Imperial

If an Impacted Claimant wishes to make an Information Request to Imperial, the following procedure shall be followed:

(a) An Information Request from an Impacted Claimant, or its financial, legal or other advisor, shall be in writing, sufficiently particularized and not duplicate any Final Information Requests from the Provinces and Territories which have been provided to the Impacted Claimant by the PTLC Chair;

(b) The Impacted Claimant shall submit its Information Request to the CCAA Plan Administrator with a copy to the PTLC Chair;

(c) The PTLC Chair shall provide a copy of the Impacted Claimant's Information Request to all PTLC Members;

(d) The CCAA Plan Administrator shall review and then may submit the Impacted Claimant's Information Request to Imperial. Notwithstanding the foregoing responsibility, the CCAA Plan Administrator may, in its discretion, suggest revisions, add comments or decline to send to Imperial an Information Request which, in the reasonable view of the CCAA Plan Administrator, is unreasonable, unnecessary, overly broad or imprecise. If the CCAA Plan Administrator declines to send an Information Request to Imperial, the CCAA Plan Administrator shall advise the Impacted Claimant of the reason for such decision. In that event:

(i) The Impacted Claimant may reconsider whether to revise or withdraw its Information Request; or

(ii) The Impacted Claimant may require the CCAA Plan Administrator to provide Imperial with a copy of its Information Request, in which case the written reasons for the CCAA Plan Administrator's view that the Information Request is unreasonable, unnecessary, overly broad or imprecise shall also be submitted to Imperial.

All Information Requests of an Impacted Claimant that are submitted to Imperial and any written comments or written reasons of the CCAA Plan Administrator shall be admissible in evidence in any arbitration or proceeding in the CCAA Court;

(e) Imperial shall provide to the CCAA Plan Administrator data, information and any documents responsive to the Impacted Claimant's Information Request which the CCAA Plan Administrator shall use to prepare a written response to the Information Request. The CCAA Plan Administrator shall deposit the written response and any documents received from Imperial in the Virtual Data Room for Imperial, and then notify the Impacted Claimant and the PTLC Chair of such deposit;

(f) The PTLC Chair shall notify the PTLC Members that the written response and any documents responsive to the Impacted Claimant's Information Request have been deposited into Imperial's Virtual Data Room; and

(g) The Impacted Claimant, PTLC Chair or CCAA Plan Administrator may request an *ad hoc* Interface Meeting to discuss Imperial's response to the Impacted Claimant's Information Request.

Under no circumstances shall an Impacted Claimant, or any of its financial, legal or other advisors, contact Imperial or any member of Imperial's Tobacco Company Group directly to make an Information Request and thereby bypass the CCAA Plan Administrator.

10.7 Confidentiality of Information

In addition to their obligations pursuant to the NDAs and any confidentiality order, the PTLC Members and the Impacted Claimants shall maintain the strict confidentiality of all communications made, all information shared and all agendas, reports, records and other documents exchanged during the Interface Meetings and the Deliberation Meetings and in response to Information Requests, which shall not be disclosed in or used for any proceeding or any other purposes, other than as provided for in Article 10, Sections 10.5(e) and 10.6(d).

10.8 Information and Certification to be provided by Imperial regarding Annual Contributions and Reserved Amounts

During the Contribution Period, Imperial shall provide to the CCAA Plan Administrator sufficiently detailed information and supporting data regarding the quantum of the Annual Contributions and Reserved Amounts to be made by Imperial in respect of each calendar year, including a certification provided by Imperial's chief financial officer that the quantum of the Annual Contributions and Reserved Amounts to be made by Imperial in respect of each calendar year has been calculated accurately in accordance with the Metric and all other applicable terms of the Definitive Documents. Such certification shall be delivered to the CCAA Plan Administrator at the same time as the aforesaid information and supporting data and shall not give rise to any personal liability on the part of the certifying officer.

10.9 Timing of Imperial's Delivery of Business Plan, Financial Statements and MD&A to CCAA Plan Administrators

By no later than the applicable dates specified in the Table below, Imperial shall deliver to the CCAA Plan Administrator the Business Plans and financial records and information that it is required to produce pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 herein:

Financial Documents	Dates by which Imperial shall deliver Financial Documents to CCAA Plan Administrator
Q1 Financial Statements	May 15
Q2 Financial Statements	August 15
Q3 Financial Statements	November 15
Q4 Financial Statements	March 15
Annual Financial Statements	March 31
5 year Business Plan provided annually	May 15
Calculation of Metric	June 30

10.10 Virtual Data Rooms and NDAs

As provided in Article 11, Section 11.1(b) herein, during the Contribution Period, Imperial shall provide to its CCAA Plan Administrator for deposit into its virtual data room ("**Virtual Data Room**") all of the financial records and information required to be produced to the CCAA Plan Administrator pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 herein. Imperial's Virtual Data Room shall only be accessed by the CCAA Plan Administrators, Provinces, Territories and Impacted Claimants and their advisors who have executed an NDA with Imperial.

Provided that they have executed an NDA, any Claimant to whom any portion of its share of the Global Settlement Amount remains unpaid shall be entitled to access all of the financial records and information that Imperial shall deposit in its Virtual Data Room pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 and Article 11, Section 11.1(b) herein.

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, provided that following any receipt of any such submissions, objections or appeals, the CCAA Plan Administrators shall not knowingly waive any applicable privilege in respect of such submissions, objections or appeals;

(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.

ARTICLE 12. EVENTS OF DEFAULT, BREACHES AND REMEDIES

12.1 Aggrieved Parties in Dispute Resolution

For the purpose of the dispute resolution processes set forth in Articles 12 and 13 of the CCAA Plan, the following Persons only may be "**Aggrieved Parties**":

(a) the Provinces and Territories collectively, the collective interests of which will be advanced in the dispute resolution processes in a coordinated manner through the PTLC. Notwithstanding the foregoing, each Province and Territory retains its right to pursue a claim individually should it decide to do so and, if any Province or Territory elects to do so, it shall be designated as an Aggrieved Party hereunder. However, such right shall not extend to any assignee of an Affected Claim of a Province or Territory;

(b) the Pan-Canadian Claimants whose collective interests will be represented in the dispute resolution processes by the PCC Representative Counsel;

(c) the QCAPs whose collective interests will be represented in the dispute resolution processes by the Quebec Class Counsel;

(d) any other Impacted Claimant who has not yet been paid their full share of the Global Settlement Amount; and/or

(e) the Cy-près Foundation solely for the purpose of enforcing any non-payment of any portion of the Cy-près Fund.

Upon the occurrence of an event that may constitute an Event of Default or a Breach, any Aggrieved Party may exercise their rights and pursue any remedies available pursuant to the terms of the CCAA Plan, any other Definitive Documents and Applicable Law. For greater certainty, no Aggrieved Party shall have any rights to enforce the Contribution Security in the event of the

occurrence and continuance of a Breach. In so doing, such Aggrieved Party shall consult with and communicate relevant information to all other Impacted Claimants regarding the steps to be taken, remedies sought, outcome and other significant matters relating to the resolution or determination of the Event of Default or Breach.

12.2 Events of Default

The occurrence during the Contribution Period of any of the following events ("**Events of Default**") shall constitute an Event of Default subject, where applicable, to the Monetary Cure Period, Non-Monetary Cure Period or Extended Cure Period:

(a) Imperial fails to pay or cause its Upfront Contribution or any portion thereof to be paid when due in accordance with the terms of the Definitive Documents;

(b) Imperial fails to pay or cause any Annual Contribution or any portion thereof to be paid when due in accordance with the terms of the Definitive Documents;

(c) Imperial fails to pay or cause a Reserved Amount or any portion thereof to be paid when due in accordance with the terms of the Definitive Documents;

(d) Imperial fails to provide any annual Business Plan and MD&A at all to the CCAA Plan Administrator in accordance with Article 10, Section 10.1 and Article 10, Section 10.2.2 herein;

(e) Imperial fails to provide any quarterly financial statements and MD&A at all to the CCAA Plan Administrator in accordance with Article 10, Section 10.2.3 herein;

(f) Imperial fails to provide any Annual Financial Statements at all to the CCAA Plan Administrator in accordance with Article 10, Section 10.2.1 herein;

(g) Imperial fails to provide any information to the CCAA Plan Administrator at all regarding the calculation of the Annual Contributions and Reserved Amounts to be made by Imperial in respect of each calendar year in accordance with Article 10, Section 10.8 herein;

(h) Imperial fails to respond to an *ad hoc* request from the CCAA Plan Administrator for information in connection with any of Imperial's Business Plan, annual MD&A, quarterly MD&A and Annual Financial Statements in accordance with Article 10, Section 10.3 herein;

(i) Imperial's key management personnel fail to attend a quarterly meeting or any meeting scheduled *ad hoc* with the CCAA Plan Administrators in accordance with Article 10, Section 10.4 herein;

(j) Imperial fails to provide the Contribution Security in accordance with Article 5, Section 5.13;

(k) Any material provision in the CCAA Plan or in the Contribution Security Agreement or other Definitive Documents for any reason ceases to be valid, binding and enforceable against Imperial in accordance with its terms, or Imperial so asserts in writing;

(l) Any representation or warranty made by Imperial in the CCAA Plan or in any other Definitive Document or in any report, certificate, financial statement or other instrument, agreement or document furnished pursuant hereto or thereto is false, incorrect, incomplete or misleading in any material respect as of the date that the representation or warranty was made or deemed to be made;

(m) Imperial or its Material Subsidiary transfers any or all of its assets and business to any other entity including an unrelated company, a Canadian Affiliate of its Parent, or a Canada Newco, pursuant to its CCAA Plan or otherwise (except, for greater certainty, Permitted Transfers), or sells or otherwise disposes of its respective assets, including the disposition of manufacturing equipment and the transfer of trademarks, intellectual property and any other intangible assets, that are material to the conduct of the Ordinary Course of Business of Imperial or its Material Subsidiary, other than Permitted Transfers;

(n) Imperial or its Material Subsidiary ceases or threatens to cease to carry on its business or admits its inability to pay its Indebtedness generally, or is insolvent or admits that it is insolvent;

(o) Expressly excepting Imperial's CCAA Proceeding, a Bankruptcy Action exists in respect of Imperial or its Material Subsidiary;

(p) Any arrangement not permitted by the Definitive Documents is proposed involving a reclassification, reorganization, change or conversion of Imperial's shares or its consolidation with or into another entity;

(q) A judgment, writ of execution, garnishment, sequestration, distress, attachment or similar process is issued or levied for the payment of money in a sum which exceeds $1 million against Imperial or its Material Subsidiary, and the same is not released, bonded, satisfied, discharged, vacated, accepted for payment by an insurer or otherwise stayed within 30 days from the date of notice of entry thereof;

(r) Any remedial order that causes or would reasonably be expected to cause a Material Adverse Effect is issued by any Governmental Authority in respect of Imperial or its Material Subsidiary pursuant to any environmental law;

(s) Imperial or its Material Subsidiary violates any legal requirement which results in the issuance of an order or the cancellation of any license or certificate or approval by a Governmental Authority that causes or would reasonably be expected to cause a Material Adverse Effect;

(t) Imperial conducts its business and operations, divests assets, rearranges ownership, alters its corporate structure and/or operational practices either directly or indirectly, in any manner that circumvents or is adverse to the intention underlying the CCAA Plan, including the ability of Imperial to pay the Global Settlement Amount in full;

(u) Any Encumbrance for the benefit of one or more of the Claimants created upon any properties or assets of Imperial or its Material Subsidiary, or intended so to be, pursuant to any Definitive Document ceases to be a valid and perfected Encumbrance, having the priority contemplated in the Definitive Documents;

(v) Imperial or its Material Subsidiary creates, incurs, assumes, suffers to exist or otherwise becomes bound by or subject to any Encumbrance upon any of its properties and assets other than a Permitted Encumbrance;

(w) An encumbrancer pursuant to an Encumbrance takes possession of, or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce an Encumbrance over any of the property or assets of Imperial or its Material Subsidiary;

(x) Imperial or its Material Subsidiary fails to comply with an order, decision or award made by the Arbitrator or the CCAA Court; or

(y) The Parent fails to comply with its obligations pursuant to Article 5, Section 5.14, or an Order of the CCAA Court issued pursuant to Article 5, Section 5.14.

12.3 Cure of Events of Default

Upon the occurrence of an Event of Default, an Aggrieved Party may deliver written notice to Imperial of such default ("**Notice of Default**") and:

(a) If the Event of Default is one referred to in Article 12, Sections 12.2(j), 12.2(k) and 12.2(m) to 12.2(o) herein, no cure period (defined in subsections (b) or (c) as applicable below) shall apply;

(b) If the Event of Default is one referred to in Article 12, Sections 12.2(a), 12.2(b) and 12.2(c) herein, and is capable of being remedied, Imperial shall have 10 days following receipt of the Notice of Default to remedy such default ("**Monetary Cure Period**");

(c) If the Event of Default is one referred to in Articles 12, Sections 12.2(d) to 12.2(i), 12.2(l) and 12.2(p) to 12.2(x) herein and is capable of being remedied, Imperial shall have 15 days following receipt of the Notice of Default to remedy such default ("**Non-Monetary Cure Period**") or, if the nature of such Event of Default is such that it is capable of being remedied, but is not capable of being remedied within the Non-Monetary Cure Period, then the Non-Monetary Cure Period shall be extended for a period not to exceed 45 days from the date that Imperial receives the Notice of Default (the "**Extended Cure Period**") as may be required to permit Imperial to remedy the Event of Default, provided that Imperial makes best efforts to remedy the Event of Default during the Extended Cure Period; or

(d) If the Event of Default is the one referred to in Article 12, Section 12.2(y) herein and is capable of being remedied, the Parent shall have the Non-Monetary Cure Period to remedy such default or, if the nature of such Event of Default is such that it is capable of being remedied, but is not capable of being remedied within the Non-Monetary Cure Period, then the Non-Monetary Cure Period shall be extended for a period not to exceed the Extended Cure Period as may be required to permit the Parent to remedy the Event of Default,

provided that the Parent makes best efforts to remedy the Event of Default during the Extended Cure Period.

The discontinuance or correction of an Event of Default shall constitute a cure thereof.

12.4 Breach of CCAA Plan

The occurrence during the Contribution Period of any of the following events constitutes a breach ("**Breach**") of Imperial's obligations pursuant to the CCAA Plan and other Definitive Documents:

(a) On the part of Imperial:

(i) The provision of an annual Business Plan and MD&A to the CCAA Plan Administrators the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.1 and Article 10, Section 10.2.2 herein;

(ii) The provision of quarterly financial statements and MD&A to the CCAA Plan Administrators the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.2.3 herein;

(iii) The provision of Annual Financial Statements to the CCAA Plan Administrators the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.2.1 herein;

(iv) The provision to the CCAA Plan Administrators of information regarding the quantum of the Contributions and Reserved Amounts to be made by Imperial in respect of each calendar year, the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.8 herein;

(v) The provision of an unsatisfactory, incomplete or deficient response to an *ad hoc* request from the CCAA Plan Administrators for information in connection with any of Imperial's Business Plan, annual MD&A, quarterly MD&A and Annual Financial Statements in accordance with Article 10, Section 10.3 herein;

(vi) The making of a capital expenditure that exceeds the applicable CapEx Threshold contrary to Article 11, Section 11.3 herein;

(vii) The making of an Ordinary Course Divestiture that exceeds the applicable Ordinary Course Divestitures Threshold contrary to Article 11, Section 11.4 herein;

(viii) The application of the Metric to calculate the Annual Contributions in a manner which is contrary to the applicable provisions of the Definitive Documents; and

(ix) The calculation of the Reserved Amounts in a manner which is contrary to the applicable provisions of the Definitive Documents; and

(b) Any failure on the part of Imperial and/or its Material Subsidiary to perform its obligations in any material respect under any of the Definitive Documents that is not expressly

enumerated in Article 12, Sections 12.2 or 12.4 of the CCAA Plan will constitute a Breach that shall be resolved in accordance with the Dispute Resolution Procedure set out in Section 13.1.

12.5 Recourse against Parent

Notwithstanding anything to the contrary in this CCAA Plan or any other Definitive Document, recourse against any Parent and its Affiliates other than Imperial and its Subsidiaries under or in respect of this CCAA Plan and the other Definitive Documents shall be limited solely to circumstances involving a default by such Person of its obligations under Section 5.14, as determined by the CCAA Court.

12.6 Waiver of Events of Default and Breaches

Any Event of Default or Breach, other than a failure to make a Contribution, may be waived in writing by the CCAA Plan Administrators, with the consent of the Provinces and Territories and any Impacted Claimants, subject to the approval of the CCAA Court.

ARTICLE 13. DISPUTE RESOLUTION PROCEDURE

13.1 Procedure for Dispute Resolution

Any question, issue, difference of opinion, disagreement, claim, complaint or dispute arising from or out of, or in any way in connection with the interpretation, implementation, application, compliance with, enforcement of, or alleged breach or violation of any terms of any of the Definitive Documents ("**Dispute**") shall be addressed and determined in accordance with Articles 12 and 13 herein which set out the procedure for the resolution of all Disputes ("**Dispute Resolution Procedure**"). Only the Aggrieved Parties, Imperial, its Tobacco Company Group and the CCAA Plan Administrators, as applicable, shall be entitled to participate in any arbitration or CCAA Court proceeding conducted in accordance with the Dispute Resolution Procedure.

13.2 Investigation of Events causing a Material Adverse Effect

Without limiting the rights of the Provinces, Territories and any other Impacted Claimants as Aggrieved Parties, if the CCAA Plan Administrators are made aware of an issue, event or condition regarding Imperial which caused or would reasonably be expected to cause a Material Adverse Effect, or may constitute a Breach or Event of Default, they will convene an *ad hoc* meeting with the PTLC Chair and any other Impacted Claimants to provide a preliminary report regarding the issue.

If further information is required, the PTLC and any other Impacted Claimants may consult and prepare a written request for particulars ("**Request for Particulars**") which includes a statement of the Breach or Event of Default which Imperial is alleged to have committed. The PTLC Chair will provide the Request for Particulars to the CCAA Plan Administrators who shall send the Request for Particulars to Imperial. Notwithstanding the foregoing responsibility, the CCAA Plan Administrators may, in their discretion, decline to send to Imperial a Request for Particulars or other information request received from the PTLC Chair which, in the reasonable view of the CCAA Plan Administrators, is improper or irrelevant.

Within ten days of receipt of a Request for Particulars, Imperial shall be required to provide a written response to the Request for Particulars and advise why the circumstances at issue do not constitute a Breach or an Event of Default. The deadline specified for Imperial's response may be extended on a case by case basis by the CCAA Plan Administrators, in consultation with the PTLC Chair, and will take into account the nature and complexity of the issue under review in order to set a reasonable and realistic time frame for the response.

The CCAA Plan Administrators will provide to the PTLC Chair Imperial's written response to the Request for Particulars and their explanation regarding the alleged Breach or Event of Default. The PTLC Chair shall provide Imperial's written response to the PTLC and any other Impacted Claimants.

The PTLC and any other Impacted Claimants will then consult and decide whether their position is that the issue:

(a) Falls within Imperial's Ordinary Course Operational Activities such that it is not a Breach or an Event of Default;

(b) Is a Breach; or

(c) Is an Event of Default.

13.3 Resolution of Breaches by Parties

If an Aggrieved Party is of the view that Imperial has committed a Breach and it wishes to resolve such Breach, the Aggrieved Party shall deliver a written notice ("**Notice of Breach**") to Imperial providing particulars regarding the Breach to the extent they are known to the Aggrieved Party, including specifying all Sections of the Definitive Documents that are relevant to the Breach.

After receiving a Notice of Breach Imperial may, within 10 days of such receipt, deliver to the Aggrieved Party a written request for further written particulars regarding the Breach. The Aggrieved Party shall have 10 days to respond to such request in writing. The deadline specified for Imperial's response may be extended on a case by case basis by the CCAA Plan Administrator, in consultation with the Aggrieved Party, and will take into account the nature and complexity of the issue under review in order to set a reasonable and realistic time frame for the response.

Within 10 days after the later of the receipt of the Notice of Breach or the receipt of further particulars if any are known to the Aggrieved Party, Imperial shall deliver to the Aggrieved Party a written response to the Notice of Breach ("**Response**") which provides the full particulars of Imperial's position, including whether Imperial disputes the position of the Aggrieved Party in whole or in part, and the grounds for the disagreement with or denial of the position of the Aggrieved Party.

The Aggrieved Party and Imperial shall have a period of time not exceeding 30 days following the delivery of the Response to consider and, if they believe appropriate to do so, discuss or address the Breach. If the matter is addressed to the reasonable satisfaction of the Aggrieved Party and Imperial within such 30 day period, then the issue in dispute shall be deemed to be resolved and shall not be the basis for further remedies pursuant to the Definitive Documents.

13.4 Resolution of Breaches by Arbitrator

13.4.1 Notice of Arbitration

If the Aggrieved Party and Imperial fail to resolve a Breach within 30 days following Imperial's delivery of the Response, and the Aggrieved Party has decided to seek a resolution of the Breach by way of arbitration pursuant to Article 13, Section 13.2(b), they shall deliver a notice of arbitration to Imperial within a further thirty day period. Such notice of arbitration shall include the following information:

(a) The specific terms of the Definitive Documents that are relevant to the Breach and the relief sought;

(b) A concise summary of the material facts relevant to the issues raised in the Breach that are relied upon by the Aggrieved Party; and

(c) A statement of the material facts that Imperial accepts as correct, and a concise summary of the additional material facts upon which Imperial relies.

Notwithstanding the foregoing, on the CCAA Court's own motion or upon application by any of the Aggrieved Party, Imperial, its Tobacco Company Group or the CCAA Plan Administrator as applicable, in exceptional circumstances the CCAA Court may, in its discretion, decide that it shall hear and determine a Breach in lieu of the Arbitrator doing so.

All Breaches referred to the Arbitrator shall be arbitrated in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, except to the extent that those statutory provisions are expressly varied by the terms hereof or the terms of the other Definitive Documents.

13.4.2 Appointment of an Arbitrator

The Aggrieved Party and Imperial shall agree upon an Arbitrator to appoint who:

(a) Is independent of the Parties and the CCAA Plan Administrators;

(b) Is not and has never been in the employ of or under contract with any Party or any CCAA Plan Administrator at any time; and

(c) Is qualified by education, experience and training to determine the subject matter of the Breach.

If the Aggrieved Party and Imperial are unable to reach an agreement regarding the choice of Arbitrator, the CCAA Court shall appoint the Arbitrator from a list of five prospective Arbitrators provided by the Aggrieved Party and Imperial. The five prospective Arbitrators shall fulfill the criteria set forth in subsections (a) to (c) immediately above and shall have not been rejected by the Aggrieved Party or Imperial. If the Aggrieved Party and Imperial are unable to agree upon the list of five prospective Arbitrators, then the CCAA Court may appoint an Arbitrator in its discretion.

The Arbitrator shall be empowered and shall have the discretion to conduct a mediation of the Breach and, in doing so, shall not be disqualified from conducting an arbitration hearing to resolve the Breach if the mediation is unsuccessful.

The Aggrieved Party shall advise the Arbitrator of the position of the CCAA Plan Administrator and provide to the Arbitrator any report prepared by the CCAA Plan Administrator in regard to the issue to be arbitrated.

13.5 Jurisdiction of Arbitrator

The Arbitrator has exclusive jurisdiction to determine:

(a) All Disputes pertaining to a Breach unless, pursuant to Article 13, Section 13.4.1, the CCAA Court, in its discretion, decides that exceptional circumstances exist which warrant the CCAA Court hearing and determining a Breach in lieu of the Arbitrator doing so;

(b) All questions pertaining to the interpretation of the terms of the Definitive Documents; and

(c) All questions of fact, law and mixed fact and law that arise in any Dispute referred to the Arbitrator for determination pursuant to Article 13, Section 13.4 herein.

In deciding a Dispute, the Arbitrator shall apply the laws of the Province of Ontario and the Applicable Laws of Canada.

The Arbitrator may receive evidence, rely upon it and determine what, if any, weight to give to the evidence, whether or not such evidence is admissible in a court of law.

All decisions of the Arbitrator shall be final and conclusive for all purposes, and shall bind the parties to the arbitration.

No appeal shall lie to the CCAA Court or any other Court in Canada from a decision of the Arbitrator on questions of fact, law or mixed fact and law.

13.6 Arbitration Remedies

The Arbitrator shall decide a Dispute regarding a Breach in accordance with Applicable Law, including equity, and may order specific performance, injunctions and other equitable remedies.

If the Arbitrator makes a finding against Imperial in regard to (i) the application of the Metric to calculate the Annual Contributions [Article 12, Section 12.4(viii)], or (ii) the calculation of the Reserved Amounts [Article 12, Section 12.4(ix)], the Arbitrator may:

(a) Fix the amount of the Annual Contributions or Reserved Amounts, as applicable, that the Arbitrator shall order Imperial to pay;

(b) Remit the matter back to Imperial with the direction that it recalculate the Annual Contributions or Reserved Amounts in accordance with the Arbitrator's findings, and make

a finding as to the amount of the adjustment Imperial owes to the Aggrieved Parties. The Arbitrator shall retain jurisdiction over the matter pending its final disposition; or

(c) Make any other order which the Arbitrator determines is appropriate.

The Arbitrator has the jurisdiction to make an order as to interest or any additional sum in respect of any amount found to be due and owing by Imperial. If Imperial withholds payment of all or a portion of the Annual Contributions, or Reserved Amounts, then:

(a) Interest shall accrue on the sum that is ultimately found to be owing to the Aggrieved Parties at the rate of interest payable pursuant to sections 127 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended, such interest to accrue daily until the arbitral award, inclusive of such interest, has been paid in full; and

(b) Any interest paid by Imperial shall not be applied to reduce the balance of the Global Settlement Amount owing.

13.7 Enforcement of Arbitrator's Awards

A Party who is entitled to enforcement of an award made by the Arbitrator may make an application to the CCAA Court on notice to the Party or Person against whom enforcement is sought. The CCAA Court shall give a judgment enforcing the Arbitrator's award and shall have the same powers with respect to the enforcement of the Arbitrator's award as with respect to the enforcement of its own judgments.

13.8 Costs of Arbitration

The Arbitrator may award full indemnity costs of an arbitration which include the parties' legal expenses, the fees and expenses of the Arbitrator and any other expenses related to the arbitration.

13.9 Jurisdiction of CCAA Court

After the Effective Time, the CCAA Court shall retain jurisdiction over the CCAA Proceedings, be seized of the implementation of Imperial's CCAA Plan and have exclusive supervisory jurisdiction over the administration of the CCAA Plan, except that the US Bankruptcy Court shall retain jurisdiction with respect to the Sanction Recognition Order, and for the joint supervision of the Quebec Administration Plan by the CCAA Court and the Quebec Superior Court as described in Article 7, Section 7.2, until such time as the CCAA Plans have been fully implemented, including payment of the Global Settlement Amount in full.

The CCAA Court shall, in its discretion, give such directions and make such orders as are necessary to facilitate the Parties completing the implementation of the CCAA Plan, including determining any Disputes that may arise between the Tobacco Companies, any or all members of the Tobacco Company Groups, the Claimants and/or the CCAA Plan Administrators arising out of or relating to the CCAA Plan in accordance with the Dispute Resolution Procedure.

Without exception, the CCAA Court shall have the exclusive jurisdiction to determine:

(a) Whether a matter falls within the scope of Article 13, Section 13.1 herein such that it shall be determined through the Dispute Resolution Procedure;

(b) Whether, on the CCAA Court's own motion or upon application by an Aggrieved Party, Imperial, a member of its Tobacco Company Group or the CCAA Plan Administrators as applicable, the CCAA Court may, in its discretion, decide to hear and determine a Breach in lieu of the Arbitrator doing so in accordance with Article 13, Section 13.4 herein; and

(c) All proceedings regarding Events of Default in accordance with Article 13, Section 13.11 herein.

13.10 Appeals from Orders or Decisions of CCAA Court

Imperial, any applicable members of its Tobacco Company Group, the CCAA Plan Administrator or any Aggrieved Party who is a party to a proceeding that is determined by the CCAA Court in accordance with the Dispute Resolution Procedure may appeal from the order or decision of the CCAA Court in accordance with Sections 13, 14 and 15 of the CCAA.

13.11 Resolution of Events of Default by CCAA Court

Upon the occurrence of any Event of Default, an Aggrieved Party shall be immediately entitled to exercise all rights and remedies available pursuant to the CCAA Plan and any other Definitive Documents and the laws of Ontario and the laws of Canada, including applying to the CCAA Court for such relief as the CCAA Court finds appropriate.

In addition, upon the occurrence of any of the Events of Default enumerated in Article 12, Sections 12.2(d) to 12.2(i) herein, the CCAA Plan Administrator shall also be entitled to apply to the CCAA Court for such relief as the CCAA Court finds appropriate.

The CCAA Court shall have the exclusive jurisdiction to determine all proceedings regarding Events of Default. The CCAA Court shall have exclusive jurisdiction to determine all matters related to the enforcement of the terms of the Contribution Security Agreement and the exercise of any rights, remedies and powers that the Collateral Agent may have under the Contribution Security Agreement, at law, in equity or under the PPSA.

During the pendency of any proceeding in the CCAA Court relating to the occurrence of an Event of Default, Imperial shall continue to comply with its obligations pursuant to the Definitive Documents, including the obligation to pay the Annual Contributions and Reserved Amounts for deposit into the Global Settlement Trust Account and Supplemental Trust Account.

Upon the occurrence of:

(a) An Event of Default referred to in Article 12, Section 12.3(a) herein, or

(b) An Event of Default referred to in Article 12, Section 12.3(b) or Section 12.3(c) herein, where either Imperial fails to cure such Event of Default within the Monetary Cure Period, Non-Monetary Cure Period or Extended Cure Period, as applicable, or such Event of Default is incapable of being cured,

the terms of Article 5, Section 5.11 shall govern, and Imperial shall fulfill its obligations thereunder. If Imperial fails to deposit into the Global Settlement Trust Account or the Supplemental Trust Account, as applicable, any amount at all on account of its respective share of any of the Upfront Contribution, any Annual Contribution or any Reserved Amounts, then the balance remaining to be paid of Imperial's share of the Global Settlement Amount shall accelerate and be deemed to be due and payable in full without any further action being required to be taken by any Aggrieved Party, and any and all amounts owing by Imperial under or in respect of the CCAA Plan or Definitive Documents shall bear interest at the rate of interest payable pursuant to sections 127 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended. 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.

ARTICLE 14. CCAA PLAN ADMINISTRATORS

14.1 Appointment of CCAA Plan Administrators

Pursuant to the CCAA Plan Administrators' Order, the CCAA Court shall be requested to approve the appointment of an Administrator for the CCAA Plan of each Tobacco Company (collectively, the "**CCAA Plan Administrators**") which shall administer the implementation of the Tobacco Company's CCAA Plan. The CCAA Plan Administrators' Order shall specify the effective date of the CCAA Plan Administrators' appointment.

Subject to the approval of the CCAA Court, the following firms shall be appointed to serve as the CCAA Plan Administrators until such time as such firms may be replaced with the further approval of the CCAA Court:

(a) For Imperial, FTI Consulting Canada Inc;

(b) For RBH, Ernst & Young Inc.; and

(c) For JTIM, Deloitte Restructuring Inc.

14.2 Role of CCAA Plan Administrators

The CCAA Plan Administrators shall be neutral and independent from the Tobacco Companies, the Tobacco Company Groups and the Claimants and, in this capacity, shall report to the CCAA Court. From time to time, in their discretion, the CCAA Plan Administrators may seek directions from the CCAA Court regarding any matters relevant to the implementation or administration of the Tobacco Companies' CCAA Plans.

For greater certainty, in no circumstances shall the CCAA Plan Administrators:

(a) Be or be deemed to be the representatives of the Claimants, Tobacco Companies and/or Tobacco Company Groups for the purposes of the implementation and administration of the CCAA Plan (including, without limitation, in respect of any notice, consent or agreement contemplated herein), or for any other purpose;

(b) Have the authority to bind any of the Claimants in respect of any matters relating to the CCAA Plan, or any other matter; or

(c) Have the authority to bind any of the Tobacco Companies or Tobacco Company Groups in respect of any matters relating to the CCAA Plan, or any other matter.

The global settlement of all Tobacco Claims in Canada involves the concurrent resolution of the CCAA Proceedings of Imperial, RBH and JTIM in accordance with the terms of the CCAA Plans. As will be set forth with more particularity in the CCAA Plan Administrators' Order in each CCAA Proceeding, as appropriate and as necessitated by the circumstances of the matters being addressed, the CCAA Plan Administrators shall consult with each other and act jointly and in concert in fulfilling their duties and responsibilities enumerated in Article 14, Section 14.4 herein. Accordingly, in certain instances in the CCAA Plan, the joint fulfillment of the CCAA Plan Administrators' duties and responsibilities is referenced. The CCAA Plan Administrators shall have access to all documents and information provided by each Tobacco Company during the Contribution Period, including the financial and other information produced by each Tobacco Company pursuant to Article 10 of the CCAA Plan.

14.3 Trustees of the Global Settlement Trust Account, PCC Trust Account, QCAP Trust Account and Cy-près Trust Account

The CCAA Plan Administrators shall oversee the Global Settlement Trust Account, PCC Trust Account, QCAP Trust Account, Cy-près Trust Account, Miscellaneous Claims Fund, CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account. For greater certainty, the CCAA Plan Administrators shall not be trustees in any capacity other than in regard to holding the Global Settlement Trust Account, PCC Trust Account, QCAP Trust Account, Cy-près Trust Account, Miscellaneous Claims Fund, CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account. The details regarding these accounts will be set forth in greater detail in the CCAA Plan Administrators' Order.

14.4 Duties and Responsibilities of CCAA Plan Administrators

In implementing the administration of the CCAA Plans during the Contribution Period, the duties and responsibilities of the CCAA Plan Administrators shall be as set out below provided, however, that the CCAA Plan Administrators shall incur no liability of any kind whatsoever to the Provinces, Territories, any Impacted Claimants or any other Person in respect of their performance of such duties and responsibilities and shall be held harmless in this regard:

(a) On an annual basis, receiving and reviewing the Business Plan and accompanying MD&A which each Tobacco Company shall provide pursuant to Article 10, Sections 10.1 and Section 10.2.2 of their respective CCAA Plans;

(b) On a quarterly basis, receiving and reviewing the financial statements and accompanying MD&A which each Tobacco Company shall provide pursuant to Article 10, Section 10.2.3 herein;

(c) On an annual basis, receiving and reviewing the financial statements with notes that each Tobacco Company shall provide pursuant to Article 10, Section 10.2.1 herein;

(d) Receiving and reviewing the information that each Tobacco Company shall provide to the CCAA Plan Administrators regarding the calculation of the Annual Contributions and Reserved Amounts to be paid by each Tobacco Company in respect of each calendar year pursuant to Article 10, Section 10.8 herein;

(e) Receiving and reviewing the information that each Tobacco Company shall provide in response to the *ad hoc* requests made from time to time by the CCAA Plan Administrators in connection with the Tobacco Company's Business Plan, annual MD&A, quarterly MD&A and Annual Financial Statements pursuant to Article 10, Section 10.3 herein;

(f) Reporting to the Provinces, Territories and any Impacted Claimants regarding any issue, event or condition pertaining to a Tobacco Company which is disclosed to the CCAA Plan Administrators as an event which may constitute a Material Adverse Effect, or may constitute a Breach or an Event of Default;

(g) Overseeing the investment of the Upfront Contributions, Annual Contributions and Reserved Amounts in accordance with approved investment guidelines pending disbursement to the Claimants, and reporting from time to time to the Provinces, Territories and any Impacted Claimants regarding same;

(h) Reporting to the Provinces, Territories and any Impacted Claimants regarding the calculation of the amount of the Annual Contributions and Reserved Amounts payable by the Tobacco Companies in each calendar year;

(i) Overseeing and concurring with the release of funds from the Supplemental Trust Account pursuant to Article 5;

(j) Administering the distribution to the Claimants of amounts from the Global Settlement Trust Account in accordance with Article 16, Sections 16.1, 16.2 and 16.3 until such time as the implementation of all of the CCAA Plans has been completed;

(k) Overseeing the administration of the PCC Compensation Plan including:

(i) Ensuring that the PCC Compensation Plan Amount is invested in accordance with approved investment guidelines pending disbursement to the Claims Administrator for payment to the Eligible Pan-Canadian Claimants;

(ii) Entering into a written agreement, that is subject to approval by the CCAA Court, with the Claims Administrator for the provision of services to process claims made to the PCC Compensation Plan;

(iii) Reviewing the budget submitted by the Claims Administrator for the administration of the claims made to the PCC Compensation Plan;

(iv) From time to time, advancing instalments of funds from the PCC Compensation Plan Amount to the Claims Administrator to enable it to make Individual Payments to Eligible Pan-Canadian Claimants; and

(v) Receiving and reviewing reports made annually, and as circumstances warrant at any other times as requested by the CCAA Plan Administrators in their discretion or as the CCAA Court directs, by the Claims Administrator regarding, without limitation, the publication of notices, the PCC Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible Pan-Canadian Claimants, fees charged and disbursements made;

(l) Certain oversight activities regarding the Cy-près Foundation;

(m) Overseeing the administration of the Quebec Administration Plan including:

(i) Ensuring that the QCAP Settlement Amount is invested in accordance with approved investment guidelines pending disbursement to the Claims Administrator for payment to the Eligible *Blais* Class Members;

(ii) Entering into a written agreement, that is subject to approval by the CCAA Court, with the Claims Administrator for the provision of services to process claims made to the Quebec Administration Plan;

(iii) Reviewing the budget submitted by the Claims Administrator for the administration of the claims made to the Quebec Administration Plan;

(iv) From time to time, advancing instalments of funds from the QCAP Settlement Amount to the Claims Administrator to enable it to make Compensation Payments to Eligible *Blais* Class Members; and

(v) Receiving and reviewing reports made annually, and as circumstances warrant at any other times as requested by the CCAA Plan Administrators in their discretion or as the CCAA Court directs, by the Claims Administrator regarding, without limitation, the publication of notices, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible *Blais* Class Members, fees charged and disbursements made;

(n) On an annual basis, and as circumstances warrant at any other times in the discretion of the CCAA Plan Administrators, or as the CCAA Court directs, reporting to the CCAA Court regarding:

(i) The annual amounts of the Annual Contributions and Reserved Amounts paid by the Tobacco Companies for deposit into the Global Settlement Trust Account and Supplemental Trust Account, and the progress of the payment of the share of the Global Settlement Amount allocated to the Provinces and Territories;

(ii) The progress of the payment of the share of the Global Settlement Amount allocated to the Tobacco Producers;

(iii) The progress of the administration of the PCC Compensation Plan including the publication of notices, the PCC Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible Pan-Canadian Claimants, fees charged and disbursements made;

(iv) The progress of the administration of the Cy-près Fund;

(v) The progress of the administration of the Quebec Administration Plan including the publication of notices, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible *Blais* Class Members, fees charged and disbursements made; and

(vi) Any other matter which the CCAA Plan Administrators in their discretion deem to be appropriate.

For greater certainty, the CCAA Plan Administrators shall not conduct an audit or other assurance engagement, or otherwise attempt to verify the accuracy or completeness of the financial information in each Tobacco Company's Business Plan, annual MD&A, quarterly MD&A, Annual Financial Statements and any information produced by a Tobacco Company in response to an *ad hoc* request from the CCAA Plan Administrators.

Also for greater certainty, the duties and responsibilities of the CCAA Plan Administrators shall be fully described in orders of the CCAA Court appointing the CCAA Plan Administrators.

14.5 CCAA Plan Administrators' Communications

The CCAA Plan Administrators shall communicate with:

(a) the Chair of the Provincial and Territorial Liaison Committee representing the Provinces and Territories;

(b) the Administrative Coordinator in regard to the Quebec Administration Plan and Quebec Class Counsel representing the Quebec Class Action Plaintiffs;

(c) the Administrative Coordinator in regard to the PCC Compensation Plan and the PCC Representative Counsel for the Pan-Canadian Claimants;

(d) Dr. Robert Bell, the Chair of the Cy-près Foundation;

(e) *Knight* Class Counsel;

(f) Counsel for the Tobacco Producers; and

(g) the Tobacco Companies.

Notwithstanding the foregoing, in the performance of their duties and responsibilities under the CCAA Plan, the CCAA Plan Administrators may, in their discretion, communicate with any individuals as necessary or desirable.

14.6 Distributions to Claimants from Global Settlement Trust Account

The CCAA Plan Administrators shall, subject to the approval of the CCAA Court, administer the Global Settlement Trust Account and, from time to time, shall authorize the payment from the Global Settlement Trust Account of distributions in accordance with Article 16, Sections 16.1, 16.2 and 16.3 herein, which will be paid to the:

(a) Quebec Class Action Plaintiffs;

(b) Pan-Canadian Claimants;

(c) Provinces and Territories;

(d) Cy-près Foundation;

(e) Tobacco Producers; and

(f) *Knight* Class Action Plaintiffs.

14.7 Advisors to CCAA Plan Administrator

The CCAA Plan Administrator, in its discretion, may retain any advisors, including legal, financial, investment or other advisors, to advise and assist it to carry out its duties in relation to the administration of the CCAA Plan.

14.8 Role of Court-Appointed Mediator after Sanction Order

The Court-Appointed Mediator may provide any services after the date of the Sanction Order, as requested by either the CCAA Plan Administrators or the CCAA Court, and approved by the CCAA Court.

14.9 Payment of Costs

The professional fees, other fees, costs, disbursements, expenses, court costs and other expenditures, and all applicable Sales and Excise Taxes thereon (collectively, "**Costs**"), charged and incurred in relation to the settlement of the Tobacco Claims and the implementation and administration of the CCAA Plan shall be paid as follows:

(a) All Costs incurred in respect of:

  (i) All services which the CCAA Plan Administrator provides in relation to the implementation and administration of the CCAA Plan, including the fulfillment of its duties and responsibilities enumerated in Article 14, Section 14.4 herein, and

(ii) All services provided by all legal, financial, investment or other advisors engaged by the CCAA Plan Administrator,

shall be paid biweekly by Imperial. From time to time, the CCAA Plan Administrator shall pass its accounts in the CCAA Court at intervals as the CCAA Court directs;

(b) All Costs for the services of the Court-Appointed Mediator provided after the date of the Sanction Order, including for the services of any of his legal or other advisors, shall be paid equally by the Tobacco Companies;

(c) All Costs for the services of the Claims Administrator, including for the services of any of its legal or other advisors, incurred in respect of the administration of the PCC Compensation Plan shall be paid equally by the Tobacco Companies;

(d) All Costs for the services provided by the Administrative Coordinator, including for the services of any legal or other advisors to the Administrative Coordinator, shall be paid equally by the Tobacco Companies;

(e) All Costs incurred in respect of the administration of the Cy-près Foundation shall be paid from the Cy-près Fund;

(f) The Quebec Class Counsel Fee shall be paid out of and deducted from the QCAP Settlement Amount. The Quebec Class Counsel Fee and the retainer agreement respecting fees and disbursements between the Quebec Class Counsel and the representative plaintiffs in the Quebec Class Actions are subject to the approval of the CCAA Court and shall be dealt with at the Sanction Hearing;

(g) All Costs incurred in respect of the services provided by Raymond Chabot (as agent for the Quebec Class Counsel on behalf of the QCAPs) in relation to the Quebec Administration Plan both before and after the Plan Implementation Date shall be paid by the Quebec Class Counsel out of the Quebec Class Counsel Fee;

(h) All Costs for the services of the Claims Administrator, including for the services of any of its legal or other advisors, incurred in respect of the administration of the Quebec Administration Plan shall be paid from the balance of the QCAP Settlement Amount net of the Quebec Class Counsel Fee;

(i) All Costs for the services which the PCC Representative Counsel, including their advisors, provide in connection with the performance of their duties under the CCAA Plan, including the PCC Compensation Plan, and in the CCAA Proceeding shall be paid equally by the Tobacco Companies;

(j) The Counsel for the Tobacco Producers' Fee shall be paid out of and deducted from the Tobacco Producers Settlement Amount. The Counsel for the Tobacco Producers' Fee and the retainer agreement respecting fees and disbursements between the Counsel for the Tobacco Producers and the representative plaintiffs in the Tobacco Producers' Actions are subject to the approval of the CCAA Court;

(k) All Costs and disbursements of any kind incurred in respect of the administration of the distribution of payments to eligible Tobacco Producers shall be paid from the Tobacco Producers Settlement Amount;

(l) The *Knight* Class Counsel Fee shall be paid out of and deducted from the *Knight* Class Action Plaintiffs Settlement Amount. The *Knight* Class Counsel Fee and the retainer agreement respecting fees and disbursements between the *Knight* Class Counsel and the representative plaintiff in the *Knight* Class Action are subject to the approval of the CCAA Court; and

(m) All Costs and disbursements of any kind incurred in respect of the settlement of the *Knight* Class Action shall be paid from the *Knight* Class Action Plaintiffs Settlement Amount.

The Costs enumerated in Article 14, Sections 14.9(a), (b), (c), (d) and (i) are expenses of the business and deducted from income in the calculation of the Metric.

ARTICLE 15. CCAA PLAN ADMINISTRATION RESERVE AND PCC COMPENSATION PLAN RESERVE

15.1 CCAA Plan Administration Reserve

On the Plan Implementation Date, the CCAA Plan Administration Reserve in the amount of $25.0 million, which sum shall be paid out of the Upfront Contributions, shall be established as security for the CCAA Plan Administration Reserve Costs.

The CCAA Plan Administrator will hold the CCAA Plan Administration Reserve in trust for those entitled to be paid CCAA Plan Administration Reserve Costs pursuant to the CCAA Plan. If the CCAA Plan Administration Reserve is no longer required as security after the administration of the CCAA Plan has been completed, any amount remaining in the CCAA Plan Administration Reserve shall be released by the CCAA Plan Administrator and paid to the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

15.2 PCC Compensation Plan Reserve

On the Plan Implementation Date, the PCC Compensation Plan Reserve in the amount of $5.0 million, which sum shall be paid out of the Upfront Contributions, shall be established as security for the PCC Compensation Plan Reserve Costs.

The CCAA Plan Administrators will hold the PCC Compensation Plan Reserve in trust for those entitled to be paid PCC Compensation Plan Reserve Costs pursuant to the CCAA Plan. If the PCC Compensation Plan Reserve is no longer required as security after the administration of the CCAA Plan has been completed, any amount remaining in the PCC Compensation Plan Reserve shall be released by the CCAA Plan Administrators and paid to the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

ARTICLE 16. CLAIMANT ALLOCATION

16.1 Claimant Allocation

The Global Settlement Amount shall be allocated among the Claimants and the Cy-près Foundation ("**Claimant Allocation**") as follows:

All amounts in CAD, billions

Provinces and Territories Settlement Amount:	24.725
QCAP Settlement Amount ($4.250 minus $0.131 allocated to Cy-près Foundation):	4.119
PCC Compensation Plan Amount:	2.521
Cy-près Fund (inclusive of $0.131 QCAP Cy-près Contribution):	1.000
Tobacco Producers Settlement Amount:	0.015
Knight Class Action Plaintiffs Settlement Amount:	0.015
Miscellaneous Claims Amount (may be increased to $0.060 if the Tobacco Companies make an election pursuant to Section 18.2.1):	0.025
CCAA Plan Administration Reserve	0.075
PCC Compensation Plan Reserve	0.005
Total:	32.500

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Estimated Upfront Contributions Available: **12.456** [See calculation below, 2]

Period[4]	Upfront Contribution	Annual Contributions						Total
		Year 1 (2025)	Year 2 ('26)	Year 3 ('27)	Year 4 ('28)	Year 5 ('29)	Remainder to end of Contribution Period	
Amount Available[3]	12.456	1.111	1.078	1.067	1.037	1.037	14.714	32.500
Provinces & Territories	6.202	0.361	0.682	0.942	0.912	0.912	14.714	24.725
QCAPs[5, 6, 7, 8]	3.869	0.250						4.119
PCCs[6, 7, 8]	1.750	0.500	0.271					2.521
Cy-près Foundation[5, 6]	0.500		0.125	0.125	0.125	0.125		1.000
Tobacco Producers[8]	0.015							0.015
Knight Class Action Plaintiffs[8]	0.015							0.015
Miscellaneous Claims Fund[7]	0.025							0.025
CCAA Plan Administration Reserve[7]	0.075							0.075
PCC Compensation Plan Reserve[7]	0.005							0.005
Total allocated	**12.456**	**1.111**	**1.078**	**1.067**	**1.037**	**1.037**	**14.714**	**32.500**

16.2 Explanatory Notes

1. In preparing the Claimant Allocation, the Court-Appointed Mediator and Monitors have been provided with, and have relied upon, unaudited financial information prepared by the Tobacco Companies. The Monitors have reviewed this financial information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitors have not audited, or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with GAAS pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitors express no opinion or other form of assurance contemplated under GAAS in respect of the financial information. For clarity, the Court-Appointed Mediator has not reviewed the aforementioned financial information.

   This financial information consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional

Accountants of Canada Handbook, has not been performed. The financial information was prepared based on the Tobacco Companies' estimates and assumptions.

Readers are cautioned that since projections are based on assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2. In the table below, the Upfront Contributions are as estimated as at December 31, 2024 and calculated as estimated in the Spring 2024 5-year forecasts prepared by the Tobacco Companies. The Upfront Contributions will be as noted herein for all Claimants except the Provinces and Territories. The Upfront Contributions for the Provinces and Territories will be equal to the total Upfront Contributions less the Upfront Contributions being paid to the other Claimants, the Miscellaneous Claims Amount, the CCAA Plan Administration Reserve and the PCC Compensation Plan Reserve.

All amounts in CAD, billions

Projected Upfront Contributions as at December 31, 2024:

JTIM:	1.581
ITCAN:	4.849
RBH:	5.792
Cash Security Deposits:	0.984
Total:	13.206
Less: Working Capital	(0.750)
Projected Available Upfront Contributions:	**12.456**

3. The Annual Contribution percentage of Net After-Tax Income is calculated as set out in the CCAA Plan. The Claimant Allocation is based on 85% of estimated Net After-Tax Income received from the Tobacco Companies (the percentage of Net After-Tax Income to be reduced in 5.0% increments every five years pursuant to Article 5, Section 5.6 herein). The "Amount Available" is based on the 5-year financial projections provided by the Tobacco Companies in spring 2024. The projection assumes that the 2028 results are replicated thereafter. The Claimant Allocation does not include any Tax Refunds that may be available during the Contribution Period.

4. Payment is contemplated to be made within 182 days following the end of the period noted. For example, the "Year 1 (2025)" payment would be made in mid 2026.

5. The Cy-près Fund includes $131 million of the QCAP Settlement Amount funded to the Cy-près Fund (in addition to the $869 million specifically allocated to the Cy-près Fund).

6. The Year 1 and Year 2 payments to the QCAPs and the PCCs and the Year 2 payment to the Cy-près Foundation will be made in priority to those being made to the Provinces and Territories in the event of a shortfall relative to the estimated Annual Contributions available.

7. If there are any funds remaining in the QCAP Settlement Amount, the PCC Compensation Plan Amount, the CCAA Plan Administration Reserve, the PCC Compensation Plan Reserve and/or the Miscellaneous Claims Fund, such funds shall be paid to the Provinces and Territories (in accordance with the percentages set out in the table in Article 16, Section 16.3), as the foregoing is more particularly defined in paragraph 55 of the Quebec Administration Plan, paragraph 54 of the PCC Compensation Plan, Article 15, Sections 15.1 and 15.2 herein, and Article 18, Section 18.2.5 herein.

8. The Quebec Class Counsel Fee, Counsel for the Tobacco Producers' Fee and *Knight* Class Counsel Fee are subject to approval by the CCAA Court. Subject to such approval, these fees will be paid in full at the time of plan implementation.

16.3 Provincial and Territorial Allocation

The Provinces and Territories have agreed that the Provinces and Territories Settlement Amount shall be apportioned among the Provinces and Territories in accordance with the percentages set out in the table below:

Province/Territory	Percentage Share of Provinces and Territories Settlement Amount
British Columbia	14.4710%
Alberta	12.6272%
Saskatchewan	2.8787%
Manitoba	4.5252%
Ontario	28.7761%
Québec	26.8248%
New Brunswick	2.4117%
Nova Scotia	3.1740%

Province/Territory	Percentage Share of Provinces and Territories Settlement Amount
Prince Edward Island	0.6605%
Newfoundland and Labrador	2.1471%
Yukon	0.3973%
Northwest Territories	0.7269%
Nunavut	0.3795%
Total:	100.0000%

ARTICLE 17. DISTRIBUTIONS, PAYMENTS AND CURRENCY

17.1 Distributions Generally

All distributions to Affected Creditors and other payments to be effected pursuant to the CCAA Plan will be made pursuant to this Article 17. For greater certainty, all payments and distributions pursuant to this Article 17 will be subject to satisfaction or waiver of the Plan Implementation Conditions set forth in Article 19, Section 19.3 and the occurrence of the Effective Time, and will occur in accordance with the timing set out in Article 4, Section 4.2. Except as otherwise expressly stated herein, FTI, whether in its capacity as the Monitor and/or as the CCAA Plan Administrator, shall have the sole discretion to determine the timing for any distributions to be made under the CCAA Plan.

17.2 Payment of Claimants' Claims

All distributions to the Claimants will be made pursuant to this Article 17 and Article 16, Sections 16.1, 16.2 and 16.3 herein.

17.3 Payment of Miscellaneous Claims

All distributions to any Putative Miscellaneous Claimants will be made pursuant to this Article 17 and Article 18, Section 18.2.1 to Section 18.2.5.

17.4 Payment of Claims secured by the Administration Charge

To the extent that such payments have not already been made, forthwith after the Plan Implementation Date, Imperial shall pay in full all Claims secured by the Administration Charge as at the Plan Implementation Date.

17.5 Payment of Claims secured by the Court-Appointed Mediator Charge

To the extent that such payments have not already been made, forthwith after the Plan Implementation Date, Imperial shall pay in full all Claims secured by the Court-Appointed Mediator Charge as at the Plan Implementation Date.

17.6 Method of Distribution

All distributions or other payments by the CCAA Plan Administrators to any Person entitled to receive a distribution or payment under the CCAA Plan shall be made by wire transfer in accordance with wire transfer instructions, in form satisfactory to the CCAA Plan Administrators, provided by such Person to the CCAA Plan Administrators at least fifteen (15) Business Days prior to the Plan Implementation Date. If any such Person wishes to thereafter change its wire transfer instructions, notice, in form satisfactory to the CCAA Plan Administrators, must be given to the CCAA Plan Administrators at least fifteen (15) Business Days prior to any subsequent distribution or payment date.

For greater certainty, the CCAA Plan Administrators may, prior to initiating any wire transfer, make any verifications, as they deem appropriate in their discretion, to confirm and validate the wire transfer instructions received.

Notwithstanding the foregoing, in circumstances where the CCAA Plan Administrators consider it more practical or efficient to do so, certain payments hereunder may also be made by cheque.

17.7 Addresses for Distribution

Prior to the applicable Distribution Record Date, an Affected Creditor may, in writing to Imperial and FTI, whether in its capacity as the Monitor and/or as the CCAA Plan Administrator, change its address on file with Imperial for distribution purposes. For the avoidance of doubt, FTI will not have any responsibility to track such addresses or notices in any capacity.

17.8 Withholding Rights

FTI, whether in its capacity as the Monitor and/or as the CCAA Plan Administrator, Imperial and any other Person facilitating payments pursuant to the CCAA Plan will be entitled to deduct and withhold from any such payment to any Person such amounts as may be required to be deducted or withheld under any Applicable Law and to remit such amounts to the appropriate Governmental Authority or other Person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate Governmental Authority or other Person, such withheld or deducted amounts will be treated for all purposes hereof as having been paid to such Person as the remainder of the payment in respect of which such withholding or deduction was made. Without in any way limiting the generality of the foregoing, FTI, on behalf of Imperial, shall deduct from any distribution to an Affected Creditor hereunder any amounts as indicated by Employment and Social Development Canada in a Notice of Debt and remit such amounts to Employment and Social Development Canada pursuant to the *Employment Insurance Act* (Canada). Any Affected Creditor whose address on file with Imperial on the Distribution Record Date is not a Canadian address will be treated as a non-resident of Canada for purposes of any applicable non-resident withholding tax on all payments hereunder, subject to receipt by FTI or Imperial of information

satisfactory (in their sole discretion) that such Affected Creditor is not a non-resident. No gross-up or additional amount will be paid on any payment hereunder to the extent FTI, Imperial or any other Person deducts or withholds amounts pursuant to Article 17, Section 17.8. Notwithstanding any withholding or deduction, each Person receiving a payment will have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority (including income and other tax obligations on account of such distribution).

17.9 Cancellation of Certificates and Notes, etc.

At the Effective Time, all debentures, notes, certificates, indentures, guarantees, agreements, invoices and other instruments evidencing Affected Claims, Released Claims or Miscellaneous Claims (and all guarantees associated with each of the foregoing), will not entitle any holder thereof to any compensation or participation other than as expressly provided for in the CCAA Plan and will be deemed cancelled and extinguished and be null and void.

17.10 Calculations

All amounts to be paid to the Claimants by Imperial pursuant to the CCAA Plan shall be calculated in accordance with Article 5, Section 5.1 to Section 5.15.

17.11 Currency Matters

Distributions to any Persons entitled to distributions under the CCAA Plan will be paid in Canadian dollars and any such Claims that are denominated in a currency other than the lawful money of Canada will be converted to the equivalent thereof in the lawful money of Canada at the noon rate of exchange as quoted by the Bank of Canada on March 8, 2019, in accordance with the Claims Procedure Order.

ARTICLE 18. RELEASES, MISCELLANEOUS CLAIMS, INJUNCTIONS AND DISPOSITION OF PENDING PROCEEDINGS

18.1 CCAA Plan Releases

18.1.1 Consideration for Release

The release ("**Release**") is given by the Releasors, individually and collectively, in consideration of (a) the Tobacco Companies' payment of the Upfront Contributions and promise to pay the Annual Contributions and Reserved Amounts to the Global Settlement Trust Account and Supplemental Trust Account in accordance with the Definitive Documents, (b) the agreement to provide shared services and other operational support to the Tobacco Companies by their respective Parents and relevant Affiliates, and (c) the other promises and commitments made by the Released Parties, or any of them as applicable, in the Definitive Documents.

18.1.2 Release

At the Effective Time, each of the Released Parties shall be, and shall be deemed to be, fully, finally, irrevocably and unconditionally released and forever discharged of and from any and all

of the Released Claims that any of the Releasors has ever had, now has, or may hereafter have against the Released Parties or any of them (either individually or with any other Person), whether or not based on conduct continuing after the Effective Time and whether or not presently known to any of the Releasors.

Nothing herein does release (and the Released Parties agree hereby that they will not assert otherwise), or is intended to release, any Claim of a Released Party (including its Representatives) that has been, could have been or could be advanced, directly or indirectly, against any other Released Party (including its Representatives) other than the Tobacco Companies and their respective Subsidiaries and Representatives (such other Released Parties, not including the Tobacco Companies and their respective Subsidiaries and Representatives, collectively, the "Other Released Parties"), in respect of:

(a) the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products outside of Canada,

(b) the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions outside of Canada,

(c) the development of any disease related to the use of Tobacco Products outside of Canada,

(d) any representation or omission in respect of Tobacco Products outside of Canada, or

(e) conduct of the Other Released Parties not related to Canada;

provided that such Claim is not, in whole or in part, based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada (and it is agreed that to the extent such Claim is based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada, then that same extent of the Claim will be hereby released).

18.1.3 Claimant Contractual Release

The Claimant Contractual Release, which is attached to the CCAA Plan as Schedule "T", shall be executed and delivered by Imperial and each of the Claimants, or an authorized Person on their behalf, in favour of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, and their respective Representatives, and shall take effect as at the Effective Time. From and after the Effective Time, the Claimant Contractual Release will be binding on and enure to the benefit of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives.

18.1.4 Release of Monitors

At the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, shall be deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Monitors and the CCAA Plan

Administrators, and their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known, arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) any Claim that has been barred or extinguished pursuant to the terms of the Claims Procedure Order and/or the terms of the CCAA Plan; (ii) the CCAA Proceedings; (iii) the Chapter 15 Proceedings; (iv) the actions of the Monitors or the CCAA Plan Administrators and their legal counsel and advisors in connection with the CCAA Proceedings or the Chapter 15 Proceedings; (v) the business and affairs of the Tobacco Companies whenever or however conducted; (vi) the administration and management of the Tobacco Companies whenever or however conducted; (vii) the allocation of the Global Settlement Amount and any distributions, payments, disbursements from the Global Settlement Amount, and/or (viii) any matter or transaction involving any of the Tobacco Companies occurring in or in connection with the CCAA Proceedings or the Chapter 15 Proceedings including the CCAA Plans, the development thereof, and any and all actions, steps or transactions taken by the Monitors to implement the CCAA Plans, including in their capacity as CCAA Plan Administrators and in FTI's capacity as the Foreign Representative, and in each case, all Claims arising out of aforesaid actions or omissions above shall be forever waived and released (other than the right to enforce the Monitors' obligations under the CCAA Plans or any related document), all to the fullest extent permitted by Applicable Law.

Nothing in this Release shall derogate from the protections afforded to the Monitors or the CCAA Plan Administrators as officers of the CCAA Court, or in the case of FTI, as the Foreign Representative in the Chapter 15 Proceedings, and by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings. For greater certainty, the Monitors and the CCAA Plan Administrators shall not be responsible or liable for any obligations of the Tobacco Companies. The Monitors and the CCAA Plan Administrators and their respective Affiliates, shareholders, Affiliates' shareholders, employees, advisors, legal counsel, Representatives or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document.

18.1.5 Release of Court-Appointed Mediator

At the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, shall be deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Court-Appointed Mediator, and his Representatives, legal counsel, consultants and advisors, from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known to the Released Parties, Releasors, Affected Creditors and Unaffected Creditors arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence in any way in connection with the CCAA Proceedings, including: (i) any Claim that

has been barred or extinguished pursuant to the terms of the Claims Procedure Order and/or the terms of the CCAA Plan; (ii) the CCAA Proceedings; (iii) the Chapter 15 Proceedings; (iv) the actions of the Court-Appointed Mediator as an officer of the CCAA Court carrying out his mandate as a neutral third party to mediate a global settlement in the Tobacco Companies' CCAA Proceedings; (v) the business and affairs of the Tobacco Companies whenever or however conducted; (vi) the administration and management of the Tobacco Companies whenever or however conducted; (vii) the allocation of the Global Settlement Amount and any distributions, payments, disbursements from the Global Settlement Amount, and/or (viii) any matter or transaction involving any of the Tobacco Companies occurring in or in connection with the CCAA Proceedings or the Chapter 15 Proceedings including the CCAA Plans, the development thereof, and any and all actions, steps or transactions taken by the Court-Appointed Mediator to implement the CCAA Plans, and in each case, all Claims arising out of aforesaid actions or omissions above shall be forever waived and released to the fullest extent permitted by Applicable Law.

Nothing in this Release shall derogate from the protections afforded to the Court-Appointed Mediator as an officer of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings, including the orders appointing the Court-Appointed Mediator. In particular, the Court-Appointed Mediator shall not be liable to any Party or participant in the mediation for any act or omission in connection with the mediation process and shall have the immunity of a Judge of a Superior Court in Canada. For greater certainty, the Court-Appointed Mediator shall not be responsible or liable for any obligations of the Tobacco Companies. The Court-Appointed Mediator's heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document.

18.1.6 Release of Administrative Coordinator

At the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, shall be deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Administrative Coordinator and his Representatives from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known to the Released Parties, Releasors, Affected Creditors and Unaffected Creditors arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) the CCAA Proceedings; (ii) the Chapter 15 Proceedings; (iii) the development of the PCC Compensation Plan and the development of the Quebec Administration Plan; and (iv) the actions of the Administrative Coordinator in connection with the administration of the PCC Compensation Plan and the administration of the Quebec Administration Plan, and in each case, all Claims arising out of aforesaid actions or omissions above shall be forever waived and released to the fullest extent permitted by Applicable Law.

Nothing in this Release shall derogate from the protections afforded to the Administrative Coordinator by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings. For greater certainty, the Administrative Coordinator shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Administrative Coordinator's heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document.

18.1.7 Indemnity of Monitors, CCAA Plan Administrators, Foreign Representative, Court-Appointed Mediator and Administrative Coordinator

Imperial shall indemnify and save harmless the Court-Appointed Mediator, the Monitors (FTI, EY and Deloitte) in their various capacities (including as the Monitors, the CCAA Plan Administrators, and Foreign Representative (as applicable)), the Administrative Coordinator and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents (collectively, the "**Indemnified Parties**"), from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of each Indemnified Party's respective activities or duties in any way in connection with the CCAA Proceeding and the Chapter 15 Proceedings, including for the avoidance of doubt: (i) the actions of the Court-Appointed Mediator, the Monitors, the CCAA Plan Administrators and the Administrative Coordinator and their respective legal counsel and advisors in connection with the CCAA Proceeding and the Chapter 15 Proceedings, (ii) the business and affairs of Imperial whenever or however conducted, and (iii) any matter or transaction involving Imperial occurring in or in connection with the CCAA Proceeding and the Chapter 15 Proceedings, the CCAA Plan, or the development thereof (other than enforcement of Indemnified Parties' obligations under the CCAA Plan and the Definitive Documents). This indemnity shall survive the resignation or removal of the Indemnified Parties from any role, capacity, engagement, office or position relevant to its activities or duties in connection with the CCAA Plan. To the extent any Indemnified Party is not otherwise compensated by Imperial such Indemnified Party may resort to the Imperial CCAA Plan Administration Reserve for compensation.

18.1.8 Injunctions

From and after the Effective Time, all Persons will be permanently and forever barred, estopped, stayed and enjoined from:

(a) Commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives with respect to any and all Affected Claims and Released Claims;

(b) Enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, or their respective property with respect to any and all Affected Claims and Released Claims;

(c) Commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to an Affected Claim or a Released Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, unless such Claim of such other Person is itself an Affected Claim or a Released Claim;

(d) Creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, their respective Representatives or any of their respective property with respect to any and all Affected Claims and Released Claims, except for the exclusions in Article 18, Section 18.1.9 in relation to obligations arising from the Definitive Documents; and

(e) Taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Released Claims.

18.1.9 Released Parties' Fulfillment of Obligations pursuant to Definitive Documents

Notwithstanding any of the provisions herein, the Released Parties are not released from the due performance of their obligations arising from the Definitive Documents, and nothing in this Release shall prevent or restrict any of the Releasors or the CCAA Plan Administrators from pursuing any legal remedies against any of the Released Parties for non-performance of their obligations pursuant to the Definitive Documents, including the covenants of each Tobacco Company, its Parent and the relevant Affiliates within its Tobacco Company Group.

18.1.10 Releases are Final and Binding

The releases and injunctions in favour of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives shall be final and binding on all the Releasors, Released Parties, Affected Creditors and Unaffected Creditors (except to the extent of their Unaffected Claims) as applicable, including any Claims resulting, directly or indirectly, from the consequences and effects relating to the acceptance of the CCAA Plan, the sanction thereof by the CCAA Court, the recognition thereof by the US Bankruptcy Court, or its implementation. The aforesaid final and binding effect of the CCAA Plan on the Releasors, Released Parties, Affected Creditors and

Unaffected Creditors (except to the extent of their Unaffected Claims) shall operate for all legal purposes as and from the Effective Time.

18.1.11 CCAA Meeting Orders and Sanction Orders

To facilitate the provision of the releases and the granting of the injunctions in favour of the Released Parties, Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator:

(a) Pursuant to the Orders governing the conduct of the Meeting of the Affected Creditors to consider and vote on the CCAA Plan:

(i) Quebec Class Counsel will be appointed to act as proxy and vote on behalf of the Quebec Class Action Plaintiffs in respect of the CCAA Plan;

(ii) PCC Representative Counsel will be appointed to act as proxy and vote on behalf of the Pan-Canadian Claimants in respect of the CCAA Plan;

(iii) *Knight* Class Counsel will be appointed to act as proxy and vote on behalf of the *Knight* Class Action Plaintiffs in respect of the CCAA Plan; and

(iv) Counsel for the Tobacco Producers will be appointed to act as proxy and vote on behalf of the Tobacco Producers in respect of the CCAA Plan; and

(b) The Sanction Order will:

(i) Authorize Quebec Class Counsel, PCC Representative Counsel, *Knight* Class Counsel and Counsel for the Tobacco Producers to execute and deliver the Claimant Contractual Release on behalf of the Quebec Class Action Plaintiffs, the Pan-Canadian Claimants, the *Knight* Class Action Plaintiffs, and the Tobacco Producers and Ontario Flue-Cured Tobacco Growers' Marketing Board, respectively;

(ii) Confirm that each of (A) the affirmative vote in respect of the CCAA Plan and (B) the signing of the Claimant Contractual Release, by or on behalf of each Claimant, shall be evidence of the consent of the Claimant to the treatment of its Claims for the purposes of Section 5.1(2) and/or Section 19(2) of the CCAA to the extent that they apply; and

(iii) Order that no action, proceeding or enforcement process in any court or tribunal may be commenced or continued against (A) any Released Party, the Monitor, the CCAA Plan Administrator, the Foreign Representative, the Court-Appointed Mediator, the Administrative Coordinator, or (B) any Person who claims or might reasonably be expected to claim in any manner or forum against any Released Party, the Monitor, the CCAA Plan Administrator, the Foreign Representative, the Court-Appointed Mediator, or the Administrative Coordinator, in respect of the Affected Claims and Released Claims without the prior written consent of the Released Party, the Monitor, the CCAA Plan Administrator, the Foreign Representative, the Court-Appointed Mediator, the Administrative Coordinator, as applicable, or leave

of the CCAA Court obtained on notice to the Released Party, the Monitor, the CCAA Plan Administrator, the Foreign Representative, the Court-Appointed Mediator and the Administrative Coordinator (as applicable), and the Tobacco Companies, including appropriate injunctive language with respect to same.

18.1.12 Future Legislation

The Released Parties and the Provinces and Territories recognize that a legislature's sovereign power to enact, amend and repeal legislation cannot be fettered. However, in the event that any legislation (including any regulations promulgated thereunder) similar or analogous to the HCCR Legislation may be enacted or amended by a Province or Territory at any time after the Effective Time, the Released Parties and the Provinces and Territories are *ad idem* that the enactment of such future legislation shall not render unenforceable or otherwise make ineffective any of the terms of the Claimants Contractual Release or of this Article 18.

18.2 Treatment of Miscellaneous Claims

18.2.1 Miscellaneous Claims Fund

From the Upfront Contributions deposited into the Global Settlement Trust Account, the one-time aggregate sum of **$25.0 million** ("**Miscellaneous Claims Amount**") shall be transferred to and deposited into a segregated interest-bearing trust account held in the Bank ("**Miscellaneous Claims Fund**"). The Miscellaneous Claims Amount, and interest accrued thereon, shall be held in the Miscellaneous Claims Fund for a period of three years from the Effective Time, or for such other period of time as the CCAA Plan Administrators are of the view is necessary and appropriate to permit the completion of the adjudication of any Miscellaneous Claims ("**Miscellaneous Claims Fund Period**").

The Tobacco Companies may unanimously elect to increase the Miscellaneous Claims Amount from $25.0 million to $60.0 million provided that:

(a) The $35.0 million top-up of the Miscellaneous Claims Amount shall be paid by the Tobacco Companies and shall be on top of the $32.5 billion Global Settlement Amount;

(b) The Tobacco Companies are in unanimous agreement regarding how they shall apportion payment of the $35.0 million among themselves and the source of the top-up funds; and

(c) The sourcing of the additional sum of $35.0 million shall not affect the amount nor the timing of the payments of the Upfront Contributions and the Global Settlement Amount.

If the Tobacco Companies make such election as aforesaid, this Section 18.2.1 shall be deemed to stipulate that the Miscellaneous Claims Amount is $60.0 million.

18.2.2 Determination of Miscellaneous Claims

The determination of all Miscellaneous Claims shall be governed by this Section 18.2 and the Claims Procedure Order, the Meeting Order and any other further Order of the CCAA Court, as applicable. A Putative Miscellaneous Claimant shall not be permitted to commence a proceeding

in any other forum except the CCAA Court with leave and, if any such proceeding is commenced, it shall be a nullity.

18.2.3 Leave required from CCAA Court to bring a Miscellaneous Claim Proceeding

Except for (i) an application for leave to commence a proceeding brought in the CCAA Court pursuant to this Section, and (ii) any subsequent proceeding commenced with leave of the CCAA Court, any proceeding commenced in any court relating to a Miscellaneous Claim shall be a nullity.

A Putative Miscellaneous Claimant shall bring an application to the CCAA Court seeking leave to commence a proceeding relating to the Miscellaneous Claim.

On the application for leave, the Putative Miscellaneous Claimant shall serve on Imperial and file with the CCAA Court:

(a) An affidavit setting out a concise statement of the material facts upon which the Putative Miscellaneous Claimant intends to rely; and

(b) An affidavit of documents disclosing, to the full extent of the Putative Miscellaneous Claimant's knowledge, information and belief, all documents relevant to any matter in issue in the proceeding relating to the Miscellaneous Claim that are or have been in the Putative Miscellaneous Claimant's possession, control or power.

On the application for leave, Imperial may serve on the Putative Miscellaneous Claimant and file an affidavit setting out a concise statement of the material facts on which Imperial intends to rely for the defence of the Miscellaneous Claim, but is not required to do so.

The CCAA Court shall not grant leave unless it finds that:

(a) The application for leave has been brought before the CCAA Court either prior to or no later than two years after the issuance of the Sanction Order;

(b) The Miscellaneous Claim was not fully, finally, irrevocably and unconditionally released and forever discharged, and permanently barred and enjoined pursuant to the terms of the CCAA Plan, Claims Procedure Order, Sanction Order, the Claimant Contractual Release and/or any other orders made in the CCAA Proceeding;

(c) The Miscellaneous Claim is being brought in good faith; and

(d) There is a reasonable possibility that the Miscellaneous Claim will be resolved in the Putative Miscellaneous Claimant's favour.

The Putative Miscellaneous Claimant shall bear the onus of establishing that leave should be granted.

If leave is granted, the CCAA Court shall have exclusive jurisdiction to adjudicate and determine the proceeding relating to the Miscellaneous Claim on its merits. Notwithstanding the foregoing,

the CCAA Court in its discretion may decide how the Miscellaneous Claim will be heard and determined.

Either the Putative Miscellaneous Claimant or Imperial may appeal from the decision of the CCAA Court on the application for leave or, if leave is granted, from any order or decision of the CCAA Court made in the proceeding relating to the Miscellaneous Claim, in accordance with Sections 13, 14 and 15 of the CCAA.

Both the Putative Miscellaneous Claimant and Imperial shall bear their own costs of the application for leave and any appeal from the decision of the CCAA Court on the application for leave.

If by final decision of the CCAA Court leave is not granted, and any appeal from such decision is dismissed, the Putative Miscellaneous Claimant shall be permanently and forever barred, estopped, stayed and enjoined from commencing any proceeding in any court relating to or arising from the Miscellaneous Claim.

18.2.4 Payment from Miscellaneous Claims Fund

Any judgments or awards made, or other amounts ordered to be paid in regard to Miscellaneous Claims shall be paid solely from the Miscellaneous Claims Fund.

18.2.5 Distribution of any Residual Monies from Miscellaneous Claims Fund

After the expiry of the Miscellaneous Claims Fund Period, to the extent that there remains any residual funds in the Miscellaneous Claims Fund after the payment of all judgments, awards and any other amounts ordered to be paid in regard to proven Miscellaneous Claims, any such residual funds shall be apportioned among the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

18.2.6 Sole Recourse for Miscellaneous Claims

All Putative Miscellaneous Claimants shall only have recourse to the Miscellaneous Claims Fund in regard to any Miscellaneous Claims and shall have no recourse in relation to any Miscellaneous Claims as against the Released Parties, the Claimants or their Representatives, or any other funds paid, held or administered pursuant to the CCAA Plan and all other Definitive Documents.

18.3 Disposition of Pending Proceedings

18.3.1 Termination of Pending Litigation other than Quebec Class Actions

As soon as possible after the Plan Implementation Date, the Parties shall take all steps and actions that are necessary and appropriate to dismiss with prejudice and without costs to any party or counsel the following proceedings pending in courts in the Provinces and Territories against the Tobacco Companies, certain members of their respective Tobacco Company Groups and the Canadian Tobacco Manufacturers' Council ("**Pending Litigation**"):

(a) The actions which the Provinces commenced pursuant to the HCCR Legislation claiming the recovery of expenditures for Health Care Benefits provided for Insured Persons resulting from Tobacco-related Disease or the risk of Tobacco-related Disease caused by the Tobacco Companies' tobacco-related wrongs, including any related motions, applications, leave applications or appeals, that are listed in Schedule "U" to the CCAA Plan;

(b) The *Knight* Class Action;

(c) The actions commenced by Individuals under the class proceedings legislation in British Columbia (other than the *Knight* Class Action), Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, and Newfoundland and Labrador, that are listed in Schedule "V" to the CCAA Plan;

(d) The Tobacco Producers' Actions; and

(e) Any action, other than the Quebec Class Actions, regardless of whether the statement of claim was served, commenced by Individuals in Ontario, Quebec and Nova Scotia, or any other Province or Territory relating to Tobacco Claims or the subject matter of the CCAA Plan, that are listed in Schedule "W" to the CCAA Plan.

Imperial and the Claimants shall consent to the inclusion of orders in the Sanction Order providing that:

(a) Effective from Plan Implementation Date, all parties to the Pending Litigation, including each plaintiff, class representative, class member and defendant therein, shall be deemed to have given all consents necessary to effect the termination with prejudice and without costs of the Pending Litigation,

(b) The Sanction Order shall have full force and effect in all Provinces and Territories, the United States and elsewhere, and as against all Persons against whom it may apply; and

(c) Each applicable court in the Provinces and Territories in which the Pending Litigation was commenced is requested to:

    (i) Aid, recognize and assist the CCAA Court to confirm that, effective as and from the Plan Implementation Date, the CCAA Plan has fully and finally resolved and definitively settled the Pending Litigation,

    (ii) Provide such assistance to Imperial and its CCAA Plan Administrator, as an officer of the CCAA Court, as may be necessary or desirable to give effect to the Sanction Order or to assist Imperial and its CCAA Plan Administrator in carrying out the terms of the Sanction Order and CCAA Plan, and

    (iii) Issue such orders as may be necessary to terminate all of the Pending Litigation by a with prejudice dismissal without costs. Such dismissals shall be effected by the filing of the appropriate documents with each applicable court in each jurisdiction.

18.3.2 Disposition of Quebec Class Actions

As soon as possible after the Plan Implementation Date, Imperial and the QCAPs shall take all steps and actions that are necessary and appropriate to, if applicable, dismiss with prejudice and without costs to any party or counsel any leave applications or appeals from the judgments in the Quebec Class Actions or any related motions pending in the Quebec Superior Court, the Court of Appeal of Quebec and/or the Supreme Court of Canada.

After the QCAP Claims Process has ended and the Eligible *Blais* Class Members have been paid their Compensation Payments, Imperial and the QCAPs shall consent to motions seeking the Closing Judgment to be brought in the Quebec Superior Court by the Quebec Class Counsel in the *Blais* Class Action and the *Létourneau* Class Action.

Imperial and the QCAPs shall consent to the inclusion in the Sanction Order of orders providing that:

(a) The *Blais* Judgment and the *Létourneau* Judgment are fully and finally satisfied, resolved, compromised and settled;

(b) The Sanction Order shall have full force and effect in Quebec as against all Persons against whom it may apply; and

(c) The Quebec Superior Court is requested to:

  (i) Aid, recognize and assist the CCAA Court to confirm that, effective as and from the Plan Implementation Date, the CCAA Plan has fully and finally resolved and definitively settled the Quebec Class Actions;

  (ii) Provide such assistance to Imperial and the CCAA Plan Administrator, as an officer of the CCAA Court, as may be necessary or desirable to give effect to the Sanction Order or to assist Imperial and its CCAA Plan Administrator in carrying out the terms of the CCAA Plan Sanction Order and the CCAA Plan; and

  (iii) Upon the completion of the QCAP Claims Process and the payment of Compensation Payments thereunder, issue such orders, including the Closing Judgment, as may be necessary to terminate with prejudice and without costs the Quebec Class Actions.

ARTICLE 19. COURT SANCTION, CONDITIONS PRECEDENT AND CCAA PLAN IMPLEMENTATION

19.1 Application for Sanction Order

If the CCAA Plan is approved by the Required Majority of the Affected Creditor Class at the Meeting, the Court-Appointed Mediator and the Monitor shall apply for the Sanction Order on or before the date set for the Sanction Order hearing or such later date as the CCAA Court may set.

19.2 Sanction Order

The Court-Appointed Mediator and the Monitor will apply for a Sanction Order that shall, among other things:

(a) Order that: (i) the CCAA Plan has been approved by the Required Majority of the Affected Creditor Class in conformity with the CCAA; (ii) the activities of Imperial and the Monitor have been in compliance with the provisions of the CCAA and the Orders of the CCAA Court made in this CCAA Proceeding in all respects; (iii) neither Imperial nor the Monitor has done or purported to do anything that is not authorized by the CCAA; and (iv) the CCAA Plan and the transactions contemplated thereby are fair and reasonable;

(b) Order that the CCAA Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are sanctioned and approved, and at the Effective Time will be binding and effective upon and with respect to Imperial, all Affected Creditors, the Released Parties and all other Persons named or referred to in, or subject to, the CCAA Plan or the Sanction Order;

(c) Confirm that the CCAA Court is satisfied that: (i) the hearing regarding the Sanction Hearing was open to all of the Affected Creditors and all other Persons, including Putative Miscellaneous Claimants, with an interest in Imperial and that such Affected Creditors and other Persons were permitted to be heard at the Sanction Hearing; and (ii) all of the Affected Creditors and all other Persons on the Common Service List were given adequate notice thereof;

(d) Approve and authorize the Restructuring Steps;

(e) Approve the Quebec Administration Plan;

(f) Approve the PCC Compensation Plan;

(g) Approve the appointment of the Monitor as the CCAA Plan Administrator as set out in the CCAA Plan Administrators' Order;

(h) Approve the appointment of the Court-Appointed Mediator to provide services with respect to the implementation of the CCAA Plan and perform such other functions as may be requested by the CCAA Plan Administrator or the CCAA Court;

(i) Approve the appointment of Epiq as the Claims Administrator;

(j) Approve the appointment of Daniel Shapiro, K.C. as the Administrative Coordinator;

(k) Approve the appointment of Dr. Robert Bell as the initial Chair of the Cy-près Foundation;

(l) Order that any Affected Claim for which a Miscellaneous Claimant Proof of Claim or Notice of Dispute of Negative Notice Claim has not been filed by the Miscellaneous Claims Bar Date or the Negative Notice Bar Date, as applicable, in accordance with the Claims

Procedure Order is forever barred and extinguished, and all such Affected Claims are released and discharged;

(m) Order that, on a date to be agreed between Imperial and the CCAA Plan Administrators, the Alternative Products Business transferred by Imperial to Newco vests absolutely in Newco in accordance with Article 4, Section 4.1 of the CCAA Plan;

(n) Order that, as of the Effective Time, any and all Released Claims are and are deemed to be fully, finally, irrevocably and forever compromised, released, discharged and barred, and the ability of any Person to proceed against any of the Released Parties in respect of or relating to any Released Claims, whether directly, indirectly, derivatively or otherwise is forever barred, estopped, stayed and enjoined, and all proceedings with respect to, in connection with or relating to such Released Claims are permanently stayed, subject only to the right of the Affected Creditors to receive distributions pursuant to the CCAA Plan in respect of their Affected Claims and to exercise their rights under the CCAA Plan;

(o) Order that, as of the Effective Time, no action, proceeding or enforcement process in any court or tribunal may be commenced or continued against any Released Party, or any Person who claims or might reasonably be expected to claim in any manner or forum against any Released Party, in respect of the Released Claims without the prior written consent of the Released Party or leave of the CCAA Court obtained on notice to the Released Party and the Tobacco Companies, including appropriate injunctive language with respect to same;

(p) Authorize and approve the releases and injunctions set forth in Article 18, Sections 18.1.1 to 18.1.10 herein and order that such releases and injunctions shall become effective at the Effective Time;

(q) Authorize Quebec Class Counsel, PCC Representative Counsel, Knight Class Counsel and Counsel for the Tobacco Producers to execute and deliver the Claimant Contractual Release on behalf of the Quebec Class Action Plaintiffs, the Pan-Canadian Claimants, the Knight Class Action Plaintiffs, and the Tobacco Producers and Ontario Flue-Cured Tobacco Growers' Marketing Board, respectively;

(r) Confirm that each of (i) the affirmative vote in respect of the CCAA Plan and (ii) the signing of the Claimant Contractual Release, by or on behalf of each Claimant, shall be evidence of the consent of the Claimant to the treatment of its Claims for the purposes of Section 5.1(2) and/or Section 19(2) of the CCAA to the extent that they apply;

(s) Grant the Monitor, in addition to its rights and obligation under the CCAA, the powers, duties and protections contemplated by and required under the CCAA Plan and authorize and direct the Monitor to perform its duties and fulfil its obligations under the CCAA Plan as the CCAA Plan Administrator for Imperial to facilitate the implementation of the CCAA Plan;

(t) Authorize Imperial and FTI, in its capacity as the Monitor, the Foreign Representative, or the CCAA Plan Administrator, to take all steps and actions, and to do all things, necessary or appropriate to implement the CCAA Plan in accordance with and subject to its terms

and conditions, and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, payments, deliveries, allocation, instruments and agreements contemplated by, and subject to the terms and conditions of, the CCAA Plan;

(u) Order that in no circumstance will the Monitor have any liability for any of Imperial's tax or other liabilities regardless of how or when such liability may have arisen;

(v) Approve the form of the Monitor's Plan Implementation Date Certificate, and order that the Monitor, in its capacity as Monitor, following the fulfilment or waiver of the conditions precedent to implementation of the CCAA Plan as set out in Article 19, Sections 19.3 and 19.4 of the CCAA Plan, shall deliver the Monitor's Plan Implementation Date Certificate to Imperial and serve a copy thereof on the Common Service List;

(w) Order that upon completion by FTI of its duties as the Monitor and the CCAA Plan Administrator in respect of Imperial pursuant to the CCAA and any Order of the CCAA Court made in connection with the CCAA Proceeding or the CCAA Plan, FTI may file with the CCAA Court a certificate ("**Certificate of Plan Completion**") stating that all of its duties in respect of Imperial pursuant to the CCAA, the CCAA Plan and any Orders of the CCAA Court in respect thereof, have been completed and thereupon, FTI shall be deemed to be discharged from its duties as the Monitor and as the CCAA Plan Administrator and released of all claims relating to its activities as the Monitor and as the CCAA Plan Administrator;

(x) Approve the form of the Certificate of Plan Completion, and order that FTI, in its capacities as the Monitor and the CCAA Plan Administrator has completed its duties to fully and finally effect all distributions, disbursements and payments in accordance with the CCAA Plan, shall file the Certificate of Plan Completion with the CCAA Court;

(y) Order that, in carrying out the terms of the Sanction Order and the CCAA Plan, (i) FTI, in its capacities as the Monitor and the CCAA Plan Administrator, shall benefit from all the protections given to it by the CCAA, the Initial Order and any other Order in the CCAA Proceeding, and as an officer of the CCAA Court, (ii) FTI shall incur no liability or obligation as a result of carrying out the provisions of the Sanction Order and/or CCAA Plan, and (iii) FTI shall be entitled to rely on the books and records of Imperial and any information provided by Imperial without independent investigation and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;

(z) Order that each Putative Miscellaneous Claimant will be limited to recovering from the Miscellaneous Claims Fund in respect of all Miscellaneous Claims in accordance with the CCAA Plan and any other Definitive Documents, and such Putative Miscellaneous Claimant will have no right to and shall not make any claim against or seek any recovery from any Released Party in respect of such Miscellaneous Claim;

(aa) Order that each of the Sales and Excise Tax Charge and Directors' Charge will be terminated, discharged, expunged and released at the applicable time set out in the Sanction

Order upon receipt by Imperial of an acknowledgement of payment in full and in the appropriate currency of the claims secured thereby;

(bb) Approve the CCAA Plan Administration Reserve;

(cc) Approve the PCC Compensation Plan Reserve;

(dd) Order that, notwithstanding: (i) the pendency of the CCAA Proceeding or the Chapter 15 Proceedings; (ii) any applications for a bankruptcy, receivership or other order now or hereafter issued pursuant to the BIA, the CCAA, the US Bankruptcy Code or otherwise in respect of Imperial and any bankruptcy, receivership or other order issued pursuant to any such applications; and (iii) any assignment in bankruptcy made or deemed to be made in respect of Imperial, the transactions contemplated by the CCAA Plan shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect Imperial or its assets and shall not be void or voidable by creditors of Imperial, nor shall the CCAA Plan or the payments and distributions contemplated pursuant thereto constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA, CCAA or any other applicable federal or provincial legislation, nor shall the CCAA Plan constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation;

(ee) Order that, subject to the performance by Imperial of its obligations under the CCAA Plan, all obligations, contracts, leases, agreements and other arrangements to which (i) Imperial is a party at the Effective Time or (ii) Newco becomes a party on a date to be agreed between Imperial and the CCAA Plan Administrators as a result of the transfer of the Alternative Products Business to Newco in accordance with the terms of Article 4, Section 4.1, and that have not been terminated or disclaimed pursuant to the applicable paragraph of the Initial Order and related provision of the CCAA will be and remain in full force and effect, unamended as of the Effective Time, and no Person who is a party to any such obligation, contract, lease, agreement or other arrangement shall at or following the Effective Time accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(i) any event that occurred at or prior to the Effective Time and is not continuing thereafter, or which is or continues to be suspended or waived under the CCAA Plan, that would have entitled such Person to enforce those rights or remedies (including defaults or events or default arising as a result of the insolvency of Imperial);

(ii) the insolvency of Imperial or the fact that Imperial sought or obtained relief under the CCAA or the US Bankruptcy Code;

(iii) any compromises or arrangements effected pursuant to the CCAA Plan, or any action taken or transaction effected pursuant to the CCAA Plan; or

(iv) the fact that Imperial has sought or obtained relief or taken steps as part of the CCAA Proceedings or the Chapter 15 Proceedings.

(ff) Approve all conduct of the Directors of Imperial during the CCAA Proceeding and the Chapter 15 Proceedings;

(gg) Approve all conduct of the Monitor and the Monitor's Representatives in relation to Imperial and its Tobacco Company Group and bar all claims against them arising from or relating to the services provided to Imperial and its Tobacco Company Group up to and including the date of the Sanction Order;

(hh) Order that, in regard to the services that it provides after the date of the Sanction Order, FTI, whether in its capacity as the Monitor, the CCAA Plan Administrator and/or the Foreign Representative, shall have the benefit of all the protections afforded to the Monitors as officers of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings. For greater certainty, FTI, whether in its capacity as the Monitor, the CCAA Plan Administrator and/or the Foreign Representative, shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Monitor or its respective Affiliates, shareholders, Affiliates' shareholders, employees, advisors, legal counsel, representatives or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document;

(ii) Approve all conduct of the Court-Appointed Mediator and the Court-Appointed Mediator's Representatives in relation to Imperial and its Tobacco Company Group and bar all claims against them arising from or relating to the services provided during the pendency of the Court-supervised mediation up to and including the date of the Sanction Order;

(jj) Order that in the event that the Court-Appointed Mediator provides any services after the date of the Sanction Order, as requested by either the CCAA Plan Administrators or the CCAA Court, and approved by the CCAA Court, the Court-Appointed Mediator shall have the benefit of all the protections afforded to the Court-Appointed Mediator as an officer of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any Orders made in the CCAA Proceedings, including the orders appointing the Court-Appointed Mediator. In particular, the Court-Appointed Mediator shall not be liable to any Party, participant in the mediation, or any other Person, for any act or omission in connection with the mediation process and/or in connection with any services provided after date of the Sanction Order, and shall have the immunity of a Judge of a Superior Court in Canada. For greater certainty, the Court-Appointed Mediator shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Court-Appointed Mediator's heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document;

(kk) Order that, in regard to the services that the Administrative Coordinator provides after the date of the Sanction Order, the Administrative Coordinator shall have the benefit of all the protections afforded to him as an officer of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings. For greater certainty, the Administrative Coordinator shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Administrative Coordinator's heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document;

(ll) Authorize Imperial to seek an order of any court of competent jurisdiction to recognize the CCAA Plan and the Sanction Order and to confirm the CCAA Plan and the Sanction Order as binding and effective in any appropriate foreign jurisdiction, including in the Chapter 15 Proceedings;

(mm) Order that any obligation of Imperial to provide financial reporting pursuant to any Order or agreement shall cease at the Effective Time and be replaced with the obligations set forth in Article 10, Section 10.1 to Section 10.10 of the CCAA Plan;

(nn) Order that the CCAA stay of proceedings provided for in the Initial Order shall be extended until the Effective Time; and

(oo) Order that Imperial, the Court-Appointed Mediator or FTI, whether in its capacity as the Monitor, the CCAA Plan Administrator and/or the Foreign Representative, may apply to the CCAA Court for advice and direction in respect of any matters arising from or in relation to the CCAA Plan.

19.3 Conditions Precedent to Implementation of CCAA Plan

The implementation of the CCAA Plan shall be conditional upon the satisfaction, prior to or at the Effective Time, of the following conditions precedent ("**Plan Implementation Conditions**"):

(a) The CCAA Plan will have been approved by the Required Majority of the Affected Creditors at the Meeting;

(b) The CCAA Plans of RBH and JTIM will have been approved by the Required Majority of the Affected Creditors of RBH and JTIM at the Meetings in respect of the CCAA Plans of RBH and JTIM;

(c) The Sanction Order will have been granted by the CCAA Court, consistent with the terms of Article 19, Section 19.2 herein, and will have become a final Order;

(d) The Sanction Orders in respect of the CCAA Plans of RBH and JTIM will have been granted by the CCAA Court and will have become final Orders;

(e) All applicable appeal periods in respect of the Sanction Order will have expired and any appeals or motions for leave to appeal therefrom will have been finally disposed of by the applicable appellate court;

(f) The Sanction Recognition Order shall have been entered by the US Bankruptcy Court and will have become a final Order;

(g) The Plan Implementation Date will have occurred by no later than a date to be set by the Court-Appointed Mediator and the Monitors, unless otherwise ordered by the CCAA Court;

(h) The Effective Time of the CCAA Plans of RBH and JTIM shall become effective at the same time or immediately prior or immediately subsequent to the Effective Time of the CCAA Plan;

(i) The with prejudice dismissal of all Pending Litigation will have occurred by no later than a date to be set by the Court-Appointed Mediator and the Monitors, unless otherwise ordered by the CCAA Court;

(j) The CCAA Plan Administrators will have established the Global Settlement Trust Account, the PCC Trust Account, the Cy-près Trust Account and the QCAP Trust Account;

(k) Imperial shall have deposited its share of the Upfront Contributions into the Global Settlement Trust Account;

(l) The amount of $25.0 million in respect of the CCAA Plan of each Tobacco Company shall have been paid out of the Upfront Contributions and deposited into the CCAA Plan Administration Reserve Account to establish the CCAA Plan Administration Reserve;

(m) The amount of $5.0 million shall have been paid out of the Upfront Contributions and deposited into the PCC Compensation Plan Reserve Account to establish the PCC Compensation Plan Reserve;

(n) Imperial's and RBH's Cash Security Deposits will have been released from suretyship and deposited into the Global Settlement Trust Account;

(o) All relevant Persons will have executed, delivered and filed all documents and other instruments that, in the opinion of the Court-Appointed Mediator and the Monitor, acting reasonably, are necessary to implement the provisions of the CCAA Plan and the Sanction Order, including the Contribution Security Agreement and the Deed of Moveable Hypothec;

(p) The Claimant Contractual Release will have been executed, delivered and become effective in accordance with its terms, subject only to the occurrence of the Plan Implementation Date, on terms satisfactory to each Claimant, to the extent that Imperial and such Claimant are parties receiving or giving the applicable releases;

(q) No action or proceeding will be pending by any third party to enjoin or prohibit the implementation of the CCAA Plan and the transactions contemplated by the CCAA Plan;

(r) There shall not exist or have occurred any Material Adverse Effect upon Imperial;

(s) Except as expressly set out in the CCAA Plan, Imperial shall not have (i) issued or authorized the issuance of any shares, notes, options, warrants or other securities of any kind, (ii) become subject to any Encumbrance with respect to its assets or property, (iii) acquired any assets or become liable to pay any Indebtedness or liability of any kind (other than as expressly set out in the CCAA Plan), or (iv) entered into any agreement for any of the foregoing; and

(t) All applicable approvals and orders of, and all applicable submissions and filings with, Governmental Authorities having jurisdiction for the completion of the steps and transactions contemplated by the CCAA Plan (including the steps and transactions which are Plan Implementation Conditions) will have been obtained or made, as the case may be, in each case to the extent deemed necessary or advisable by the Court-Appointed Mediator and the Monitor, in form and substance satisfactory to the Court-Appointed Mediator and the Monitor.

Except in the case of Article 19, Sections 19.3 (a), (b), (c), (d), (f) and (h) which may not be waived, the Plan Implementation Conditions may be waived in whole or in part only with the consent, in writing, of the Court-Appointed Mediator and the Monitor provided that the waiver relates to matters of a non-material nature. In the event that the Court-Appointed Mediator and the Monitor seek to waive any material Plan Implementation Conditions, they shall provide notice to the Provinces and Territories, the Impacted Claimants and the Tobacco Company and will bring the issue before the CCAA Court for determination. In respect of Article 19, Section 19.3(p), the obligation of the Claimants to execute the Claimant Contractual Release cannot be waived without Imperial's consent.

19.4 Monitor's Certificate – Plan Implementation

As soon as practicable following fulfilment of the Plan Implementation Conditions, the Monitor shall deliver to Imperial, serve on the Common Service List, post on the Monitor's website and file with the CCAA Court a certificate confirming that the Plan Implementation Date has occurred ("**Plan Implementation Date Certificate**").

ARTICLE 20. GENERAL

20.1 Binding Effect

At the Effective Time, the CCAA Plan will become effective and binding on and enure to the benefit of the Released Parties and any other Person named or referred to in or subject to the CCAA Plan and their Representatives. Without limiting the generality of the foregoing, at the Effective Time:

(a) The treatment of Affected Claims, Released Claims and Miscellaneous Claims under the CCAA Plan will be final and binding for all purposes and enure to the benefit of the

Released Parties, the Affected Creditors and all other Persons named or referred to in or subject to the CCAA Plan and their Representatives;

(b) All Affected Claims shall be and shall be deemed to be forever compromised, released, discharged and barred, excepting only the obligations to make distributions in respect of such Affected Claims in the manner and to the extent provided for in the CCAA Plan;

(c) All Released Claims will be forever discharged, released, enjoined and barred;

(d) Each Affected Creditor and each Person holding a Released Claim or Miscellaneous Claim and all other Persons named or referred to in or subject to the CCAA Plan will be deemed to have:

(i) Consented and agreed to all of the provisions of the CCAA Plan in its entirety,

(ii) Executed and delivered to Imperial and to the other Released Parties, as applicable, all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the CCAA Plan in its entirety,

(iii) Waived any default by or rescinded any demand for payment against Imperial that has occurred on or prior to the Effective Time pursuant to, based on, or as a result of any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Affected Creditor, Person or Putative Miscellaneous Claimant and Imperial with respect to an Affected Claim, Released Claim or Miscellaneous Claim (as the case may be), and

(iv) Agreed that, if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing as at the moment before the Effective Time between an Affected Creditor or a Person holding a Released Claim or Miscellaneous Claim and Imperial with respect to an Affected Claim, Released Claim or Miscellaneous Claim (as the case may be) and the provisions of the CCAA Plan, then the provisions of the CCAA Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly; and

(e) Each Person named or referred to in, or subject to, the CCAA Plan shall be deemed to have received from the Released Parties, all statements, notices, declarations and notifications, statutory or otherwise, required to implement and carry out the CCAA Plan in its entirety.

20.2 Deeming Provisions

In the CCAA Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

20.3 Interest and Fees

Interest shall not accrue or be paid on Affected Claims after the Filing Date, and no holder of an Affected Claim, Released Claim or Miscellaneous Claim shall be entitled to interest accruing nor to fees and expenses incurred in respect of an Affected Claim, Released Claim or Miscellaneous

Claim on or after the Filing Date, and any Claim in respect of interest accruing or fees and expenses incurred on or after the Filing Date shall be deemed to be forever extinguished and released.

20.4 Modification of the CCAA Plan

(a) The Court-Appointed Mediator and the Monitor reserve the right, at any time and from time to time (including prior to, at or following the Meeting), to amend, restate, modify and/or supplement the CCAA Plan, provided that any such amendment, restatement, modification or supplement is contained in a notice which is filed with the CCAA Court and posted on the Monitor's website and,

(i) If made prior to the Meeting Order, such amendment, restatement, modification or supplement is communicated to the Affected Creditors and Imperial; or

(ii) If made following the Meeting Order, such amendment, restatement, modification or supplement shall be subject to approval by the CCAA Court following notice to the Affected Creditors and Imperial.

(b) Notwithstanding Article 20, Section 20.4(a), any amendment, restatement, modification or supplement to the CCAA Plan may be made by the Court-Appointed Mediator and the Monitor, at any time and from time to time, provided that it: (i) concerns a matter which is of an administrative nature required to better give effect to the implementation of the CCAA Plan; or (ii) is to cure any errors, omissions or ambiguities, and in either case is not materially adverse to the financial or economic interests of the Affected Creditors or the Unaffected Creditors.

(c) Any amended, restated, modified or supplementary CCAA Plan filed with the CCAA Court and, if required by this Section, approved by the CCAA Court, will for all purposes be and be deemed to be a part of and incorporated in the CCAA Plan.

20.5 Paramountcy

From and after the Effective Time, any conflict between any of:

(a) The CCAA Plan;

(b) The Sanction Order; and/or

(c) The covenants, warranties, representations, terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Affected Creditors and Imperial as at the moment before the Effective Time,

will be deemed to be governed by the terms, conditions and provisions of the Sanction Order, which will take precedence and priority.

20.6 Severability of CCAA Plan Provisions

If, prior to the Plan Implementation Date, any term or provision of the CCAA Plan is held by the CCAA Court to be invalid, void or unenforceable, the CCAA Court, at the request of the Court-Appointed Mediator, the Monitor or Imperial, will have the power to either: (a) sever such term or provision from the balance of the CCAA Plan and provide the Court-Appointed Mediator and the Monitor with the option to proceed with the implementation of the balance of the CCAA Plan, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as so altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that the Court-Appointed Mediator and the Monitor are authorized by the CCAA Court to proceed with implementation of the CCAA Plan, the remainder of the terms and provisions of the CCAA Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

20.7 Transition Period - Responsibilities and Protections of FTI as Monitor and CCAA Plan Administrator

FTI is acting and will continue to act in all respects in its capacity as Monitor in the CCAA Proceedings with respect to Imperial (and not in its personal capacity). Subject to the approval by the CCAA Court of FTI's appointment as the CCAA Plan Administrator pursuant to Article 14, Section 14.1, subsequent to the Effective Time FTI will transform from the Monitor into the CCAA Plan Administrator and will fulfill the duties and responsibilities of the CCAA Plan Administrator set forth in the CCAA Plan, any other Definitive Documents and any Order made in the CCAA Proceeding. Notwithstanding the foregoing, during the period of time subsequent to the Effective Time during which FTI transitions from its capacity as Monitor to its capacity as CCAA Plan Administrator, from time to time as required and applicable, FTI may act in both its capacities as the Monitor and the CCAA Plan Administrator depending upon the duties and responsibilities that it is fulfilling.

In all of its capacities as the Monitor, the Foreign Representative and the CCAA Plan Administrator, FTI shall not be responsible or liable for any obligations of Imperial and its Tobacco Company Group. FTI will have the powers and protections granted to it by the Initial Order, the CCAA Plan, the CCAA, the Sanction Order and any other Order made in the CCAA Proceeding and the Chapter 15 Proceedings, including the protections expressly set forth in Article 18, Sections 18.1.1 to 18.1.10 of the CCAA Plan. FTI and its Affiliates, shareholders, Affiliates' shareholders, employees, legal counsel, advisors, representatives and agents will incur no personal liability whatsoever whether on their own part or in respect of any failure on the part of Imperial and its Tobacco Company Group to observe, perform or comply with any of their obligations under the CCAA Plan. Any release, discharge or other benefit conferred upon FTI pursuant to the CCAA Plan will enure to the benefit of FTI and its Affiliates, shareholders, Affiliates' shareholders, employees, legal counsel, advisors, representatives and agents. FTI in its personal capacity, and each of its Affiliates, shareholders, Affiliates' shareholders, employees, legal counsel, advisors, representatives and agents, will be third party beneficiaries to the CCAA Plan entitled to enforce such releases, discharges and other benefits in accordance with the terms of the CCAA Plan.

20.8 Transition Period - Responsibilities and Protections of the Court-Appointed Mediator

The Court-Appointed Mediator is acting and will continue to act in all respects in his capacity as the Court-Appointed Mediator in the CCAA Proceeding with respect to Imperial (and not in his personal capacity). Subsequent to the Effective Time, if (i) requested by FTI in its capacity as the Monitor, the Foreign Representative or the CCAA Plan Administrator, or (ii) directed by the CCAA Court, the Court-Appointed Mediator will perform such duties and provide such services as may arise from or relate to the fulfillment of his mandate to mediate and give effect to the global settlement of all Tobacco Claims.

The Court-Appointed Mediator shall not be responsible or liable for any obligations of Imperial and its Tobacco Company Group. The Court-Appointed Mediator will have the powers and protections granted to him by the Initial Order, the CCAA Plan, the CCAA, the Sanction Order and any other Order made in the CCAA Proceeding, including the protections expressly set forth in Article 18, Sections 18.1.1 to 18.1.10 of the CCAA Plan. The Court-Appointed Mediator and his heirs, successors, assigns, representatives, advisors, legal counsel, consultants and agents will incur no personal liability whatsoever whether on their own part or in respect of any failure on the part of Imperial and its Tobacco Company Group to observe, perform or comply with any of their obligations under the CCAA Plan. Any release, discharge or other benefit conferred upon the Court-Appointed Mediator pursuant to the CCAA Plan will enure to the benefit of the Court-Appointed Mediator and his heirs, successors, assigns, representatives, advisors, legal counsel, consultants and agents. The Court-Appointed Mediator and his heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents, will be third party beneficiaries to the CCAA Plan entitled to enforce such releases, discharges and other benefits in accordance with the terms of the CCAA Plan.

20.9 Miscellaneous Claims Bar Date

Nothing in the CCAA Plan extends or shall be interpreted as extending or amending the Miscellaneous Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order and the Meeting Order.

20.10 Different Capacities

Persons who are impacted by the CCAA Plan may be impacted in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not impact such Person in any other capacity, unless otherwise provided in the Meeting Order expressly agreed by the Court-Appointed Mediator, the Monitor and the Person in writing, or unless its Claims overlap or are otherwise duplicative.

20.11 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the CCAA Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by email addressed to the respective parties as follows:

(a) If to Imperial:

Imperial Tobacco Canada Limited
3711 Rue Saint-Antoine Ouest
Montréal QC H4C 3P6

Email: Plan_canada@bat.com

With a copy to (which will not constitute notice):

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Attention: Marc Wasserman / Martino Calvaruso
Email: mwasserman@osler.com / mcalvaruso@osler.com

(b) If to an Affected Creditor: to the mailing address or email address provided on such Affected Creditor's Statement of Negative Notice Claim or other proof of claim, or such more recent address particulars of an Affected Creditor as noted in the files of Imperial or the Monitor.

(c) If to the Monitor:

FTI Consulting Canada Inc.
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto ON M5K 1G8

Email: imperialtobacco@fticonsulting.com

With a copy to (which will not constitute notice):

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto ON M5V 3J7

Email: itcan@dwpv.com

or to such other address as any party may from time to time notify the others in accordance with this Section, or, in the case of an address change for Imperial or the Monitor or CCAA Plan Administrator, by posting notice of such address change on the Monitor's website (http://cfcanada.fticonsulting.com/imperialtobacco). Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of sending by means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered or sent before

5:00 p.m. (Eastern Time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

20.12 Further Assurances

Each of the Persons named or referred to in, or subject to, the CCAA Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the CCAA Plan and to give effect to the transactions contemplated by the CCAA Plan and the Definitive Documents notwithstanding any provision of the CCAA Plan that deems any event or transaction to occur without further formality.

20.13 Language

The CCAA Plan, as well as any notices, schedules or other documents related thereto, have been and will be prepared in the English and French languages. To the extent a French language or other translation is prepared, any such translation will be for informational purposes only, it being intended that the English language version will govern and prevail in all respects.

20.14 Acts to Occur on Next Business Day

If any distribution, payment or act under the CCAA Plan is required to be made or performed on a date that is not a Business Day, then the making of such distribution, payment or the performance of such act may be completed on the next succeeding Business Day, but will be deemed to have been completed as of the required date.

20.15 Non-Consummation of the CCAA Plan

The Court-Appointed Mediator and the Monitor reserve the right to revoke or withdraw the CCAA Plan at any time prior to the date on which the CCAA Court grants the Sanction Order. If the Court-Appointed Mediator and the Monitor revoke or withdraw the CCAA Plan, or if the Sanction Order is not issued or if the Plan Implementation Date does not occur, (a) the CCAA Plan and all transactions contemplated in the CCAA Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the CCAA Plan, or any document or agreement executed pursuant to or in connection with the CCAA Plan shall be deemed to be null and void, and (c) nothing contained in the CCAA Plan, and no acts taken in preparation for consummation of the CCAA Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against Imperial or any member of its Tobacco Company Group or any other Person, (ii) prejudice in any manner the rights of Imperial or any member of its Tobacco Company Group or any other Person in any further proceedings involving any of Imperial or any member of its Tobacco Company Group, or (iii) constitute an admission of any sort by Imperial or any member of its Tobacco Company Group or any other Person.

20.16 Deemed Waiver of Defaults from Plan Implementation Date

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of Imperial then existing or previously committed by Imperial, or caused directly or indirectly by Imperial, the commencement of the CCAA Proceeding or the Chapter 15 Proceedings, any matter pertaining to the CCAA Proceeding or the Chapter 15 Proceedings, any

of the provisions in the CCAA Plan or the Definitive Documents or steps or transactions contemplated in the CCAA Plan or the Definitive Documents, or any non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and Imperial and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect; provided that, nothing herein shall be deemed to limit or excuse Imperial from performing their obligations thereunder and under the CCAA Plan or be a waiver of any defaults by Imperial under the CCAA Plan or the other Definitive Documents.

DATED as of the 27th day of February, 2025.

Court File No.: CV-19-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

APPLICANT

THIRD AMENDED AND RESTATED COURT-APPOINTED MEDIATOR'S AND MONITOR'S CCAA PLAN OF COMPROMISE AND ARRANGEMENT

PURSUANT TO THE
COMPANIES' CREDITORS ARRANGEMENT ACT

concerning, affecting and involving

ROTHMANS, BENSON & HEDGES INC.

FEBRUARY 27, 2025

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Schedule "E": Contribution Security Agreement

Schedule "F": Deed of Immoveable Hypothec (official French version)

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Schedule "H": Deed of Moveable Hypothec

Schedule "I": Demand Debenture granting mortgage on RBH's property situated at 1500 Don Mills Road, and Acknowledgment and Direction relating to the mortgage

Schedule "J": Harrison Report

Schedule "K": Curriculum vitae of Dr. Glenn Harrison

Schedule "L": Jha Report

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Schedule "N": Quebec Class Action Administration Plan

Schedule "O": Overview of Epiq's complex claims administration experience

Schedule "P": Curriculum vitae of Daniel Shapiro, K.C.

Schedule "Q": Pan-Canadian Claimants' Compensation Plan: Methodology and Analysis dated December 5, 2024

Schedule "R": Analysis of Limitations Law applicable to Pan-Canadian Claimants dated September 2, 2020

Schedule "S": Pan-Canadian Claimants' Compensation Plan dated December 5, 2024

Schedule "T": Resume of Dr. Robert Bell

Schedule "U": Curriculum vitae of Dr. Robert Bell

Schedule "V": The Cy-près Fund: Methodology and Analysis dated December 5, 2024

Schedule "W": Claimant Contractual Release – RBH

Schedule "X": List of Health Care Costs Recovery Actions of the Provinces and HCCR Claims asserted by Territories

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THIRD AMENDED AND RESTATED COURT-APPOINTED MEDIATOR'S AND MONITOR'S CCAA PLAN OF COMPROMISE AND ARRANGEMENT CONCERNING, AFFECTING AND INVOLVING ROTHMANS, BENSON & HEDGES INC.

WHEREAS Rothmans, Benson & Hedges Inc. ("**RBH**") is insolvent;

AND WHEREAS RBH was granted protection from its creditors under the CCAA pursuant to the initial Order of the Honourable Justice Pattillo of the CCAA Court dated March 22, 2019 ("**Initial Order**");

AND WHEREAS by the Initial Order the CCAA Court appointed Ernst & Young Inc. ("**EY**") as an officer of the CCAA Court and the monitor of RBH ("**Monitor**");

AND WHEREAS by an Order dated April 5, 2019, the CCAA Court appointed the Honourable Warren K. Winkler, K.C. ("**Court-Appointed Mediator**") as an officer of the CCAA Court to, as a neutral third party, mediate a global settlement of the Tobacco Claims;

AND WHEREAS by an Order dated September 27, 2023, the Honourable Chief Justice Geoffrey B. Morawetz directed the Monitor to work with the Court-Appointed Mediator to develop a plan of compromise and arrangement concerning RBH;

NOW THEREFORE, set out herein is the third amended and restated plan of compromise and arrangement of RBH developed by the Court-Appointed Mediator and Monitor pursuant to the Order dated September 27, 2023 and in accordance with the CCAA.

ARTICLE 1. INTERPRETATION

1.1 Definitions

In the CCAA Plan, including all Schedules hereto, unless otherwise stated or the context otherwise requires:

"**Administration Charge**" means the charge over the Property for the benefit of the Monitor, counsel to the Monitor, the PCC Representative Counsel and counsel to RBH, created by paragraph 38 of the Initial Order, and having the priority provided in paragraphs 45 and 47 of such Order.

"**Administrative Coordinator**" means Daniel Shapiro, K.C., in his capacity as the Court-appointed administrative coordinator in respect of the administration of both the PCC Compensation Plan and the Quebec Administration Plan. Daniel Shapiro's appointment as the Administrative Coordinator will be upon the recommendation of the Court-Appointed Mediator and the Monitors and subject to the approval of the CCAA Court.

"**Affected Claim**" means any Claim, other than an Unaffected Claim, against RBH. For greater certainty, all Tobacco Claims, including the Provincial HCCR Claims, Territorial HCCR Claims,

QCAP Claims, PCC Claims, *Knight* Claims, Tobacco Producers Claims and Miscellaneous Claims are Affected Claims.

"**Affected Creditor**" means a creditor who holds an Affected Claim.

"**Affected Creditor Class**" means the single class of creditors comprised solely of Affected Creditors grouped for the purposes of considering and voting on the CCAA Plan.

"**Affiliate**" means a Person is an affiliate of another Person if,

(a) one of them is the subsidiary of the other, or

(b) each of them is controlled by the same Person.

For the purpose of this definition,

(i) "subsidiary" means a Person that is controlled directly or indirectly by another Person and includes a subsidiary of that subsidiary, and

(ii) a Person (first Person) is considered to control another Person (second Person) if,

(A) the first Person beneficially owns or directly or indirectly exercises control or direction over securities of the second Person carrying votes which, if exercised, would entitle the first Person to elect a majority of the directors of the second Person, unless that first Person holds the voting securities only to secure an obligation,

(B) the second Person is a partnership, other than a limited partnership, and the first Person holds more than 50% of the interests of the partnership, or

(C) the second Person is a limited partnership and the general partner of the limited partnership is the first Person.

"**Aggrieved Parties**" has the meaning given in Article 12, Section 12.1.

"**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.

"**Alternative Product Claim**" means any Claim of any Person, against or in respect of RBH or any member of its Tobacco Company Group, excluding any part of any such Claim that constitutes a Tobacco Claim, that has been advanced (including, without limitation, in any outstanding or pending litigation), that could have been advanced or that could be advanced, and whether such Claim is on such Person's own account, on behalf of another Person, as a dependent of another

Person, or on behalf of a certified or proposed class, or made or advanced by a Government, agency, insurer, employer or otherwise, under or in connection with Applicable Law, or under any current or future statute to recover damages or any other remedy or costs in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Alternative Products, the use of or exposure (whether directly or indirectly) to Alternative Products or their emissions, the development of any disease related to the use of Alternative Products or any representation or omission in respect of Alternative Products, including any misrepresentations, breach of duty or fraud in respect thereof by any member of RBH's Tobacco Company Group or its Representatives in Canada or, in the case of RBH, anywhere else in the world, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place before or after the Effective Time.

"**Alternative Products Business**" has the meaning given in Article 2, Section 2.1(f).

"**Annual Amount**" has the meaning given in the definition of Reserved Amount.

"**Annual Contributions**" has the meaning given in Article 5, Section 5.6, and "**Annual Contribution**" means any one of them.

"**Annual Financial Statement**" has the meaning given in Article 10, Section 10.2.1(a).

"**Applicable Law**" means any law, statute, order, decree, judgment, rule, regulation, ordinance or other pronouncement having the effect of law, whether in Canada or any other country, or any domestic or foreign state, county, province, city or other political subdivision of any Government.

"**Arbitrator**" means the arbitrator who is appointed pursuant to Article 13, Section 13.4.2.

"**Bank**" has the meaning given in Article 5, Section 5.3.

"**Bankruptcy Action**" means, with respect to RBH, where:

(a) An Order of a court of competent jurisdiction is entered adjudging RBH bankrupt or insolvent, or subject to the CCAA or the BIA, or any other bankruptcy, insolvency or analogous laws;

(b) RBH admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;

(c) RBH makes an assignment in bankruptcy or makes any other assignment for the benefit of creditors, gives notice of intention to make a proposal or makes a proposal under the BIA, or any comparable law, or seeks relief under the CCAA, or any other bankruptcy, insolvency or analogous law of any relevant jurisdiction;

(d) A creditor delivers notice of its intention to enforce its security on RBH's property pursuant to the BIA, or a creditor brings an application seeking, or the court or a creditor appoints, or RBH consents to or acquiesces in, the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of

itself or of all or any substantial portion of RBH's assets, or a creditor otherwise exercises any of its rights or remedies under any of the PPSAs over all or any substantial portion of RBH's assets;

(e) RBH files a petition, application or otherwise commences any proceeding seeking any reorganization, arrangement, composition, or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar insolvency law affecting creditors' rights, or consents to, or acquiesces in, such proceedings; or

(f) RBH files a petition, application or otherwise commences any proceeding seeking any reorganization, arrangement, composition, or readjustment, whether or not affecting creditors' rights, under any applicable corporate statute, or consents to, or acquiesces in, such proceedings.

"**BIA**" means the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended.

"***Blais* Class Action**" means the class action commenced on November 20, 1998 by Conseil Québécois sur le tabac et la santé and Jean-Yves Blais against ITCAN, RBH and JTIM in the Superior Court of Quebec, District of Montreal, bearing Court File No. 500-06-000076-980.

"***Blais* Class Members**" means individuals who meet the criteria of the following certified class definition in the *Blais* Class Action:

All persons residing in Quebec who satisfy the following criteria:

(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 to or greater than 87,600 cigarettes).

For example, 12 pack/years equals:

20 cigarettes a day for 12 years (20 X 365 X 12 = 87,600) or

30 cigarettes a day for 8 years (30 X 365 X 8 = 87,600) or

10 cigarettes a day for 24 years (10 X 365 X 24 = 87,600);

(2) To have been diagnosed before March 12, 2012 with:

(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.

The group also includes the Heirs of the persons deceased after November 20, 1998 who satisfied the criteria mentioned herein.

"***Blais* Eligibility Criteria**" means the criteria set out in the certified class definition in the *Blais* Class Action which a person must meet to be eligible to receive a Compensation Payment as a Blais Class Member.

"***Blais* Judgment**" means the judgment rendered by the Honourable Justice Brian Riordan on May 27, 2015 as rectified on June 9, 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. 500-06-00076-980 (*Conseil québécois sur le tabac et la santé et Jean-Yves Blais* c. *Imperial Tobacco Ltée, Rothmans, Benson & Hedges Inc. et JTI-MacDonald Corp.*).

"**Breach**" has the meaning given in Article 12, Section 12.4.

"**Business Day**" means a day other than a Saturday, Sunday, or statutory or civic holiday in the Province of Ontario.

"**Business Plan**" has the meaning given in Article 10, Section 10.1.

"**Canada**" means His Majesty in right of Canada.

"**Canada Newco**" has the meaning given in Article 11, Section 11.1(h).

"**CapEx**" has the meaning given in Article 10, Section 10.1(b).

"**CapEx Thresholds**" has the meaning given in Article 11, Section 11.3.

"**Carry Amount**" has the meaning given in the definition of Reserved Amount.

"**Cash**" means cash, certificates of deposit, bank deposits, term deposits, guaranteed investment certificates, cheques, commercial paper, treasury bills and other cash equivalents.

"**Cash Management Bank**" means any Person that is providing cash management services to RBH.

"**Cash Management Bank Claim**" means the Claim of any Cash Management Bank in connection with the provision of cash management services to RBH.

"**Cash Security Deposits**" means, collectively, (i) in the case of Imperial, the cash and interest, if any, deposited by ITCAN as suretyship pursuant to the Order of the Quebec Court of Appeal dated October 27, 2015; and (ii) in the case of RBH, the cash and interest, if any, deposited by RBH as suretyship pursuant to the Order of the Quebec Court of Appeal dated October 27, 2015, and "**Cash Security Deposit**" means any of them.

"**CCAA**" means the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended.

"**CCAA Charges**" means, collectively, the Administration Charge, Court-Appointed Mediator Charge, Sales and Excise Tax Charge and Directors' Charge, as each term is defined in the Initial Order, as amended and restated, or any subsequent order in the CCAA Proceeding.

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

"**CCAA Plan**", or "**Plan**", means the Court-Appointed Mediator's and Monitor's plan of compromise and arrangement pursuant to the CCAA concerning, affecting and involving RBH, including all Schedules thereto.

"**CCAA Plan Administration Reserve**" means the Cash reserve to be established on the Plan Implementation Date prior to any distributions to Affected Creditors as authorized by the CCAA Court pursuant to the Sanction Order, in the amount of $25.0 million in respect of the CCAA Plan of each Tobacco Company (Imperial, RBH and JTIM), and to be paid out of the Upfront Contributions and deposited into the separate CCAA Plan Administration Reserve Account for each Tobacco Company for the purpose of paying the CCAA Plan Administration Reserve Costs for that Tobacco Company. The CCAA Plan Administrator shall hold the CCAA Plan Administration Reserve in trust for those Persons entitled to such funds pursuant to the CCAA Plan in respect of the CCAA Proceeding.

"**CCAA Plan Administration Reserve Account**" means a segregated interest-bearing trust account established by the CCAA Plan Administrator to hold the CCAA Plan Administration Reserve on behalf of the beneficiaries thereof.

"**CCAA Plan Administration Reserve Costs**" means Costs incurred and payments to be made on or after the Plan Implementation Date, including Costs incurred prior to the Plan Implementation Date which remain outstanding as of the Plan Implementation Date, in respect of:

(a) The Costs of the services which EY (including its legal, financial, investment or other advisors) provides in connection with the performance of its duties as both the Monitor and the CCAA Plan Administrator under the CCAA Plan and in the CCAA Proceeding, including the fulfillment of its duties and responsibilities enumerated in Article 14, Section 14.4 herein; and

(b) The Costs of the services which the Court-Appointed Mediator (including his legal counsel and other consultants and advisors) may provide after the date of the Sanction Order, as requested by EY acting as either the Monitor or the CCAA Plan Administrator, or by the CCAA Court, and approved by the CCAA Court.

"**CCAA Plan Administrators**" has the meaning given in Article 14, Section 14.1, and "**CCAA Plan Administrator**" means EY in respect of RBH.

"**CCAA Plan Administrators' Order**" means the order or orders of the CCAA Court appointing EY to serve, as an officer of the CCAA Court, in the capacity of CCAA Plan Administrator of the CCAA Plan in respect of RBH and, among other things, setting out the rights, powers and obligations of the CCAA Plan Administrator in connection with such appointment.

"**CCAA Plans**" means, collectively, the Court-Appointed Mediator's and Monitor's plans of compromise and arrangement pursuant to the CCAA concerning, affecting and involving each of Imperial, RBH and JTIM, including all Schedules to each 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 of Plan Completion**" has the meaning given in Article 19, Section 19.2(w).

"**Chapter 15 Proceedings**" means the foreign recognition proceedings of ITCAN pursuant to Chapter 15 of the US Bankruptcy Code pending before the US Bankruptcy Court (Case No. 19-10771(SCC)).

"**Claimant Allocation**" has the meaning given in Article 16, Section 16.1.

"**Claimant Contractual Release**" means the release in the form attached to the CCAA Plan as Schedule "W" which the Claimants shall provide to the Released Parties that will fully, finally, irrevocably and unconditionally release and forever discharge the Released Parties of and from the Claimants' respective Released Claims, provided that such Claimant Contractual Release shall not release any of the Non-Released Claims.

"**Claimants**" means the Provinces and Territories, Quebec Class Action Plaintiffs, Pan-Canadian Claimants, *Knight* Class Action Plaintiffs and Tobacco Producers, and "**Claimant**" means any one of them.

"**Claimants' Representatives**" means:

(a) Counsel for the Provinces and Territories identified on the Common Service List;

(b) Quebec Class Counsel;

(c) PCC Representative Counsel;

(d) Knight Class Counsel; and

(e) Counsel for the Tobacco Producers.

"**Claims**" means any and all manner of requests, demands, complaints, claims (including claims for contribution or indemnity), rights, 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, whether asserted or unasserted, 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 or civil 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, including acting as agent for the PCCs, 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.

"**Claims Package**" means the documents attached to the Claims Procedure Order as Schedule "A", including the Instruction Letter and the Miscellaneous Claimant Proof of Claim form which are attached as Schedule "B" to the CCAA Plan.

"**Claims Procedure**" means the claims procedure contemplated by the Claims Procedure Order for (i) disputing the value and number of votes attributed to the Affected Claims of the Claimants, and (ii) identifying Miscellaneous Claims for the purpose of voting on the CCAA Plan.

"**Claims Procedure Order**" means the order of the CCAA Court (including all schedules and appendices thereto) made in the CCAA Proceeding establishing and approving the Claims Procedure in respect of RBH, and as may be further amended, restated or varied from time to time.

"**Closing Judgment**" means the judgment terminating the *Blais* Class Action and the *Létourneau* Class Action which will be requested on a motion brought by the Quebec Class Counsel after all Eligible Blais Class Members have been paid their Compensation Payments.

"**Collateral Agent**" means the collateral agent and hypothecary representative which shall act on behalf and for the benefit of the Claimants under and in relation to the Contribution Security. The Collateral Agent will be engaged prior to the Effective Time.

"**Common Service List**" means the service list posted on the Monitor's website, as may be amended from time to time.

"**Compensation Payment**" means the amount determined by the Claims Administrator to be payable to an Eligible *Blais* Class Member under the Quebec Administration Plan in satisfaction of their QCAP Claim.

"**Contribution**" means, in respect of a Tobacco Company, each of its Upfront Contribution and Annual Contributions, excluding any applicable Reserved Amounts retained in the Supplemental Trust Account. A Contribution shall also include any Reserved Amount (including any income therefrom) following release of such Reserved Amount (or income therefrom) from the Supplemental Trust Account to the Global Settlement Trust Account, but exclude any Reserved Amount released from the Supplemental Trust Account to a Tax Authority or to a Tobacco Company.

"**Contribution Period**" has the meaning given in Article 5, Section 5.8.

"**Contribution Security**" has the meaning given in Article 5, Section 5.13.

"**Contribution Security Agreement**" has the meaning given in Article 5, Section 5.13 and is attached to the CCAA Plan as Schedule "E".

"**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.

"**Cost of Health Care Benefits**" means the sum of (a) the present value of the total expenditure by a Province or Territory 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 a Province or Territory 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.

"**Cost of Health Care Benefits Percentages**" has the meaning given in Section 4 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Costs**" has the meaning given in Article 14, Section 14.9.

"**Counsel for the Tobacco Producers**" means the law practice of Strosberg Sasso Sutts LLP.

"**Counsel for the Tobacco Producers' Fee**" means the amount to be determined and approved by the CCAA Court that will be payable from the Tobacco Producers Settlement Amount to the Counsel for the Tobacco Producers in respect of their fees, disbursements and costs as Counsel for the Tobacco Producers, and any applicable Sales and Excise Taxes payable thereon. The retainer agreement respecting fees and disbursements between the Counsel for the Tobacco Producers and the representative plaintiffs, as well as the Counsel for the Tobacco Producers' Fee, are subject to the approval of the CCAA Court.

"**Court-Appointed Mediator**" means the Honourable Warren K. Winkler, K.C., in his capacity as the Court-appointed mediator in the CCAA Proceedings of the Tobacco Companies.

"**Court-Appointed Mediator Charge**" means the charge over the Property for the benefit of the Court-Appointed Mediator created by paragraph 42 of the Initial Order, and having the priority provided in paragraphs 45 and 47 of such Order.

"**CRA**" means the Canada Revenue Agency.

"**Cy-près Foundation**" has the meaning given in Article 9, Section 9.1.

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

"**Cy-près Trust Account**" has the meaning given in Article 9, Section 9.2.

"**Deeds of Hypothec**" has the meaning given in Section 1.2 of the Contribution Security Agreement which is Schedule "E" to the CCAA Plan, and includes the Deed of Immoveable Hypothec and the Deed of Moveable Hypothec.

"**Definitive Documents**" means the CCAA Plan, the Sanction Order, the Contribution Security Agreement, the Deeds of Hypothec, the documents required to implement and give effect to the PCC Compensation Plan and the Cy-près Foundation, and all other agreements, documents and orders contemplated by, or necessary to implement the transactions contemplated by, any of the foregoing.

"**Deliberation Meetings**" has the meaning given in Section 14(b) of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Deliberation Phase**" has the meaning given in Section 14(b) of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Deliberation Phase Secretariat**" has the meaning given in Section 25 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Deloitte**" means Deloitte Restructuring Inc.

"**Demand Debenture**" means the demand debenture granting a mortgage on RBH's property situated at 1500 Don Mills Road in Toronto, which is attached to the CCAA Plan as Schedule "I" together with the Acknowledgment and Direction relating to the mortgage.

"**Director**" means any Person who, as at the Effective Time, is a former or present director or officer of RBH or any other Person of a similar position or who by Applicable Law is deemed to be or is treated similarly to a director or officer of RBH or who currently manages or supervises the management of the business and affairs of RBH or did so in the past.

"**Directors' Charge**" means the charge over the Property for the benefit of the Directors created by paragraph 28 of the Initial Order, and having the priority provided in paragraphs 45 and 47 of such Order.

"**Disposition**" means, with respect to any Person, the sale, lease, license, transfer, assignment or other disposition of, or the expropriation, condemnation, destruction or other loss of, all or any portion of its business, assets, rights, revenues or property, real, personal or mixed, tangible or intangible, whether in one transaction or a series of transactions, and "**Dispose**" shall have a correlative meaning thereto.

"**Dispute**" has the meaning given in Article 13, Section 13.1.

"**Dispute Resolution Procedure**" has the meaning given in Article 13, Section 13.1.

"**Distribution Record Date**" means the date that is seven Business Days prior to the date that any distribution is made under the CCAA Plan.

"**Effective Time**" means such time on the Plan Implementation Date as the Court-Appointed Mediator and the Monitor may determine and designate.

"**Eligible *Blais* Class Members**" means the Tobacco-Victim Claimants and Succession Claimants whom the Claims Administrator has determined meet all the *Blais* Eligibility Criteria such that their Tobacco-Victim Claims and Succession Claims are approved to receive a Compensation Payment in accordance with the terms of the Quebec Administration Plan, and "**Eligible *Blais* Class Member**" means any one of them.

"**Eligible Pan-Canadian Claimants**" means the Individuals whom the Claims Administrator has determined meet all the PCC Eligibility Criteria such that their PCC Claims are approved for an Individual Payment in accordance with the terms of the PCC Compensation Plan, and "**Eligible Pan-Canadian Claimant**" means any one of them.

"**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 and the Quebec Administration Plan, "Emphysema" includes COPD (GOLD Grade III or IV).

"**Employee Priority Claim**" means any Claim for (a) accrued and unpaid wages and vacation pay owing to an employee of RBH whose employment was terminated between the Filing Date and the Plan Implementation Date; and (b) unpaid amounts provided for in sections 6(5)(a) and 6(6)(a) of the CCAA.

"**Encumbrance**" means a mortgage, floating charge, deed of trust, lien, pledge, hypothecation, assignment, security interest, right of offset or any other encumbrance, charge, or transfer of, on or affecting the property or assets of any Person or any interest therein, including any conditional sale contract or other title retention agreement or arrangement of any kind or character intended to create a security interest in substance, regardless of whether the Person creating the interest retains the equity of redemption, any financing lease having substantially the same economic effect as any of the foregoing, any rights of way, any easements and any construction, builder's, mechanic's, materialmen's or other similar liens, encumbrances and any trust imposed or deemed to exist by law.

"**Epiq**" means Epiq Class Actions Services Canada, Inc.

"**Event of Default**" has the meaning given in Article 12, Section 12.2.

"**Extended Cure Period**" has the meaning given in Article 12, Section 12.3(c).

"**EY**" means Ernst & Young Inc.

"**Filing Date**" means March 22, 2019.

"**Final Information Request**" has the meaning given in Article 10, Section 10.5(c).

"**Financially Viable**", or "**Financial Viability**", means the ability of RBH to meet its obligations to creditors in the Ordinary Course of Business as they come due.

"**First Notice**" means the initial notice which the Claims Administrator shall publish regarding the PCC Compensation Plan.

"**First Notice Date**" means the date on which the Claims Administrator publishes the First Notice.

"**Foreign Representative**" means, with respect to the Chapter 15 Proceedings, FTI in its capacity as the foreign representative for ITCAN within the meaning of section 101(24) of the US Bankruptcy Code.

"**FTI**" means FTI Consulting Canada Inc.

"**GAAS**" means Generally Accepted Auditing Standards.

"**Global Settlement Amount**" has the meaning given in Article 5, Section 5.1.

"**Global Settlement Trust Account**" has the meaning given in Article 5, Section 5.3.

"**Government**" means any government, including the Provinces, Territories and Canada, and any person, body or entity within such government having or purporting to have jurisdiction on behalf of any nation, province, territory, municipality or state or any other geographic or political subdivision of any of them.

"**Government Priority Claim**" means any Claim of any Government against RBH in respect of amounts that are outstanding, if any, provided for in section 6(3) of the CCAA.

"**Governmental Authority**" means any government (including the Provinces, Territories and Canada), regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (ii) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

"**Harrison Report**" means the report of Dr. Glenn Harrison dated March 14, 2024 entitled "The Provincial and Territorial Present Value of Smoking Attributable Expenditures" that is attached to the CCAA Plan as Schedule "J".

"**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.

"**Health Care Benefits**" means "health care benefits", "health services" or "health care services" as such terms, as applicable, are defined in each of the statutes enumerated in the definition of "HCCR Legislation".

"**Hypopharynx**" means the laryngeal part of the pharynx extending from the hyoid bone to the lower margin of the cricoid cartilage.

"**Impacted Claimants**" means, at any given time during the Contribution Period, all Claimants, other than the Provinces and Territories, who have not yet been paid their full share of the Global Settlement Amount, and "**Impacted Claimant**" means any one of them.

"**Imperial**" means, collectively, ITCAN and ITCO.

"**Indebtedness**" means for RBH or any Material Subsidiary, at a particular time, the sum (without duplication) at such time of all:

(a) Indebtedness or liability of RBH (including amounts for borrowed money and mezzanine debt and preferred equity that would be considered to be debt under relevant generally accepted accounting principles);

(b) Obligations evidenced by bonds, debentures, notes or other similar instruments;

(c) Obligations for the deferred purchase price of property or services (including trade obligations);

(d) Amounts drawn or available to be drawn under letters of credit or under guaranties or similar obligations;

(e) Face amounts outstanding under acceptance or letter of credit facilities;

(f) Guaranties, endorsements (other than for collection or deposit in the Ordinary Course of Business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person, or otherwise to assure a creditor against loss; and

(g) Obligations secured by any Encumbrances, whether or not the obligations have been assumed.

"**Indemnified Parties**" has the meaning given in Article 18, Section 18.1.7.

"**Individual Claimants**" means all individuals who have asserted or may be entitled to assert a Tobacco Claim, which individuals are either Pan-Canadian Claimants or Quebec Class Action Plaintiffs and are represented in this CCAA Proceeding by either the PCC Representative Counsel or the Quebec Class Counsel respectively.

"**Individual Payment**" means the amount determined by the Claims Administrator to be payable to an Eligible Pan-Canadian Claimant under the PCC Compensation Plan.

"**Individuals**" means all individuals residing in a Province or Territory of Canada, and "**Individual**" means any one of them.

"**Information Request**" has the meaning given in Article 10, Section 10.5.

"**Initial Order**" means the initial order commencing the CCAA Proceedings of RBH, as amended and restated from time to time.

"**Instruction Letter**" means the letter included in the Claims Package which is attached to the CCAA Plan as Schedule "B".

"**Insured Person**" means (a) a Person, including a deceased Person, for whom Health Care Benefits have been provided by a Province or Territory directly or through one or more agents or other intermediate bodies, or (b) a Person for whom Health Care Benefits could reasonably be expected will be provided by a Province or Territory directly or through one or more agents or other intermediate bodies.

"Intercompany Claim" means any Claim, other than an Intercompany Services Claim, that may be asserted against RBH by or on behalf of any member of RBH's Tobacco Company Group and, for greater certainty, includes all arrears of royalty and license fees as well as principal and interest due on loans made by any member of RBH's Tobacco Company Group to RBH.

"**Intercompany Services**" has the meaning given in Article 5, Section 5.14.

"**Intercompany Services Claim**" means any Claim that may be asserted by or on behalf of RBH's Parent or the relevant Affiliates within its Tobacco Company Group in accordance with Article 5, Section 5.14 in respect of the provision of Intercompany Services to RBH.

"**Intercompany Transaction**" means any transaction in the Ordinary Course of Business between RBH and any member(s) of its Tobacco Company Group to buy and sell goods and/or services, licences, intellectual property and/or allocate, collect and pay any costs, expenses and other amounts from and to the members of its Tobacco Company Group, including in relation to:

(a) Head office, shared or supplied services and operational support (including information technology and marketing services);

(b) Finished, unfinished (including tobacco leaf purchases) and semi-finished goods and materials;

(c) Manufacturing of goods;

(d) Distribution and sale of goods;

(e) Equipment purchases;

(f) Personnel, administrative, technical and professional services;

(g) Royalties and fees in respect of trademark licenses;

(h) Treasury and debt; and

(i) RBH's central cash management system and all related transactions and intercompany funding policies and procedures between RBH and its Tobacco Company Group,

collectively, "**Intercompany Transactions**".

"**Interface Meetings**" has the meaning given in Section 14(a) of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Interface Phase**" has the meaning given in Section 14(a) of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Interface Phase Secretariat**" has the meaning given in Section 24 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**ITA**" means the *Income Tax Act* (Canada), as amended from time to time.

"**ITCAN**" means Imperial Tobacco Canada Limited.

"**ITCAN Subsidiaries**" means Imperial Tobacco Services Inc., Imperial Tobacco Products Limited, Marlboro Canada Limited, Cameo Inc., Medallion Inc., Allan Ramsay and Company Limited, John Player & Sons Ltd., Imperial Brands Ltd., 2004969 Ontario Inc., Construction Romir Inc., Genstar Corporation, Imasco Holdings Group, Inc., ITL (USA) Limited, Genstar Pacific Corporation, Imasco Holdings Inc., Southward Insurance Ltd., and Liggett & Myers Tobacco Company of Canada Limited.

"**ITCO**" means Imperial Tobacco Company Limited.

"**Jha Report**" means the report of Dr. Prabhat Jha dated March 24, 2021 entitled "Analyses to quantify smoking-attributable conditions that could be compensable and quantification of these conditions for each province and over time from 2003-2019", that is attached to the CCAA Plan as Schedule "L".

"**JTIM**" means JTI-Macdonald Corp.

"**JTIM TM**" means JTI-Macdonald TM Corp.

"***Knight* Claim**" means any Claim that has been advanced, could have been advanced or could be advanced in the following class action, whether before or after the Effective Time: *Kenneth Knight* v. *Imperial Tobacco Canada Limited* (Supreme Court of British Columbia, Court File No. L031300), including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"***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.

"***Knight* Class Action Plaintiffs Settlement Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable to the *Knight* Class Action Plaintiffs as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein.

"***Knight* Class Counsel**" means Klein Lawyers LLP.

"***Knight* Class Counsel Fee**" means the amount to be determined and approved by the CCAA Court that will be payable from the *Knight* Class Action Plaintiffs Settlement Amount to the *Knight* Class Counsel in respect of their fees, disbursements and costs as *Knight* Class Counsel and any applicable Sales and Excise Taxes payable thereon. The retainer agreement respecting fees and disbursements between the *Knight* Class Counsel and the representative plaintiffs, as well as the *Knight* Class Counsel Fee, are subject to the approval of the CCAA Court.

"**Larynx**" means the upper part of the respiratory passage that is bounded above by the glottis and is continuous below with the trachea.

"**Legal Representative**" means an Individual who establishes through the submission to the Claims Administrator of one of the documents listed in the Claim Form for the Legal Representative of a PCC-Claimant that they have the right and are authorized to make a Submitted PCC-Claim on behalf of the PCC-Claimant.

"***Létourneau* Class Action**" means the class action commenced on September 30, 1998 by Cecilia Létourneau against ITCAN, RBH and JTIM in the Superior Court of Quebec, District of Montreal, bearing Court File No. 500-06-000070-983.

"***Létourneau* Class Members**" means Persons who meet the criteria of the following certified class definition in the *Létourneau* Class Action:

> 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:
>
> (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.

"***Létourneau* Judgment**" means the judgment rendered by the Honourable Justice Brian Riordan on May 27, 2015 as rectified on June 9, 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.*).

"**Lung Cancer**" has the meaning given in Article 8, Section 8.1(d)(i).

"**Material Adverse Effect**" means an event or condition that caused or would reasonably be expected to cause a material adverse effect on:

(a) The assets and liabilities of RBH considered as a whole or the use or operation thereof;

(b) The business, profits, operations or condition (financial or otherwise) of RBH;

(c) The ability of RBH to perform its obligations in any material respect under any of the Definitive Documents to which it is a party or by which it is bound; or

(d) The Contribution Security.

"**Material Subsidiary**" means, in relation to RBH:

(a) Any of its Subsidiaries that holds 5% or more of the consolidated assets of RBH or contributes 5% or more of the consolidated revenues or net income of RBH, or

(b) Any of its Subsidiaries that are material to the conduct of RBH's business and operations.

provided that, without limiting the generality of Subsections (a) and (b), it includes Rothmans Inc.

"**MD&A**" has the meaning given in Article 10, Section 10.2.2.

"**Meeting**" means the meeting of Affected Creditors to be called and held pursuant to the Meeting Order for the purpose of considering and voting on the CCAA Plan, and includes any adjournment, extension, postponement or other rescheduling of such meeting.

"**Meeting Date**" means the date fixed for the Meeting pursuant to the Meeting Order subject to any adjournment or postponement or further order of the CCAA Court.

"**Meeting Order**" means the order of the CCAA Court directing the calling and holding of the Meeting of Affected Creditors to consider and vote on the CCAA Plan, as such order may be amended, restated or varied from time to time.

"**Metric**" has the meaning given in Article 5, Section 5.6.

"**Miscellaneous Claimant Proof of Claim**" means the proof of claim form included as part of the Claims Package which is attached to the CCAA Plan as Schedule "B".

"**Miscellaneous Claims**" means, collectively:

(a) any Pre-Implementation Miscellaneous Claim;

(b) any Section 5.1(2) Claim, in respect of which the Person holding such Claim, or an authorized Person on their behalf, has not executed and delivered, or will not execute and deliver, a Claimant Contractual Release;

(c) any Section 19(2) Claim in regard to which the compromise or arrangement in respect of RBH explicitly provides for the Section 19(2) Claim's compromise, and the Person holding such Claim, or an authorized Person on their behalf, has not voted, or will not vote, for the acceptance of the compromise or arrangement, or otherwise execute and deliver a Claimant Contractual Release; and

(d) any other Claim in respect of RBH (excluding any Unaffected Claim) which is received by the Monitor and asserted against any Released Party based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter, or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) by a Person who asserts that such Claim will not be or, if asserted after the Effective Time, has not been compromised and fully, finally and irrevocably and unconditionally released and forever discharged, and permanently barred and enjoined pursuant to the terms of the CCAA Plan, the Claims Procedure Order, the Sanction Order or any other Order made in the CCAA Proceeding, and in accordance with Article 18, Section 18.2.3 of the CCAA Plan, the CCAA Court grants leave for such Person to bring such Claim for determination on its merits by the CCAA Court.

The existence of any such Miscellaneous Claims is not admitted but is expressly denied by RBH, its Tobacco Company Group and the Claimants. For greater certainty, no Claimant or Individual Claimant may assert a Miscellaneous Claim.

"**Miscellaneous Claims Amount**" has the meaning given in Article 18, Section 18.2.1.

"**Miscellaneous Claims Bar Date**" means 5:00 pm (Eastern Time) on December 5, 2024.

"**Miscellaneous Claims Fund**" has the meaning given in Article 18, Section 18.2.1.

"**Miscellaneous Claims Fund Period**" has the meaning given in Article 18, Section 18.2.1.

"**Miscellaneous Claims Procedure**" means the procedure pursuant to which a Putative Miscellaneous Claimant can assert a Miscellaneous Claim as established in Article 18, Section 18.2 of the CCAA Plan.

"**Monetary Cure Period**" has the meaning given in Article 12, Section 12.3(b).

"**Monitor**" means Ernst & Young Inc. in its capacity as the Court-appointed monitor appointed pursuant to the Initial Order in the CCAA Proceeding.

"**Monitors**" means, collectively, the Court-appointed monitors of the Tobacco Companies in the CCAA Proceedings.

"**NDA**" means a confidentiality, non-disclosure and non-use agreement between RBH and another Person in the form already agreed to by the Parties.

"**Negative Notice Bar Date**" means 5:00 p.m. (Eastern Time) on the date that is twenty-one (21) days following the Negative Notice Issuance Date.

"**Negative Notice Claim**" means the value (for voting purposes only) of the Affected Claims of each Claimant and the number of votes associated therewith as set forth in a Statement of Negative Notice Claim to be sent to each Claimant in accordance with the following:

Claimant	Number of Votes for Voting Purposes	Value of Claim for Voting Purposes
Quebec Class Action Plaintiffs (QCAPs)	99,958	$13,706,891,279
Pan-Canadian Claimants (PCCs)	186,003	$5,041,088,110
Tobacco Producers	3,930	$29,043,876
British Columbia	1	$136,681,344,490
Alberta	1	$119,266,303,168
Saskatchewan	1	$27,189,868,453
Manitoba	1	$42,741,373,788
Ontario	1	$271,795,731,959
Quebec	1	$253,365,332,712
New Brunswick	1	$22,778,964,723
Nova Scotia	1	$29,979,033,060
Prince Edward Island	1	$6,238,547,995
Newfoundland and Labrador	1	$20,279,767,449
Yukon	1	$3,752,573,987
Northwest Territories	1	$6,865,708,611
Nunavut	1	$3,584,449,605

"**Negative Notice Claims Package**" means the Claimant's Statement of Negative Notice Claim and the form of Notice of Dispute of Negative Notice Claim to be used in the event that the Claimant wishes to raise a dispute in accordance with paragraph 8 of the Claims Procedure Order, which are attached as Schedule "A" to the CCAA Plan.

"**Negative Notice Issuance Date**" means the date that the Statement of Negative Notice Claim is sent to a Claimant.

"**Net After-Tax Income**" is as described in Article 5, Section 5.6.

"**Newco**" has the meaning given in Article 2, Section 2.1(f) and refers to the new corporation to be incorporated pursuant to Article 4, Section 4.1.

"**Non-Monetary Cure Period**" has the meaning given in Article 12, Section 12.3(c).

"**Non-Released Claims**" means all Claims that are not Released Claims and, for greater certainty, includes all Unaffected Claims.

"**Normal Reassessment Period**" has the meaning ascribed by subsection 152(3.1) of the ITA (and any analogous provisions of provincial or territorial law), taking into account any applicable extension under the *Taxation Act* (Quebec) resulting from a reassessment made by the CRA or another Provincial Tax Authority, except that in the case of a Tax Refund Cash Payment, the extended period provided by subparagraph 152(4)(b)(i) of the ITA (and any analogous provisions of provincial or territorial law) will apply, and where the CCAA Plan Administrators and RBH have agreed to file a waiver, the extended period provided by subparagraph 152(4)(a)(ii) of the ITA (or the relevant analogous provisions of provincial or territorial law) shall apply.

"**Notice of Breach**" has the meaning given in Article 13, Section 13.3.

"**Notice of Default**" has the meaning given in Article 12, Section 12.3.

"**Notice of Dispute of Negative Notice Claim**" means the notice, substantially in the form included in the Negative Notice Claims Package and attached to the CCAA Plan as Schedule "A", which may be delivered to the Monitor by a Claimant disputing a Statement of Negative Notice Claim and providing reasons for such dispute.

"**Omnibus Notice**" means the notice which the Monitor shall cause to be published regarding the Claims Procedure Order and the Meeting, in accordance with the Omnibus Notice Program, a copy of which notice is attached as Schedule "C" to the Claims Procedure Order and as Schedule "C" to the CCAA Plan.

"**Omnibus Notice Program**" means the plan to publish comprehensive legal notice regarding the Claims Procedure Order and the Meeting to Persons, including Putative Miscellaneous Claimants, situated in all the Provinces and Territories, as set forth on the document attached as Schedule "D" to the Claims Procedure Order and as Schedule "D" to the CCAA Plan.

"**Omnibus Sanction Hearing Notice**" means the notice which the Monitor shall cause to be published regarding the Sanction Hearing in accordance with the Omnibus Sanction Hearing Notice Program.

"**Omnibus Sanction Hearing Notice Program**" means the plan to publish comprehensive legal notice regarding the Sanction Hearing to Persons, including Putative Miscellaneous Claimants, situated in all the Provinces and Territories.

"**Ordinary Course Divestitures**" has the meaning given in Article 11, Section 11.4.

"**Ordinary Course Divestitures Thresholds**" has the meaning given in Article 11, Section 11.4.

"**Ordinary Course of Business**" means, in relation to RBH or a member of its Tobacco Company Group, the ordinary course of day-to-day business activities and operations of that company consistent with past practices, as such practices may change from time to time in the tobacco industry in response to regulatory, market or industry developments or changes, and materially similar in nature and magnitude to actions customarily taken in the normal course of day-to-day operations.

"**Ordinary Course Operational Activities**" has the meaning given in Article 11, Section 11.2.

"**Oropharynx**" means the part of the pharynx that is below the soft palate and above the epiglottis and is continuous with the mouth. It includes the back third of the tongue, the soft palate, the side and back walls of the throat, and the tonsils.

"**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, in the case of RBH, Philip Morris International Inc.

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

"**PCC Claim**" means any Claim of any Pan-Canadian Claimant that has been made or may in the future be asserted or made in whole or in part against or in respect of the Released Parties, or any one of them (either individually or with any other Person), that has been advanced, could have been advanced or could be advanced, whether on such Pan-Canadian Claimant's own account, or on their behalf, or on behalf of a certified or proposed class, to recover damages or any other remedy in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase or sale of Tobacco Products, including any representations or omissions in respect thereof, the historical or ongoing use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions and the development of any disease or condition as a result thereof, whether existing or hereafter arising, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) including, all Claims that have been advanced, could have been advanced or could be advanced in the following actions commenced by Individuals under provincial class proceedings legislation and actions commenced by Individuals, or in any other similar proceedings:

(a) *Barbara Bourassa* v. *Imperial Tobacco Canada Limited et al.* (Supreme Court of British Columbia, Court File No. 10-2780 and Court File No. 14-4722);

(b) *Roderick Dennis McDermid* v. *Imperial Tobacco Canada Limited et al.* (Supreme Court of British Columbia, Court File No. 10-2769);

(c) *Linda Dorion* v. *Canadian Tobacco Manufacturers' Council et al*. (Alberta Court of Queen's Bench, Court File No. 0901-08964);

(d) *Thelma Adams* v. *Canadian Tobacco Manufacturers' Council et al.* (Saskatchewan Court of Queen's Bench, Court File No. 916 of 2009);

(e) *Deborah Kunta* v. *Canadian Tobacco Manufacturers' Council et al.* (Manitoba Court of Queen's Bench, Court File No. CI09-01-61479);

(f) *Suzanne Jacklin* v. *Canadian Tobacco Manufacturers' Council* (Ontario Superior Court of Justice, Court File No. 53794/12);

(g) *Ben Semple* v. *Canadian Tobacco Manufacturers' Council et al.* (Supreme Court of Nova Scotia, Court File No. 312869);

(h) *Victor Todd Sparkes* v. *Imperial Tobacco Canada Limited* (Newfoundland and Labrador Supreme Court - Trial Division, Court File No. 200401T2716 CP);

(i) *Peter Stright* v. *Imperial Tobacco Canada Limited* (Supreme Court of Nova Scotia, Court File No. 177663);

(j) *Ljubisa Spasic as estate trustee of Mirjana Spasic* v. *Imperial Tobacco Limited and Rothmans, Benson & Hedges Inc.* (Ontario Superior Court of Justice, Court File No. C17773/97);

(k) *Ljubisa Spasic as estate trustee of Mirjana Spasic* v. *B.A.T. Industries P.L.C.* (Ontario Superior Court of Justice, Court File No. C18187/97);

(l) *Ragoonanan* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 00-CV-183165-CP00);

(m) *Scott Landry* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 1442/03);

(n) *Joseph Battaglia* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 21513/97);

(o) *Roland Bergeron* v. *Imperial Tobacco Canada Limited* (Quebec Superior Court, Court File No. 750-32-700014-163);

(p) *Paradis, in personal capacity and on behalf of estate of Lorraine Trepanier* v. *Rothmans, Benson & Hedges Inc.* (Quebec Small Claims Court);

(q) *Couture* v. *Rothmans, Benson & Hedges Inc.* (Quebec Superior Court); and

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"PCC Claim Package" means all of the documents that a PCC-Claimant or a PCC-Claimant's Legal Representative, as applicable, is required to complete and submit to the Claims Administrator including the Claim Form for PCC-Claimant, Claim Form for the Legal Representative of a PCC-Claimant, Physician Form (only if a pathology report in respect of Lung Cancer or Throat Cancer, or a spirometry report in respect of Emphysema/COPD (GOLD Grade III or IV), is not available), and all medical and other documents requested in the Claim Forms and the Physician Form. The aforesaid forms are Appendices "C", "D" and "E" to the PCC Compensation Plan which is attached as Schedule "S" to the CCAA Plan.

"**PCC-Claimants**" means the Pan-Canadian Claimants who are all Individuals resident in a Province or Territory of Canada, excluding the Quebec Class Action Plaintiffs in relation to QCAP Claims but including the Pan-Canadian Claimants' respective heirs, successors, assigns and representatives, who assert a PCC Claim by submitting a PCC Claim Package to the Claims

Administrator pursuant to the PCC Compensation Plan, and "**PCC-Claimant**" means any one of them.

"**PCC Claims Application Deadline**" means the date twenty-four months after the First Notice Date by which all PCC-Claimants are required to submit their completed PCC Claim Packages to the Claims Administrator. The PCC Claims Application Deadline may be extended by the CCAA Court if it is deemed necessary and expedient to do so as the implementation of the PCC Compensation Plan unfolds.

"**PCC Claims Period**" has the meaning given in Article 8, Section 8.1(d).

"**PCC Compensable Diseases**" has the meaning given in Article 8, Section 8.1(d)(iii).

"**PCC Compensation Plan**" has the meaning given in Article 8, Section 8.1 and is attached as Schedule "S".

"**PCC Compensation Plan Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable into the PCC Trust Account in respect of compensation for Eligible Pan-Canadian Claimants as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein.

"**PCC Compensation Plan Reserve**" means the Cash reserve to be established on the Plan Implementation Date prior to any distributions to Affected Creditors as authorized by the CCAA Court pursuant to the Sanction Order, in the amount of $5.0 million, and to be paid out of the total Upfront Contributions from the Tobacco Companies and deposited into the PCC Compensation Plan Reserve Account for the purpose of paying the PCC Compensation Plan Reserve Costs. The CCAA Plan Administrators for Imperial, RBH and JTIM shall hold the PCC Compensation Plan Reserve in trust for those Persons entitled to such funds pursuant to the CCAA Plan.

"**PCC Compensation Plan Reserve Account**" means a segregated interest-bearing trust account established by the CCAA Plan Administrators to hold the PCC Compensation Plan Reserve on behalf of the beneficiaries thereof.

"**PCC Compensation Plan Reserve Costs**" means Costs incurred and payments to be made on or after the Plan Implementation Date, including Costs incurred prior to the Plan Implementation Date which remain outstanding as of the Plan Implementation Date, in respect of:

(a) The Costs of the services which the Claims Administrator (including its advisors) provides in relation to the PCC Compensation Plan;

(b) The Costs of the services which the Administrative Coordinator (including his advisors) provides in connection with the performance of his duties under the CCAA Plan; and

(c) The Costs of the services which the PCC Representative Counsel (including their advisors) provide in connection with the performance of their duties under the CCAA Plan and in the CCAA Proceeding.

"**PCC Eligibility Criteria**" has the meaning given in Article 8, Section 8.1.

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

"**PCC Trust Account**" has the meaning given in Article 8, Section 8.3.

"**Pending Litigation**" has the meaning given in Article 18, Section 18.3.1.

"**Permitted Encumbrance**" in regard to RBH or any Material Subsidiary means:

(a) Encumbrances in favour of RBH or any Material Subsidiary existing on the date of the Contribution Security Agreement;

(b) Subject to the covenants set forth in Article 11, Section 11.1(g) and Article 11, Section 11.1(l) herein, Encumbrances on property, or on capital stock or Indebtedness, of a Person existing at the time such Person is merged with or into, amalgamated with, or consolidated with RBH or any Material Subsidiary, provided that such Encumbrances were in existence prior to the contemplation of such merger, amalgamation or consolidation and do not extend to any assets other than those of the Person merged into, amalgamated with, or consolidated with RBH or any Material Subsidiary;

(c) Encumbrances on property (including capital stock) existing at the time of acquisition of the property by RBH or any Material Subsidiary, provided that such Encumbrances were in existence prior to, and not incurred in contemplation of, such acquisition;

(d) Encumbrances to secure the performance of bids, tenders, leases, statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the Ordinary Course of Business;

(e) Encumbrances existing on the Plan Implementation Date;

(f) Encumbrances for Taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, provided that any reserve or other appropriate provision as is required in conformity with generally accepted accounting principles has been established therefor;

(g) Encumbrances imposed by law, such as carriers', warehousemen's, landlord's, construction and mechanics' liens, in each case incurred in the Ordinary Course of Business;

(h) Survey exceptions, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property that were not incurred in connection with Indebtedness and that do not in the aggregate constitute a Material Adverse Effect on the value of such property or materially impair their use in the operation of the business of such Person;

(i) Encumbrances created for the benefit of or to secure the obligations created in the Definitive Documents; and

(j) Encumbrances incurred in the Ordinary Course of Business of RBH or any Material Subsidiary with respect to obligations that do not cause a Material Adverse Effect.

"**Permitted Transfers**" has the meaning given in Article 11, Section 11.1(h).

"**Person**" means an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated association, a Government, or any other group, entity or body.

"**Plan Implementation Conditions**" has the meaning given in Article 19, Section 19.3.

"**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 Plan, the Sanction Order and the other Definitive Documents are to be implemented, as evidenced by the Monitor's Plan Implementation Date Certificate to be delivered to RBH and filed with the CCAA Court.

"**Plan Implementation Date Certificate**" has the meaning given in Article 19, Section 19.4.

"**PPSAs**" means, collectively, *Personal Property Security Act*, RSBC 1996, c. 359, *Personal Property Security Act*, RSA 2000, c. P-7, *The Personal Property Security Act, 1993*, SS 1993, c. P-6.2, *The Personal Property Security Act*, RSM 1987, c. P35, *Personal Property Security Act*, RSO 1990, c. P.10, *Personal Property Security Act*, SNB 1993, c. P-7.1, *Personal Property Security Act*, SNS 1995-96, c. 13, *Personal Property Security Act*, RSPEI 1988, c. P-3.1, *Personal Property Security Act*, SNL 1998, c. P-7.1, *Personal Property Security Act*, RSY 2002, c. 169, *Personal Property Security Act*, SNWT (Nu) 1994, c. 8, as amended, and the relevant provisions of the Civil Code of Quebec, CQLR c. CCQ-1991.

"**Pre-Implementation Miscellaneous Claim**" means an Affected Claim by a Person who is not an Individual Claimant and which Affected Claim is not a: (a) Provincial HCCR Claim, (b) Territorial HCCR Claim, (c) QCAP Claim, (d) PCC Claim, (e) Tobacco Producers Claim, or (f) *Knight* Claim.

"**Property**" means all current and future assets, undertakings and properties of RBH of every nature and kind whatsoever, and wherever situate, including all Cash and other proceeds thereof.

"**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**"), and "**Province**" means any one of them.

"**Provinces and Territories Settlement Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable to the Provinces and Territories to settle the Provincial HCCR Claims and Territorial HCCR Claims, as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein.

"**Provincial and Territorial Liaison Committee**", or "**PTLC**", means the committee that shall be established by the Provinces and Territories in accordance with the PTLC Terms set out in Schedule "AA".

"**Provincial and Territorial Liaison Committee Terms**", or "**PTLC Terms**", are attached to the CCAA Plan as Schedule "AA".

"**Provincial HCCR Claim**" means any Claim that has been advanced, could have been advanced or could be advanced in any of the following actions or in any other similar proceedings, whether before or after the Effective Time and whether under the HCCR Legislation or otherwise:

(a) *Her Majesty the Queen in right of British Columbia* v. *Imperial Tobacco Canada Limited* (Supreme Court of British Columbia, Court File No. S010421);

(b) *Her Majesty in right of Alberta* v. *Altria Group, Inc.* (Alberta Court of Queen's Bench, Court File No. 1201-07314);

(c) *The Government of Saskatchewan* v. *Rothmans, Benson & Hedges Inc.* (Saskatchewan Court of Queen's Bench, Court File No. 8712012);

(d) *Her Majesty the Queen in right of the Province of Manitoba* v. *Rothmans, Benson & Hedges Inc.* (Manitoba Court of Queen's Bench, Court File No. CI 12-01-78127);

(e) *Her Majesty the Queen in right of Ontario* v. *Rothmans Inc. et al.* (Ontario Superior Court of Justice, Court File No. CV-09-387984);

(f) *Procureur général du Québec* v. *Impérial Tobacco Canada Limitée* (Quebec Superior Court, Court File No. 500-17-072363-123);

(g) *Her Majesty the Queen in right of the Province of New Brunswick* v. *Rothmans Inc.* (New Brunswick Court of Queen's Bench, Court File No. F/C/88/08);

(h) *Her Majesty the Queen in right of the Province of Nova Scotia* v. *Rothmans, Benson & Hedges Inc.* (Supreme Court of Nova Scotia, Court File No. 434868/737686);

(i) *Her Majesty the Queen in right of the Province of Prince Edward Island* v. *Rothmans, Benson & Hedges Inc.* (Prince Edward Island Supreme Court, Court File No. S1 GS-25019);

(j) *Attorney General of Newfoundland and Labrador* v. *Rothmans Inc.* (Supreme Court of Newfoundland and Labrador, Court File No. 201101G0826); and

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"**PTLC Chair**" has the meaning given in Section 8 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**PTLC Members**" has the meaning given in Section 5 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**PTLC Vice-Chair**" has the meaning given in Section 11 of the PTLC Terms which are Schedule "AA" to the CCAA Plan.

"**Putative Miscellaneous Claimant**" means a Person, other than a Claimant or an Individual Claimant, who asserts a Miscellaneous Claim.

"**QCAP Claim**" means any Claim that has been advanced, could have been advanced or could be advanced in the following class actions, 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 Claims Process**" means the process established pursuant to the Quebec Administration Plan for *Blais* Class Members to assert claims for direct monetary compensation.

"**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 herein.

"**QCAP Trust Account**" means the segregated interest-bearing 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 Action Plaintiffs**", or "**QCAPs**", means individuals who meet the criteria of the certified class definitions in the Quebec Class Actions.

"**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 Counsel**" means, collectively, the law practices of Trudel Johnston & Lespérance s.e.n.c., Kugler Kandestin s.e.n.c.r.l., L.L.P., De Grandpré Chait s.e.n.c.r.l., L.L.P., and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P.

"**Quebec Class Counsel Fee**" means the amount to be determined subject to the approval of the CCAA Court that will be payable from the QCAP Settlement Amount to Quebec Class Counsel, and to any legal counsel or other advisors of any nature or kind whatsoever who have provided, are providing or may in the future provide services to the Quebec Class Counsel in connection with the CCAA Proceedings, the Quebec Class Actions and/or any other proceedings on behalf of the *Blais* Class Members and/or *Létourneau* Class Members both before and after the Plan Implementation Date, in respect of their fees, disbursements and costs as Quebec Class Counsel, and any applicable Sales and Excise Taxes payable thereon. All Costs incurred in respect of the services provided by Raymond Chabot (as agent for the Quebec Class Counsel on behalf of the QCAPs) both before and after the Plan Implementation Date shall be paid by Quebec Class Counsel out of the Quebec Class Counsel Fee.

"**Quebec Superior Court**" means the Superior Court of Quebec, Class Action Division, at Montreal.

"**Raymond Chabot**" means Raymond Chabot Administrateur Provisoire Inc. and its Affiliates.

"**RBH**" means Rothmans, Benson & Hedges Inc.

"**RBH Retained Amount**" has the meaning given in Article 5, Section 5.4.

"**Release**" has the meaning given in Article 18, Section 18.1.1.

"**Released Claims**" means, collectively, any and all of the following Claims, excluding Unaffected Claims:

(a) any Tobacco Claims; and

(b) any Claims:

(i) in respect of the assets, obligations, business or affairs of the Released Parties in Canada or, in the case of RBH, anywhere else in the world, relating to Tobacco Products, which are based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter);

(ii) in respect of the CCAA Proceedings up to the Effective Time, provided that such Released Party is not determined by a final order of the CCAA Court to have committed fraud in the CCAA Proceedings;

(iii) existing at or prior to the Effective Time that have been advanced, that could have been advanced or could be advanced in the CCAA Proceeding; and

(iv) released as against the Monitors, CCAA Plan Administrators, Foreign Representative, Court-Appointed Mediator and Administrative Coordinator pursuant to Article 18, Sections 18.1.4, 18.1.5 and 18.1.6 herein.

For greater certainty, Released Claims include all Tobacco Claims in respect of fraud, misrepresentation or omission that have been or could have been asserted in any proceeding initiated prior to the Effective Time, including all Claims released by the Release and the Claimant Contractual Release.

"**Released Parties**", collectively, means:

(a) ITCAN,

(b) ITCO,

(c) RBH,

(d) JTIM,

(e) British American Tobacco p.l.c.,

(f) Philip Morris International Inc.,

(g) JT International Holding B.V.,

(h) the ITCAN Subsidiaries,

(i) B.A.T. Investment Finance p.l.c.,

(j) B.A.T Industries p.l.c.,

(k) British American Tobacco (Investments) Limited,

(l) Carreras Rothmans Limited,

(m) Philip Morris U.S.A. Inc.,

(n) Philip Morris Incorporated,

(o) Philip Morris Global Brands Inc.,

(p) Philip Morris S.A.,

(q) Rothmans Inc.,

(r) Ryesekks p.l.c.,

(s) Altria Group, Inc.,

(t) R.J. Reynolds Tobacco Company,

(u) R.J. Reynolds Tobacco International Inc.,

(v) RJR Nabisco, Inc.,

(w) JT International SA,

(x) JT Canada LLC Inc.,

(y) Japan Tobacco Inc.,

(z) JTIM TM,

(aa) Canadian Tobacco Manufacturers' Council, and

(bb) every other current or former Affiliate of any of the companies listed in subparagraphs (a) to (z) herein, and each of their respective indemnitees,

and "**Released Party**" means any of them. Each Released Party includes their respective Representatives.

"**Releasors**", collectively, means:

(a) the Provinces and Territories,

(b) the Quebec Class Action Plaintiffs,

(c) the Pan-Canadian Claimants,

(d) the *Knight* Class Action Plaintiffs,

(e) the Tobacco Producers, and

(f) every other Person having an Affected Claim or a Released Claim,

and "**Releasor**" means any one of them. "**Releasors**" and "**Releasor**" shall include their respective Representatives.

"Representatives" means, in respect of a Person, as may be applicable, such Person's past, present or future representatives, predecessors, successors, executors, trustees, heirs, dependents, children, siblings, parents, administrators, executors, directors, officers, shareholders, partners, employees,

servants, agents, consultants, legal counsel and advisers, including their respective successors and assigns, and each of their respective directors, officers, partners and employees.

"**Request for Particulars**" has the meaning given in Article 13, Section 13.2.

"**Required Majority**" means, in respect of the Affected Creditor Class, a majority in number of the Affected Creditors holding Voting Claims representing at least two-thirds in value of the Voting Claims of the Affected Creditors, in each case who are entitled to vote at the Meeting in accordance with the Meeting Order and who are present and voting in person or by proxy at the Meeting.

"**Reserved Amount**" of a Tobacco Company means: (i) any Tax Refund attributable to the carryback of a Tax Attribute to a preceding taxation year (other than the taxation year in which the Upfront Contribution is made) (a "**Tax Refund Cash Payment**"); (ii) in respect of an Annual Contribution, the reduction in income tax payable by the Tobacco Company in respect of its taxation year in which the Annual Contribution is made attributable to the deduction in computing income for tax purposes of the Annual Contribution and any resulting Tax Refund Cash Payment (the "**Annual Amount**"); and (iii) the reduction in income tax payable by the Tobacco Company in respect of a subsequent taxation year attributable to the carryforward of a Tax Attribute to the subsequent taxation year (the "**Carry Amount**").

"**Response**" has the meaning given in Article 13, Section 13.3.

"**Sales and Excise Tax Charge**" means the charge over the Property for the benefit of a Tax Authority that is entitled to receive payments or collect monies from RBH in respect of Sales and Excise Taxes (including for greater certainty the Canada Border Services Agency), created by paragraph 25 of the Initial Order, and having the priority provided in paragraphs 45 and 47 of such Order.

"**Sales and Excise Taxes**" means all goods and services, harmonized sales or other applicable federal, provincial or territorial sales or use taxes, and all federal excise taxes and customs and import duties and all federal, provincial and territorial tobacco taxes.

"**Sanction Hearing**" means the hearing before the CCAA Court in respect of the Sanction Order.

"**Sanction Hearing Objection Notice**" means the notice, substantially in the form attached as a schedule to the Sanction Hearing Order, which may be submitted or delivered to the Monitor by a Putative Miscellaneous Claimant objecting to the Sanction Order and providing reasons for such objection.

"**Sanction Hearing Order**" means the Order of the CCAA Court (including all schedules and appendices thereto) made in the CCAA Proceeding approving the Omnibus Sanction Hearing Notice, the Omnibus Sanction Hearing Notice Program and the timetable and procedure for the Sanction Hearing, as such Order may be amended, restated or varied from time to time.

"**Sanction Order**" means the Order of the CCAA Court, among other things, sanctioning and approving the CCAA Plan and granting, approving and declaring the settlements, compromises and releases, as applicable, contemplated by the CCAA Plan.

"**Section 5.1(2) Claims**" means any Claims against the Directors that:

(a) arose before the commencement of the CCAA Proceeding;

(b) relate to the obligations of RBH where the Directors are by law liable in their capacity as Directors for the payment of such obligations; and

(c) either relate to contractual rights of one or more creditors, or are based on allegations of misrepresentations made by Directors to creditors, or of wrongful or oppressive conduct by Directors.

"**Section 19(2) Claims**" means any Claims against RBH that relate to any of the following debts or liabilities, present or future, to which RBH is subject on the day on which the CCAA Proceeding commenced, or to which RBH may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by RBH before the day on which the CCAA Proceeding commenced, unless the compromise or arrangement in respect of RBH explicitly provides for the Claim's compromise, and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

(b) any award of damages by a court in civil proceedings in respect of:

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting from an act referred to in subparagraph (i);

(c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).

"**Secured Claim**" means any Claim of a creditor to the extent that it is secured by a valid Encumbrance that is duly and properly registered or otherwise perfected in accordance with Applicable Law in the appropriate jurisdiction as of the Filing Date or thereafter pursuant to an Order, to the extent of the value of such Encumbrance as at the Filing Date (having regard to the value of the assets subject to such Encumbrance and the priority of such Encumbrance) and which Claim is entitled to be proven as a secured claim pursuant to the provisions of the CCAA.

"**Statement of Negative Notice Claim**" means the respective statements to be prepared by the Monitor, each of which shall contain, for voting purposes, the amount and number of votes

ascribed to the Negative Notice Claim of each Claimant. The Statement of Negative Notice Claim is included in Schedule "A" to the CCAA Plan.

"**Stay Period**" has the meaning ascribed to such term in the Initial Order.

"**Submitted PCC-Claims**" means the claims made by the PCC-Claimants by submitting a PCC Claim Package to the Claims Administrator, and "**Submitted PCC-Claim**" means any one of them.

"**Subsidiary**" has the meaning attributed thereto in Section 2(5) of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended.

"Succession Claim" means the QCAP Claim of a Succession Claimant which is submitted to the Claims Administrator using the Succession Claim Form.

"**Succession Claimant**" means a person who asserts a Succession Claim pursuant to the Quebec Administration Plan.

"**Supplemental Trust Account**" has the meaning given in Article 5, Section 5.3.

"**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.

"**Tax Attribute**" means, with respect to RBH, any tax attribute resulting from the deductibility of an Upfront Contribution, Annual Contribution or applicable Reserved Amount that is available for carryforward or carryback to another taxation year, including a non-capital loss, capital loss, credit, and other balance.

"**Tax Authority**" means the CRA, the Receiver General for Canada, any other federal Governmental Authority (such as the Canada Border Services Agency) and any corresponding provincial or territorial Governmental Authority.

"**Tax Matter**" has the meaning given in Article 10, Section 10.2.2(m).

"**Tax Refund Cash Payment**" has the meaning given in the definition of Reserved Amount.

"**Tax Refund**" means any income tax refund received from a Tax Authority in cash or cash equivalent by RBH during the Contribution Period. For greater certainty, any tax instalment overpayment shall not be considered a Tax Refund.

"**Taxes**" means all federal, state, provincial, territorial, county, municipal, local or foreign taxes, duties, imposts, levies, assessments, tariffs and other charges imposed, assessed or collected by a Tax Authority including those levied on, or measured by, or referred to as, income, net income, gross income, gross receipts, business, royalty, capital, capital gains, goods and services, harmonized sales, value added, severance, stamp, franchise, occupation, premium, capital stock, sales and use, real property, land transfer, personal property, ad valorem, transfer, licence, profits, windfall profits, withholding, environmental, payroll, employment, employer health, pension plan, anti-dumping, countervail, excise, severance, stamp, occupation, or premium tax, all employment insurance premiums, Canada, Québec and any other pension plan contributions or premiums.

"**Territorial HCCR Claim**" means any Claim that:

(a) Northwest Territories has advanced, could have advanced or could advance pursuant to the *Tobacco Damages and Health Care Costs Recovery Act*, SNWT 2011, c 33 (proclaimed but not yet in force), whether before or after the Effective Time, and whether under the HCCR Legislation or otherwise;

(b) Nunavut has advanced, could have advanced or could advance pursuant to the *Tobacco Damages and Health Care Costs Recovery Act*, SNu 2010, c 31 (proclaimed but not yet in force), whether before or after the Effective Time, and whether under the HCCR Legislation or otherwise;

(c) Yukon has advanced, could have advanced or could advance, whether before or after the Effective Time, in relation to the recovery of (i) the present value of the total expenditure by Yukon for health care benefits provided for Insured Persons resulting from Tobacco-related Disease or the risk of Tobacco-related Disease, and (ii) the present value of the estimated total expenditure by Yukon 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, including pursuant to any legislation that may be enacted by Yukon in the future which could result in a Claim against any of the Released Parties relating to such expenditures; and

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"**Territories**" means, collectively, the Government of Yukon ("**Yukon**"), the Government of the Northwest Territories ("**Northwest Territories**") and the Government of Nunavut ("**Nunavut**"), and "**Territory**" means any one of them.

"**Throat Cancer**" has the meaning given in Article 8, Section 8.1(d)(ii).

"**Tobacco Claim**" means any Claim of any Person against or in respect of a Tobacco Company and/or any Director thereof, or any member of its Tobacco Company Group and/or any Director thereof, that has been advanced (including, without limitation, in any outstanding or pending litigation), that could have been advanced or that could be advanced, and whether such Claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced by a Government, or an agency, insurer, employer or otherwise, under or in connection with Applicable Law, or under any current or future statute to recover damages or any other remedy or costs in respect of the development,

design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products, the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions, the development of any disease related to the use of Tobacco Products, or any representation or omission in respect of Tobacco Products, including any misrepresentations, breach of duty or fraud in respect thereof by any member of the Tobacco Company Group or its Representatives in Canada or, in the case of the Tobacco Company, anywhere else in the world, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) and including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim. For greater certainty, Tobacco Claim includes:

(a) Any Provincial HCCR Claim;

(b) Any Territorial HCCR Claim;

(c) Any QCAP Claim;

(d) Any PCC Claim;

(e) Any *Knight* Claim; and

(f) Any Tobacco Producers Claim.

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

"**Tobacco Company Group**" means, in respect of RBH, its Parent and all other current or former Affiliates, direct or indirect Subsidiaries or parents, of RBH, and their respective indemnitees.

"**Tobacco Producers**" means, collectively, the Ontario Flue-Cured Tobacco Growers' Marketing Board, Andy J. Jacko, Brian Baswick, Ron Kichler, Arpad Dobrentey and all other tobacco growers and producers, including any successors or assigns, who sold their tobacco through the Ontario Flue-Cured Tobacco Growers' Marketing Board pursuant to the annual Heads of Agreement made with ITCAN, RBH and JTIM from January 1, 1986 to December 31, 1996, and "**Tobacco Producer**" means any one of them.

"**Tobacco Producers' Actions**" means the uncertified class actions enumerated in the definition of "Tobacco Producers Claim" in the CCAA Plan.

"**Tobacco Producers 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) *The Ontario Flue-Cured Tobacco Growers' Marketing Board* v. *JTI-Macdonald Corp.* (Ontario Superior Court of Justice, Court File No. 1056/10CP);

(b) *The Ontario Flue-Cured Tobacco Growers' Marketing Board* v. *Rothmans, Benson & Hedges Inc.* (Ontario Superior Court of Justice, Court File No. 64462 CP); and

(c) *The Ontario Flue-Cured Tobacco Growers' Marketing Board* v. *Imperial Tobacco Canada Limited* (Ontario Superior Court of Justice, Court File No. 64757 CP);

including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim.

"**Tobacco Producers Settlement Amount**" means the aggregate amount allocated from the Global Settlement Amount to be payable to the Ontario Flue-Cured Tobacco Growers' Marketing Board for the benefit of the Tobacco Producers, as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein. The Counsel for the Tobacco Producers' Fee is subject to the approval of the CCAA Court and shall be paid out of the Tobacco Producers Settlement Amount.

"**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-Victim**" means any Individual who suffers or suffered from a Tobacco-related Disease.

"Tobacco-Victim Claim" is the QCAP Claim of a Tobacco-Victim which is submitted to the Claims Administrator using the Tobacco-Victim Claim Form.

"**Tobacco-Victim Claimant**" means a person who asserts a Tobacco-Victim Claim pursuant to the Quebec Administration Plan.

"**Twelve Pack-Years**" means 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 to or greater than 87,600 cigarettes. For example, Twelve Pack-Years equals:

(a) 20 cigarettes a day for 12 years (20 X 365 X 12 = 87,600); or

(b) 30 cigarettes a day for 8 years (30 X 365 X 8 = 87,600); or

(c) 10 cigarettes a day for 24 years (10 X 365 X 24 = 87,600).

"**Unaffected Claims**" means, collectively:

(a) any Alternative Product Claim;

(b) any Claim by a Person relating to the right to enforce against any Released Party its obligations under any of the Definitive Documents;

(c) any Claim secured by the CCAA Charges;

(d) any Cash Management Bank Claim;

(e) any Employee Priority Claim;

(f) any Government Priority Claim;

(g) any Claim in respect of CCAA Plan Administration Reserve Costs;

(h) any Claim in respect of the PCC Compensation Plan Reserve Costs;

(i) any Secured Claim that is not a Tobacco Claim;

(j) any Claim for Costs by the Monitor, the CCAA Plan Administrator, the Claims Administrator, the Administrative Coordinator, the Court-Appointed Mediator, including their respective legal or other advisors, or counsel to RBH, subject to the applicable terms in connection therewith under the CCAA Plan;

(k) any Claim by any Director under any directors' or officers' indemnity policy or agreement with RBH to the extent not otherwise covered by the CCAA Charges;

(l) any Intercompany Services Claim;

(m) any Intercompany Claim, subject to the terms of Article 5, Section 5.15;

(n) any Claim by a supplier against RBH for the supply of goods or services other than a Tobacco Claim;

(o) any Claim against RBH relating to environmental remediation pursuant to Applicable Law;

(p) any Claim by Canada or any Province or Territory against any Released Party relating in any manner to:

  (i) any applicable federal, provincial or territorial sales taxes, federal excise taxes and customs and import duties, federal, provincial and territorial tobacco taxes, and any other taxes of any kind whatsoever applicable to any Released Party, and

  (ii) such Released Party's compliance with any Applicable Law and statutes and the regulations made thereunder, except for liability for actions or omissions occurring prior to the Effective Time in respect of a Tobacco Claim; and

(q) any Claim by any Person under any contract with RBH that has not been disclaimed and which Claim is not a Tobacco Claim;

and, for greater certainty, shall include any Unaffected Claim arising through subrogation.

"**Unaffected Creditor**" means a Person who has an Unaffected Claim.

"**Upfront Contributions**" has the meaning given in Article 5, Section 5.4, and "**Upfront Contribution**" means any one of them.

"**US Bankruptcy Code**" means title 11 of the United States Bankruptcy Code.

"**US Bankruptcy Court**" means the U.S. Bankruptcy Court, Southern District of New York.

"**Virtual Data Room**" has the meaning given in Article 10, Section 10.10.

"**Voting Claim**" means the amount of the Affected Claim of an Affected Creditor as finally determined for voting purposes in accordance with the Statements of Negative Notice Claims, the Claims Procedure Order and the Meeting Order entitling such Affected Creditor to vote at the Meeting in accordance with the provisions of the Meeting Order, the CCAA Plan and the CCAA.

1.2 Certain Rules of Interpretation

For the purposes of the CCAA Plan:

(a) Any reference in the CCAA Plan to an Order or an existing document or exhibit filed or to be filed means such Order, document or exhibit as it may have been or may be amended, modified, or supplemented;

(b) Unless otherwise specified, all references to currency are in Canadian dollars;

(c) The division of the CCAA Plan into "articles" and "sections" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the CCAA Plan, nor are the descriptive headings of "articles" and "sections" intended as complete or accurate descriptions of the content thereof;

(d) The use of words in the singular or plural, or with a particular gender, including a definition, will not limit the scope or exclude the application of any provision of the CCAA Plan or a schedule hereto to such Person (or Persons) or circumstances as the context otherwise permits;

(e) The words "includes" and "including" and similar terms of inclusion will not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather will mean "includes but is not limited to" and "including but not limited to", so that references to included matters will be regarded as illustrative without being either characterizing or exhaustive;

(f) Unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Toronto, Ontario and any reference to an event occurring on a Business Day means prior to 5:00 p.m. (Eastern Time) on such Business Day;

(g) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done will be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

(h) Unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;

(i) References to a specified "article" or "section" will, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article or section of the CCAA Plan, whereas the terms "the CCAA Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions will be deemed to refer generally to the CCAA Plan and not to any particular article, section or other portion of the CCAA Plan and includes any documents supplemental hereto; and

(j) When a capitalized term used in the CCAA Plan references a definition in any other document, the CCAA Plan shall be interpreted as if the definition in that other document is included in the CCAA Plan.

1.3 Governing Law and Jurisdiction

The CCAA Plan and all Definitive Documents shall be governed and construed in accordance with the laws of the Province of Ontario and the Applicable Laws of Canada, save only for the administration of the QCAP Claims Process pursuant to the Quebec Administration Plan which shall be governed by the laws of the Province of Quebec and the Applicable Laws of Canada.

1.4 Schedules

The following are the Schedules to the CCAA Plan, which are incorporated by reference into the CCAA Plan and form an integral part of it:

Schedule "A": Negative Notice Claims Package comprised of Statement of Negative Notice Claim (Schedule "B-1") and the Notice of Dispute of Negative Notice Claim (Schedule "B-2")

Schedule "B": Claims Package comprised of Miscellaneous Claims Instruction Letter (Schedule "A-1") and the Miscellaneous Claimant Proof of Claim (Schedule "A-2")

Schedule "C": Omnibus Notice

Schedule "D": Omnibus Notice Program comprised of condensed version of the Omnibus Notice (Appendix "A") and the list of the regional newspapers in which the Omnibus Notice will be published (Appendix "B")

Schedule "E": Contribution Security Agreement

Schedule “F”:	Deed of Immoveable Hypothec (official French version)
Schedule “G”:	Deed of Immoveable Hypothec (unofficial English version)
Schedule “H”:	Deed of Moveable Hypothec
Schedule “I”:	Demand Debenture granting mortgage on RBH’s property situated at 1500 Don Mills Road and Acknowledgment and Direction relating to the mortgage
Schedule “J”:	Harrison Report
Schedule “K”:	Curriculum vitae of Dr. Glenn Harrison
Schedule “L”:	Jha Report
Schedule “M”:	Curriculum vitae of Dr. Prabhat Jha
Schedule “N”:	Quebec Class Action Administration Plan
Schedule “O”:	Overview of Epiq’s complex claims administration experience
Schedule “P”:	Curriculum vitae of Daniel Shapiro, K.C
Schedule “Q”:	Pan-Canadian Claimants’ Compensation Plan: Methodology and Analysis dated December 5, 2024
Schedule “R”:	Analysis of Limitations Law applicable to Pan-Canadian Claimants dated September 2, 2020
Schedule “S”:	Pan-Canadian Claimants’ Compensation Plan dated December 5, 2024
Schedule “T”:	Resume of Dr. Robert Bell
Schedule “U”:	Curriculum vitae of Dr. Robert Bell
Schedule “V”:	The Cy-près Fund: Methodology and Analysis dated December 5, 2024
Schedule “W”:	Claimant Contractual Release – RBH
Schedule “X”:	List of Health Care Costs Recovery Actions of the Provinces and HCCR Claims asserted by Territories
Schedule “Y”:	List of Actions commenced under Provincial Class Proceedings Legislation
Schedule “Z”:	List of Actions commenced by Individuals
Schedule “AA”:	Provincial and Territorial Liaison Committee Terms

ARTICLE 2. PURPOSE AND EFFECT OF THE CCAA PLAN

2.1 Purpose

The purposes of the CCAA Plan are to:

(a) Effect a full and final settlement and irrevocable compromise of all Tobacco Claims;

(b) Effect a release, discharge and bar of all Released Claims;

(c) Eliminate liability for all Tobacco Claims for actions up to the Effective Time;

(d) Effect the distributions of the Global Settlement Amount to the Claimants as set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein;

(e) Provide for the disposition and resolution of all Pending Litigation;

(f) Effect the transfer of all of RBH's assets, Indebtedness, liabilities and business relating to its current and future Alternative Products ("**Alternative Products Business**") to an unrelated company, a Canadian Affiliate of its Parent, or a Canadian Subsidiary of any other company within its Tobacco Company Group ("**Newco**"); and

(g) Permit RBH to exit this CCAA Proceeding and continue to carry on its business as a going concern.

2.2 Exclusion of Alternative Products from CCAA Plan

Alternative Products are excluded from the CCAA Plan. The CCAA Plan shall not be applicable to any right or claim against RBH or any member of its Tobacco Company Group relating to its development, manufacture, production, marketing, advertising, distribution, purchase or sale of Alternative Products, use of or exposure to Alternative Products, representations in respect of Alternative Products or otherwise in connection with Alternative Products. For greater certainty, the CCAA Plan shall not release any such rights or claims relating to Alternative Products against RBH or members of its Tobacco Company Group.

ARTICLE 3. CLAIMS PROCEDURE, CLASSIFICATION OF AFFECTED CREDITORS, VOTING, PROCEDURE FOR SANCTION HEARING AND RELATED MATTERS

3.1 Claims Procedure

3.1.1 CCAA Court Hearing regarding Claims Procedure

The procedure for determining the validity and quantum of the Affected Claims for voting purposes shall be governed by the Statements of Negative Notice Claims, the Claims Procedure Order, the Meeting Order, the CCAA, the CCAA Plan and any other Order of the CCAA Court, as applicable.

The Court-Appointed Mediator and the Monitor will make a motion to the CCAA Court for Orders:

(a) Approving the filing of the CCAA Plan;

(b) Approving the Claims Procedure set forth in the Claims Procedure Order;

(c) Approving the Omnibus Notice and the Omnibus Notice Program which shall include the timetable for the implementation of the Omnibus Notice Program; and

(d) Approving the Meeting Order, including setting the Meeting Date, approving the classification of the Affected Creditors into one single class for the purpose of considering and voting on the CCAA Plan at the Meeting, and authorizing the Claimants' Representatives to vote on the CCAA Plan in person or by proxy at the Meeting.

3.1.2 Claims Procedure for Negative Notice Claims

The procedure for addressing Negative Notice Claims shall be governed by the terms of the Claims Procedure Order including the schedules thereto. Notwithstanding the foregoing, the Monitor, in consultation with the Court-Appointed Mediator, may make minor non-substantive changes to the Negative Notice Claims Package as they may consider necessary or desirable.

As soon as practicable after the date of the Claims Procedure Order, the Monitor shall cause to be sent to each Claimant's Representative a Negative Notice Claims Package which will contain a Statement of Negative Notice Claim that specifies, for voting purposes, the amount and number of votes ascribed to such Claimant's Negative Notice Claim. Attached to the CCAA Plan as Schedule "A" is the Negative Notice Claims Package comprised of the Statement of Negative Notice Claim (Schedule "B-1") and the Notice of Dispute of Negative Notice Claim (Schedule "B-2"). The Negative Notice Claims Package shall be deemed to have been received by each Claimant's Representative on the Negative Notice Issuance Date.

If a Claimant wishes to dispute the amount of its Affected Claim for voting purposes and the number of votes associated therewith as set forth in the relevant Statement of Negative Notice Claim, the Claimant's Representative shall deliver to the Monitor a Notice of Dispute of Negative Notice Claim by no later than the Negative Notice Bar Date, failing which the Claimant shall be conclusively and irrevocably deemed to have accepted the Statement of Negative Notice Claim and the value and number of votes associated with its Affected Claim solely for the purpose of voting on the CCAA Plan at the Meeting.

The Monitor, in consultation with the Court-Appointed Mediator, shall review any Notice of Dispute of Negative Notice Claim received and shall attempt to resolve such dispute with the relevant Claimant following receipt of the Notice of Dispute of Negative Notice Claim. In the event that the dispute is not settled, the Monitor shall refer the dispute to the CCAA Court, and provide timely notice of such hearing date to the disputing Claimant's Representative.

Unless any dispute of a Statement of Negative Notice Claim results in a revision to the value or number of votes associated with the relevant Affected Claim pursuant to the terms of the Claims

Procedure Order, each of the Claimants shall be entitled to vote at the Meeting in accordance with the value and number of votes set forth on the applicable Statements of Negative Notice Claim.

Except as may be required by the Meeting Order, no further steps shall be required to be taken by any of the Claimants in order for them to be able to be present and vote at the Meeting.

3.1.3 Claims Procedure for Persons, other than Claimants or Individual Claimants, to assert a Claim

The Claims Procedure for Persons, other than Claimants or Individual Claimants, to file a Claim and assert the right to attend at the Meeting and vote on the CCAA Plan shall be governed by the terms of the Claims Procedure Order and schedules thereto. Save for establishing the entitlement of certain Persons to vote on the CCAA Plan, the Claims Procedure shall not constitute, nor may it be construed as, an acceptance by the CCAA Court, the Court-Appointed Mediator, the Monitor and/or RBH of the existence, validity or value of any Claim asserted in a Miscellaneous Claimant Proof of Claim filed thereunder, including for distribution purposes under the CCAA Plan which shall be determined in accordance with the Miscellaneous Claims Procedure.

The solicitation of Miscellaneous Claimant Proofs of Claim, and the filing by any Person of any Miscellaneous Claimant Proof of Claim, shall not grant such Person any rights, including without limitation, in respect of the nature, quantum and priority of its Claims or its standing in the CCAA Proceedings, except the rights specifically set out in the Claims Procedure Order.

3.1.3.1 Notification Procedure

Attached to the CCAA Plan are the following schedules relating to the notification procedure for the Claims Procedure:

(a) Schedule “B” is the Claims Package comprised of the Miscellaneous Claims Instruction Letter (Schedule “A-1”) and the Miscellaneous Claimant Proof of Claim (Schedule “A-2”);

(b) Schedule “C” is the Omnibus Notice; and

(c) Schedule “D” is the Omnibus Notice Program which includes a condensed version of the Omnibus Notice (Appendix “A” to Schedule “D”) and the list of the regional newspapers in which the Omnibus Notice will be published (Appendix “B” to Schedule “D”).

The Monitor shall cause the Claims Procedure Order, the Omnibus Notice and the Claims Package to be posted to the Monitor’s website within five Business Days following the date of the Claims Procedure Order. The Monitor shall also cause the Omnibus Notice, the Claims Package and the Claims Procedure Order to be sent to: (i) each Person that appears on the Common Service List within five Business Days following the date of the Claims Procedure Order; and (ii) any Person that has identified itself in writing to the Monitor prior to the Miscellaneous Claims Bar Date as a Putative Miscellaneous Claimant, as soon as reasonably practicable thereafter.

Reasonable compliance with the notice program set forth in the Omnibus Notice Program, shall constitute good and sufficient service and delivery of notice of the Claims Procedure Order and

the Miscellaneous Claims Bar Date on all Persons that may be entitled to receive notice, and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of the Claims Procedure Order.

3.1.3.2 Miscellaneous Claims Bar Date

In order for a Person, other than a Claimant or an Individual Claimant, to assert a Claim and be permitted to attend the Meeting and vote thereat, such Person must file a Miscellaneous Claimant Proof of Claim with the Monitor by the Miscellaneous Claims Bar Date. Only such Persons who have filed a Miscellaneous Claimant Proof of Claim by the Miscellaneous Claims Bar Date shall be entitled to attend and vote on the CCAA Plan at the Meeting as a Putative Miscellaneous Claimant.

If a Person holding any Pre-Implementation Miscellaneous Claim fails to file a Miscellaneous Claimant Proof of Claim by the Miscellaneous Claims Bar Date, in addition to being barred from attending the Meeting and voting on the CCAA Plan, such Person:

(a) shall be forever barred, estopped and enjoined from asserting any Pre-Implementation Miscellaneous Claim under the Miscellaneous Claims Procedure;

(b) shall not be entitled to receive any distribution under the CCAA Plan in respect of any such Pre-Implementation Miscellaneous Claim, including from the Miscellaneous Claims Fund; and

(c) shall be bound by and subject to the Release and injunctions set forth in Article 18, Section 18.1 of the CCAA Plan in respect of any such Pre-Implementation Miscellaneous Claim.

The filing by any Person of a Miscellaneous Claimant Proof of Claim shall not constitute a determination of the existence, validity or value of such Miscellaneous Claim and shall not entitle such Person to any distribution under the CCAA Plan, or otherwise. For certainty, subject to a Miscellaneous Claimant Proof of Claim being filed by the Miscellaneous Claims Bar Date, provided that the CCAA Plan is approved by the Affected Creditor Class, sanctioned by the CCAA Court, and implemented, any Person who purports to have a Miscellaneous Claim shall be obliged to follow the procedure set forth in the Miscellaneous Claims Procedure to prove the existence, validity and value of such Miscellaneous Claim.

Any Miscellaneous Claimant Proof of Claim in a foreign currency that is filed with the Monitor shall be converted by the Monitor to Canadian dollars at the applicable Bank of Canada exchange rate at 12:00 pm on March 8, 2019.

3.1.3.3 Monitor's Role for Purposes of the Meeting and the Vote

In addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other Orders of the CCAA Court in the CCAA Proceeding, the Monitor shall administer the Claims Procedure and take such other actions and fulfill such other roles as are authorized by the Claims Procedure Order or incidental thereto. The Monitor shall seek such assistance as may be reasonably required from the Court-Appointed Mediator, RBH and the Claimants, as applicable, to carry out the terms of the Claims Procedure Order.

Subject to the approval of the CCAA Court, the Monitor, in consultation with the Court-Appointed Mediator, will be authorized pursuant to the Claims Procedure Order to use its reasonable discretion as to the adequacy of compliance with respect to the manner and timing in which forms delivered pursuant to the Claims Procedure Order are completed and executed, and may, where it is satisfied that a Miscellaneous Claimant Proof of Claim has been adequately filed, waive strict compliance with the requirements of the Claims Procedure Order as to completion and execution of such forms. Notwithstanding any other provision of the Claims Procedure Order, any Miscellaneous Claimant Proof of Claim filed with the Monitor after the Miscellaneous Claims Bar Date but prior to the Meeting may, in the reasonable discretion of the Monitor or subject to further Order of the Court, be deemed to have been filed before the Miscellaneous Claims Bar Date, and may be treated by the Monitor in accordance with the Claims Procedure.

The Monitor shall receive and keep a record of all Miscellaneous Claimant Proofs of Claim filed in order to prepare a list of Persons, in addition to the Claimants, entitled to attend and vote at the Meeting, but the Monitor shall not be required to make any inquiry or assessment as to the validity or quantification of any such Miscellaneous Claimant Proofs of Claim that it may receive, provided that the Monitor shall be entitled, in its sole discretion, to seek further direction from the CCAA Court with respect to any Miscellaneous Claimant Proof of Claim filed if the Monitor considers such direction necessary, including for the conduct of the Meeting.

Notwithstanding the foregoing, the Monitor shall not take into consideration any Miscellaneous Claimant Proof of Claim filed either by an Individual Claimant or on behalf of any group of Individual Claimants, as all Individual Claimants are represented by either the PCC Representative Counsel or the Quebec Class Counsel, as the case may be. For greater certainty, no Individual Claimant nor any Person purporting to represent any Individual Claimants (other than the PCC Representative Counsel and Quebec Class Counsel) shall be permitted to attend or vote at the Meeting.

At the Meeting, the Monitor shall keep distinct ledgers in order to tally the votes of all Persons that file a Miscellaneous Claimant Proof of Claim separately from the votes of the Claimants, and it shall report to the CCAA Court on the results recorded on each such ledger at the Sanction Hearing. Notwithstanding the foregoing, and without accepting the existence, validity or value of any Miscellaneous Claimant Proof of Claim received, any votes recorded by the Monitor for such Persons shall be deemed to be included in the Affected Creditor Class in accordance with the Meeting Order.

3.2 Classification of Creditors

In accordance with the Meeting Order, the Affected Creditors shall be placed into one single class for the purpose of considering and voting on the CCAA Plan at the Meeting.

3.3 Meeting of Affected Creditors

The Meeting shall be held in accordance with the CCAA Plan, the Meeting Order and any further Order of the CCAA Court. The only Persons entitled to attend and vote on the CCAA Plan at the Meeting are those specified in the Meeting Order and any further Order of the CCAA Court.

3.4 Approval by Creditors

In order to be approved, the CCAA Plan must receive the affirmative vote of the Required Majority of the Affected Creditor Class.

3.5 Voting of the Affected Creditor Class

The Affected Creditors in the Affected Creditor Class who are entitled to vote at the Meeting, pursuant to and in accordance with the Claims Procedure Order, the Meeting Order, the CCAA Plan and the CCAA, shall be entitled to the following number of votes representing the amount equal to their respective Voting Claims:

(a) The Quebec Class Action Plaintiffs shall be entitled to a total of 99,958 votes;

(b) The Pan-Canadian Claimants shall be entitled to a total of 186,003 votes;

(c) Each Province shall be entitled to a total of 1 vote;

(d) Each Territory shall be entitled to a total of 1 vote; and

(e) The Ontario Flue-Cured Tobacco Growers' Marketing Board plus the Tobacco Producers shall be entitled to a total of 3,930 votes.

In addition to the foregoing, any Putative Miscellaneous Claimant that files a Miscellaneous Claimant Proof of Claim in conformity with the Claims Procedure shall be entitled to a total of 1 vote.

3.6 Unaffected Creditors

No Unaffected Creditor, in respect of an Unaffected Claim, shall be entitled to:

(a) vote on the CCAA Plan;

(b) attend the Meeting; or

(c) receive any distributions pursuant to the CCAA Plan, other than its right to have its Unaffected Claim addressed in accordance with Article 3, Section 3.7 of the CCAA Plan.

3.7 Treatment of Unaffected Claims

Unaffected Claims are not compromised by the CCAA Plan and shall remain in full force and effect in accordance with their terms. Subject to Article 5, Section 5.15, Unaffected Claims shall be paid by RBH in the Ordinary Course of Business as and when they become due, further subject only to RBH's rights and defences, both legal and equitable, with respect to any Unaffected Claim, including any entitlement to set-off, compensation or recoupment.

3.8 Extinguishment of Claims

At the Effective Time, in accordance with the terms of the CCAA Plan and the Sanction Order, the treatment of Affected Claims and Released Claims will be final and binding on RBH, the Affected Creditors, and any Person with an Affected Claim or a Released Claim. Save and except as set out in the CCAA Plan, the Released Parties will have no further obligation whatsoever in respect of the Affected Claims and the Released Claims, as applicable.

3.9 Guarantees and Similar Covenants

No Person who has a Claim under any guarantee, surety, indemnity or similar covenant in respect of any Claim that is compromised and released under the CCAA Plan or who has any right to claim over in respect of, or to be subrogated to, the rights of any Person in respect of a Claim that is compromised under the CCAA Plan will be entitled to any greater rights as against RBH than the Person whose Claim is compromised under the CCAA Plan.

3.10 Procedure for Sanction Hearing

3.10.1 CCAA Court Hearing regarding Procedure for Sanction Hearing

Subsequent to the Meeting, the Court-Appointed Mediator and the Monitor will report to the CCAA Court regarding the results of the vote on the CCAA Plan at the Meeting. If the CCAA Plan received the affirmative vote of the Required Majority of the Affected Creditor Class, then the Monitor will make a motion to the CCAA Court for Orders:

(a) Setting the date for the Sanction Hearing;

(b) Approving the Omnibus Sanction Hearing Notice and the Omnibus Sanction Hearing Notice Program, including the timetable for implementation of the Omnibus Sanction Hearing Notice Program;

(c) Setting the date for the filing of any Sanction Hearing Objection Notices with the Monitor which will be dealt with at the Sanction Hearing;

(d) Establishing the litigation timetable leading up to the Sanction Hearing, including the dates for the filing of motion records, factums and any reply motion materials; and

(e) Establishing the agenda and procedure for the Sanction Hearing.

3.10.2 Omnibus Sanction Hearing Notice

The form and content of the Omnibus Sanction Hearing Notice and the manner and extent of publication of such notice are subject to the approval of the CCAA Court. By no later than 5:00 p.m. (Eastern Time) on the 30th calendar day prior to the Sanction Hearing, the Monitor shall cause the Omnibus Sanction Hearing Notice to be sent in accordance with the Omnibus Sanction Hearing Notice Program:

(a) To each Person that appears on the Common Service List;

(b) To any Person known to RBH or the Monitor as having a potential Affected Claim based on the books and records of RBH that is not captured in any Statement of Negative Notice Claim or in any Miscellaneous Claimant Proof of Claim;

(c) To any Putative Miscellaneous Claimant who has identified itself to RBH and/or the Monitor prior to the publication of the Omnibus Sanction Hearing Notice; and

(d) By way of general notice to any other Persons in Canada who may potentially be affected by the CCAA Plan as a Putative Miscellaneous Claimant.

The Omnibus Sanction Hearing Notice will:

(a) Include the CCAA Plan attached as a schedule;

(b) Specify the date, time and mode of hearing of the Sanction Hearing;

(c) Advise that at the Sanction Hearing the Court-Appointed Mediator and the Monitor will be seeking the granting of the Sanction Order sanctioning the CCAA Plan under the CCAA and ancillary relief relating to such sanction; and

(d) Advise that any Putative Miscellaneous Claimant who wishes to oppose the granting of the Sanction Order must serve on all Persons on the Common Service List and file with the CCAA Court a copy of the materials to be used to oppose the Sanction Order by no later than 5:00 p.m. (Eastern Time) 14 calendar days prior to the Sanction Hearing. The materials delivered by any Person desiring to oppose the granting of the Sanction Order shall specify their objection with particularity and the remedies, if any, that are sought.

3.10.3 Omnibus Sanction Hearing Notice Program

The Omnibus Sanction Hearing Notice Program is subject to the approval of the CCAA Court. It will be designed to effectively reach as many Persons across Canada as possible, including any Putative Miscellaneous Claimants, and capture their attention with notice of the Sanction Hearing communicated in clear, concise, plain language so that such Persons may fully understand their rights and options.

A pan-Canadian notice program will be implemented to widely communicate the Omnibus Sanction Hearing Notice throughout Canada using various mediums and platforms.

3.10.4 Sanction Hearing

If the CCAA Plan receives the affirmative vote of the Required Majority of the Affected Creditor Class at the Meeting in conformity with the Meeting Order and the CCAA, then the Monitor will make a motion to the CCAA Court for Orders:

(a) Approving and sanctioning the CCAA Plan and ordering the releases and injunctions necessary to implement the CCAA Plan and give effect to the settlement contemplated thereby;

(b) Authorizing and directing RBH, the Monitor, the Claimants, the Claimants' Representatives and other Persons as applicable to take all steps and actions and to do all things necessary or appropriate to implement and give effect to the transactions contemplated by the CCAA Plan in accordance with and subject to its terms and conditions; and

(c) Granting such other relief as necessary, appropriate and the CCAA Court may allow to implement and give effect to the transactions contemplated by the CCAA Plan.

ARTICLE 4. RESTRUCTURING STEPS

4.1 Transfer of Alternative Products Business to Newco

On a date to be agreed between RBH and the CCAA Plan Administrators, RBH shall take actions as may be necessary or appropriate to effect the restructuring of its business by transferring its Alternative Products Business to Newco. Such actions may include: (i) the execution and delivery of appropriate articles, agreements or other documents of incorporation, merger, amalgamation, consolidation, arrangement, continuation, restructuring or other transactions containing terms that are consistent with the terms of the CCAA Plan; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption including, where applicable, with respect to the assumption of liabilities upon the transfer or assignment of assets on terms consistent with the terms of the CCAA Plan in each case without the need to obtain any consent of any Person; (iii) the filing of appropriate articles, agreements or other documents of incorporation, merger, amalgamation, consolidation, arrangement, continuation, restructuring or other transaction with the appropriate Governmental Authorities under Applicable Laws; and (iv) all other actions that RBH determines are necessary or appropriate to give effect to the transfer of its Alternative Products Business to Newco, including the making of filings or recordings in connection with such transactions.

The organization, incorporating documents, articles, by-laws and other constating documents of Newco (including any shareholders agreement, shareholders rights plan and classes of shares (voting and non-voting)) shall be in form and substance reasonably satisfactory to the Court-Appointed Mediator, the CCAA Plan Administrator and the Claimants.

All of the steps, terms, transactions and documents relating to the conveyance of the Alternative Products Business to Newco in accordance with the CCAA Plan shall be in form and in substance acceptable to the Court-Appointed Mediator, the CCAA Plan Administrator and the Claimants.

4.2 Restructuring Steps

At the Effective Time, the following will occur and be deemed to have occurred in the order set out below unless otherwise specified in this Article 4 and become effective without any further act or formality:

(a) RBH shall deposit its Upfront Contribution into the Global Settlement Trust Account;

(b) The timing and details of the transfer of RBH's Alternative Products Business to Newco are to be agreed between and the CCAA Plan Administrator;

(c) The Contribution Security Agreement, Deeds of Hypothec and Demand Debenture will become effective;

(d) The Sales and Excise Tax Charge and Directors' Charge will be terminated, discharged, expunged and released;

(e) The amount of $25.0 million shall be paid out of RBH's Upfront Contribution and deposited into the CCAA Plan Administration Reserve Account to establish the CCAA Plan Administration Reserve;

(f) The amount of $5.0 million shall be paid out of the total Upfront Contributions from all of the Tobacco Companies and deposited into the PCC Compensation Plan Reserve Account to establish the PCC Compensation Plan Reserve;

(g) The distributions that are required to be paid to the Claimants on the Plan Implementation Date shall be paid in full as set forth in the CCAA Plan;

(h) All Affected Claims and Released Claims will be fully, finally, irrevocably and forever released, discharged, barred and enjoined in accordance with Article 3, Section 3.8 and Article 18, Sections 18.1 to 18.1.10, and all notes, certificates and other instruments evidencing Affected Claims and Released Claims (and all guarantees associated with each of the foregoing) will be deemed cancelled and extinguished and be null and void in accordance with Article 17, Section 17.9;

(i) The Claimant Contractual Release will become effective in accordance with its terms; and

(j) The Stay Period will terminate,

(collectively, the "**Restructuring Steps**"). The failure of the CCAA Plan to incorporate any provision of a document evidencing a Restructuring Step will not derogate from the enforceability of such provision.

4.3 Corporate Approvals

At the Effective Time, all corporate actions of RBH contemplated by the CCAA Plan, including those required for the transfer of RBH's Alternative Products Business to Newco, shall be deemed to have been authorized and approved in all respects (subject to the provisions of the CCAA Plan). All matters provided for in the CCAA Plan shall be deemed to have timely occurred, in accordance with Applicable Laws, and shall be effective, without any requirement of further action by the Affected Creditors, directors, officers, or managers of RBH. On the Plan Implementation Date, the appropriate directors and officers of RBH shall be authorized and directed to issue, execute and deliver the agreements, documents, securities and instruments contemplated by the CCAA Plan including with respect to the transfer of RBH's Alternative Products Business to Newco, in the name of and on behalf thereof.

ARTICLE 5. CCAA PLAN CONSIDERATION

5.1 Global Settlement Amount

The global settlement amount under the CCAA Plan shall be **$32.5 billion** (the "**Global Settlement Amount**").

5.2 Intentionally deleted

5.3 Global Settlement Trust Account and Supplemental Trust Account

The Tobacco Companies shall deposit their respective Contributions, less applicable Reserved Amounts, into a segregated interest-bearing trust account or trust accounts ("**Global Settlement Trust Account**"). The Tobacco Companies shall deposit their respective Reserved Amounts into an interest-bearing account or trust accounts ("**Supplemental Trust Account**") (for greater certainty, a separate Supplemental Trust Account shall be established and maintained for each Tobacco Company). The Global Settlement Trust Account and Supplemental Trust Account shall be held in Schedule I Chartered Banks designated by the CCAA Plan Administrators, or in a syndicate of Schedule I Chartered Banks which may include such financial institutions as may be approved and designated by the CCAA Plan Administrators ("**Bank**").

5.4 Upfront Contributions

On or before the Plan Implementation Date, each Tobacco Company shall make a cash contribution which shall be deposited into the Global Settlement Trust Account (collectively, the "**Upfront Contributions**"). The Upfront Contributions shall equal the aggregate of each Tobacco Company's cash and cash equivalents generated from all sources by each Tobacco Company as at the month end prior to the Plan Implementation Date, including all amounts pledged by the Tobacco Companies to cash collateralize any outstanding letters of credit, surety or bonding obligations to the issuers thereof, plus the Cash Security Deposits, less the sum of $750 million which shall be deducted from the aggregate amount and retained by RBH (the "**RBH Retained Amount**"). RBH shall be free to deal in its sole discretion with the RBH Retained Amount, including being free to transfer or distribute such monies outside of Canada in such manner as RBH may determine. For greater certainty, any such transfers or distributions of the RBH Retained Amount will be deemed to be a Permitted Transfer for the purposes of Article 11.

5.5 Reserved Amounts

RBH shall make a cash payment equal to any Reserved Amounts into the Supplemental Trust Account at the times referred to in this Section 5.5. RBH shall pay its Tax Refund Cash Payment into the Supplemental Trust Account within 30 days after its receipt of the applicable Tax Refund. If RBH receives its Tax Refund Cash Payment in instalments, it shall pay for deposit into the Supplemental Trust Account 100% of each instalment received within 30 days after its receipt of each instalment. RBH shall pay its respective Annual Amount into the Supplemental Trust Account on or before the 30th day following its tax filing due date for the relevant taxation year for which the Annual Contribution is made (or in the case of the final calendar year of the Contribution Period, on or before the 182nd day following the end of the Contribution Period). RBH shall pay its respective Carry Amount into the Supplemental Trust Account within 30 days after

its tax filing due date for the taxation year to which the relevant Tax Attribute is carried forward (or in the case of the final calendar year of the Contribution Period, on or before the 182nd day following the end of the Contribution Period).

For certainty and to avoid duplication, any Tax Refund Cash Payment will not be taken into account in the Metric used to compute the Annual Contributions. Reserved Amounts of RBH shall be released from the Supplemental Trust Account in the following circumstances:

(a) in respect of Annual Amounts and Carry Amounts, consistent with the Annual Contribution percentage in respect of the relevant Annual Contributions (in the case of a Carry Amount, the Annual Contribution percentage in respect of the Annual Contribution for the tax year in which the Tax Attribute is utilized) provided for in this CCAA Plan and in the case of a Tax Refund Cash Payment, 85.0% to the Global Settlement Trust Account and 15.0% to RBH, in each case, 30 days following the expiry of the last applicable Normal Reassessment Period (or, such earlier time as determined by RBH with the concurrence of the CCAA Plan Administrator, acting reasonably) in respect of the relevant taxation year of RBH to which the Reserved Amount relates, being (i) in the case of an Annual Amount, the taxation year in which the relevant Annual Contribution is deducted in computing income for tax purposes, (ii) in the case of a Tax Refund Cash Payment, the taxation year to which the relevant Tax Refund relates and (iii) in the case of a Carry Amount, the taxation year to which the relevant Tax Attribute has been carried forward;

(b) to a relevant Tax Authority on account of a notice of assessment or reassessment of income taxes (including any related assessed interest or penalties) related to a Tax Matter of RBH by a Tax Authority with the concurrence of the CCAA Plan Administrator (such concurrence not to be unreasonably withheld). Any amounts released to a Tax Authority on behalf of RBH shall be excluded from the Contributions made by RBH at any time. For greater certainty, should there be a dispute regarding a notice of assessment or reassessment of Taxes, interest or penalties, the CCAA Plan Administrator, at the request of RBH, shall transfer the amount requested by RBH (not exceeding 100% of any Taxes, interest and penalties assessed) to the relevant Tax Authority pending final resolution of the dispute; or

(c) to RBH, following termination of the Contribution Period with the concurrence of the CCAA Plan Administrator (such concurrence not to be unreasonably withheld).

5.6 Annual Contributions

On or before the July 30th following each calendar year during the Contribution Period (or in the case of the final calendar year of the Contribution Period, on or before the 182nd day following the end of the Contribution Period), RBH shall deposit into the Global Settlement Trust Account or the Supplemental Trust Account, as applicable, payments calculated in accordance with the Metric (collectively, the "**Annual Contributions**"), until such time as the total Contributions, in the aggregate, equal the Global Settlement Amount.

The CCAA Plan provides that net after-tax income is used in the calculation of the Annual Contributions in accordance with a metric ("**Metric**"). The Metric is the method by which, on an annual basis, the profits of the operating business of RBH and any additional realization of assets

are calculated, excluding the Alternative Products Business to be carved out in accordance with Section 5.7 ("**Net After-Tax Income")**. For greater certainty, the Metric will:

(a) Be based on the amount generated from all sources by RBH, excluding Alternative Products;

(b) Include interest income;

(c) Include the proceeds of any disposition of any assets, including capital assets and intangible assets;

(d) Exclude one-time accounting adjustments that are non-operational in nature;

(e) Exclude one-time restructuring and global settlement related adjustments that are non-operational in nature (for greater certainty, this includes the recognition of any global settlement liability and/or associated expense of that liability). Subparagraph (e) is not intended to exclude cash expenses associated with CCAA Plan implementation including: (i) the Costs for the services of the CCAA Plan Administrators; (ii) the Costs for the services of the Claims Administrator (both as administrator and agent) in respect of the administration of the PCC Compensation Plan; (iii) the Costs for the services of the Administrative Coordinator; and (iv) the Costs for the services of the PCC Representative Counsel;

(f) Exclude interest expense to related parties; and

(g) Exclude any penalties and fines imposed by taxing and/or regulatory authorities.

The Annual Contributions required to be made for deposit into the Global Settlement Trust Account by RBH for each year during the Contribution Period shall be calculated as follows:

(a) In years 1-5 (adjusted to take into account any stub period as appropriate, including eliminating the portion of the first year that occurs prior to the Plan Implementation Date) following the Plan Implementation Date, **85.0%** of the amount calculated pursuant to the Metric;

(b) In years 6-10 following the Plan Implementation Date, **80.0%** of the amount calculated pursuant to the Metric;

(c) In years 11-15 following the Plan Implementation Date, **75.0%** of the amount calculated pursuant to the Metric; and

(d) In year 16 following the Plan Implementation Date, **70.0%** of the amount calculated pursuant to the Metric, and continuing thereafter until the aggregate of the Contributions totals the Global Settlement Amount.

For greater certainty, the percentage of the Annual Contributions payable by RBH shall commence at 85.0% in years 1-5 (adjusted to take into account any stub period as applicable) following the Plan Implementation Date and, thereafter, shall be reduced in 5.0% increments every five years

until the percentage reaches 70.0% in year 16, and shall continue fixed at 70.0% thereafter until such time as the Global Settlement Amount has been paid in full. Notwithstanding the foregoing and without limiting the Claimants' rights in respect of an Event of Default, RBH shall only be permitted to reduce the percentage of the Annual Contributions by the next 5% increment provided that RBH has made all of the payments of Annual Contributions due and owing for all prior periods.

The Annual Contributions to be made by RBH for the first and final calendar years of the Contribution Period shall be pro-rated to ensure that the Global Settlement Amount is not exceeded.

5.7 Exclusion of Alternative Products from Metric

All revenues from Alternative Products and all proceeds from any disposition of any assets related to the Alternative Products shall be excluded from the Metric, and all capital expenditures, fees, costs, disbursements, indebtedness, liabilities, expenses and other expenditures of any kind whatsoever, irrespective of whether they are made in the Ordinary Course of Business, that are made in respect of or relating to any Alternative Products shall be excluded from the Metric and shall not be charged against the revenue from Tobacco Products. Within sixty days before the Plan Implementation Date, RBH shall provide to the CCAA Plan Administrators a list of all its Tobacco Products that shall be included in the Metric and a list of all its Alternative Products that shall be excluded from the Metric.

5.8 Contribution Period

The Tobacco Companies shall only be required to pay Annual Contributions and Reserved Amounts into the Global Settlement Trust Account and Supplemental Trust Account during the period from the Plan Implementation Date to the date that the aggregate amount of the Contributions paid into the Global Settlement Trust Account equals the Global Settlement Amount (the "**Contribution Period**"), and upon payment of the Global Settlement Amount in full, the Tobacco Companies' obligations in respect of the CCAA Plan shall terminate. For greater certainty, the Contribution Period shall include the period of time during which any debt collection or other enforcement proceedings are pursued by any of the Claimants.

5.9 Several Liability

The obligations of the Tobacco Companies under their CCAA Plans to pay their respective Upfront Contributions, Annual Contributions and Reserved Amounts for deposit into the Global Settlement Trust Account and Supplemental Trust Account, shall be several and not joint and several.

5.10 No Admission of Liability

Nothing in the CCAA Plan or in any other Definitive Document is or shall be deemed to be an admission of fact or liability of any kind by any member of the Tobacco Company Group.

5.11 Retention/Transfer of Cash

During the Contribution Period, in each year until the end of the Contribution Period, RBH shall retain its cash, cash equivalents and investments earned in respect of that year in Canada until such time as the Annual Contribution and Reserved Amounts owing in respect of that fiscal year have been deposited into the Global Settlement Trust Account or Supplemental Trust Account. Each year, after such deposit has been made in respect of that year, and provided that the amounts of the Annual Contribution and Reserved Amounts are not in dispute between the Parties, RBH shall be free to deal in its sole discretion with its respective share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to RBH that remain with RBH, including being free to transfer or distribute such monies outside of Canada in such manner as RBH may determine. Notwithstanding the foregoing, in the event that there is a dispute regarding the amount of RBH's share of the Annual Contributions and/or the relevant Reserved Amounts:

(a) RBH shall preserve and retain in Canada the amount that is in dispute out of its share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to RBH in respect of that year until such time as such dispute is fully and finally resolved and the balance of the Annual Contribution and any relevant Reserved Amounts, if any, determined to be owing by RBH to the Claimants has been deposited in full into the Global Settlement Trust Account and Supplemental Trust Account, as applicable, or as otherwise ordered by the CCAA Court; and

(b) RBH shall be required to deposit into the Global Settlement Trust Account and the Supplemental Trust Account, as applicable, the amount of the Annual Contribution and/or Reserved Amounts, as applicable, that RBH does not dispute is due and payable by it. After the dispute has been fully and finally resolved, RBH shall be free to deal in its sole discretion with the balance remaining of its respective share of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to RBH, including being free to transfer or distribute such monies outside of Canada in such manner as RBH may determine.

Provided that it is not alleged that Imperial and JTIM are in any way implicated or involved in, or responsible for, the dispute regarding the amount of RBH's share of the Annual Contributions and/or the amount of RBH's Reserved Amounts, Imperial and JTIM shall be free to deal in their sole discretion with their respective shares of the Net After-Tax Income and any amounts released from the Supplemental Trust Account to Imperial and/or JTIM that remain with Imperial and JTIM, as applicable, including being free to transfer or distribute such monies outside of Canada in such manner as Imperial and JTIM may determine.

5.12 Transparency of Payments by Tobacco Companies

The amounts of all Contributions and Reserved Amounts paid by RBH pursuant to the terms of the CCAA Plan shall be fully disclosed to the Provinces and Territories and counsel for any Impacted Claimants, pursuant to and in accordance with the CCAA Plan Administrators' Order, to enable the Provinces and Territories and any Impacted Claimants to verify that the Contributions and Reserved Amounts have been calculated accurately in accordance with the Metric and all other applicable terms of the Definitive Documents. For greater certainty, the Tobacco Companies shall

not merge their Contributions and Reserved Amounts and then blindly deposit them into the Global Settlement Trust Account.

5.13 Contribution Security

At least 10 Business Days prior to the Plan Implementation Date, RBH and its Material Subsidiaries shall enter into an agreement ("**Contribution Security Agreement**") granting security, including Deeds of Hypothec and a Demand Debenture, to the Collateral Agent for the exclusive benefit of the Claimants over all of its present and after acquired assets, undertakings and properties and otherwise as may be agreed, to secure the obligations of RBH to make the Annual Contributions and Reserved Amounts (the "**Contribution Security**"). Recourse to the Contribution Security shall only be available upon the occurrence of an Event of Default which is not cured pursuant to Article 12, Section 12.3. The Collateral Agent shall have no rights to enforce the Contribution Security in the event of the occurrence of a Breach. The Contribution Security Agreement is attached to the CCAA Plan as Schedule "E", the Deed of Immoveable Hypothec (official French version) as Schedule "F", the Deed of Immoveable Hypothec (unofficial English version) as Schedule "G", the Deed of Moveable Hypothec as Schedule "H", and the Demand Debenture granting a mortgage on RBH's property situated at 1500 Don Mills Road, Toronto, Ontario together with the Acknowledgment and Direction relating to the mortgage, as Schedule "I".

The Collateral Agent, to be engaged, shall agree pursuant to the terms of an intercreditor agreement on market terms to be agreed, to subordinate the Contribution Security to (i) any statutory deemed trusts; and (ii) any security granted (or to be granted) by RBH to any lender in connection with an operating facility on market terms with a principal amount that does not exceed an amount to be agreed in respect of RBH.

Subject to the terms of an NDA entered into between RBH and the Claimants, RBH shall provide to the Claimants the full particulars regarding the assets, undertakings and properties over which RBH and its Material Subsidiaries shall grant security.

5.14 Parent and Tobacco Company Group Support through Intercompany Transactions

During the Contribution Period, RBH's Parent and the relevant Affiliates within its Tobacco Company Group shall continue to provide to RBH and its Subsidiaries shared services and other operational support ("**Intercompany Services**") pursuant to the Intercompany Transactions that are in place on the Plan Implementation Date, or new Intercompany Services that are part of a broader operational restructuring among RBH's Tobacco Company Group. The provision of such Intercompany Services shall be (a) consistent with existing arrangements or past practice, or as otherwise approved by the CCAA Plan Administrators, and (b) in compliance with Applicable Law and subject to the Tobacco Company Group's transfer pricing policies across global markets, and (c) subject to normal course market adjustments. Any adjustments to Intercompany Services within RBH's Tobacco Company Group shall not affect RBH in a manner that is materially less favourable, as compared to the terms on which similar Intercompany Services are provided to any other members of RBH's Tobacco Company Group. The chief financial officer of RBH shall certify that any adjustments to the Intercompany Services are consistent with the treatment of the

other companies within the Tobacco Company Group. Any such certification shall not give rise to any personal liability on the part of the applicable certifying officer.

RBH, its Parent and the relevant Affiliates within its Tobacco Company Group shall:

(a) maintain and not make any revision to or variation of the terms of any Intercompany Transaction, including the withdrawal, termination or cessation of the Intercompany Transaction; and

(b) shall maintain and not make any material change to its related party Canadian trademark and other intellectual property licensing arrangements, together with the structure and pricing methodology currently used for carrying on business in Canada,

except in compliance with the requirements set out in this Section 5.14.

In the event that RBH is no longer Financially Viable due to circumstances beyond the control of RBH or its Tobacco Company Group, RBH's Parent may give the CCAA Plan Administrators, the Provinces and Territories, the Impacted Claimants and the other Tobacco Companies one year's notice of its intention to discontinue its Canadian operations. If the CCAA Plan Administrators are satisfied, based on the financial information made available to them by RBH pursuant to the CCAA Plan, that RBH is no longer Financially Viable due to circumstances beyond the control of RBH or its Tobacco Company Group, then they will communicate such position to the Provinces and Territories and the Impacted Claimants. If each of the Provinces and Territories and the Impacted Claimants accept such position, then RBH's Parent may discontinue the provision of shared services and other operational support on the date that the discontinuance takes effect.

The foregoing does not negate the prohibition against RBH's Parent and relevant Affiliates within its Tobacco Company Group entering the market for Tobacco Products in Canada with any other company or entity in place of the discontinued business, or any other provision in the CCAA Plan except for the obligation to provide shared services and other operational support. For greater certainty, except through RBH and its Material Subsidiary, RBH's Parent and the relevant Affiliates within its Tobacco Company Group shall not directly or indirectly, including by (i) exporting or supplying Tobacco Products to Canada, (ii) licensing technology, trademarks and intellectual property, or (iii) providing services, engage in any business activity or have any direct or indirect involvement or participation in the market for Tobacco Products in Canada.

In the event that the CCAA Plan Administrators, the Provinces and Territories, the Impacted Claimants or other Tobacco Companies do not accept the position of RBH and its Parent regarding the Financial Viability of RBH's Canadian operation, RBH and its Parent may bring the issue before the CCAA Court for determination.

5.15 Payment of Intercompany Claims

Any Intercompany Claim outstanding and due by RBH as at the Effective Time may only be repaid by RBH from its share of the Net After-Tax Income and amounts released from the Supplemental Trust Account, as applicable, that will remain with RBH in each year after its Annual Contribution and any Reserved Amounts have been deposited into the Global Settlement Trust Account or Supplemental Trust Account, as applicable, the whole subject, however, to the terms of Article 5,

Section 5.11 that govern the retention of its share of funds in the event that the amount of the Annual Contribution or Reserved Amount is in dispute.

ARTICLE 6. ADMINISTRATION OF THE GLOBAL SETTLEMENT AMOUNT

6.1 Allocation of the Global Settlement Amount

Set forth in Article 16, Sections 16.1, 16.2 and 16.3 herein are the terms that will govern the allocation of the Global Settlement Amount and the timing of the distributions thereof to the:

(a) Quebec Class Action Plaintiffs;

(b) Pan-Canadian Claimants;

(c) Provinces and Territories;

(d) Cy-près Foundation;

(e) Tobacco Producers; and

(f) *Knight* Class Action Plaintiffs.

6.2 Expert Evidence supporting Provincial HCCR Claims and Territorial HCCR Claims and Provincial and Territorial Allocation

Expert evidence informing, in part, and supporting the quantification of the Provincial HCCR Claims and the Territorial HCCR Claims, and the allocation of the Provinces and Territories Settlement Amount among the Provinces and Territories, includes the Harrison Report that is attached to this Plan as Schedule "J". Dr. Harrison's curriculum vitae is attached to the CCAA Plan as Schedule "K". The Provinces and Territories Settlement Amount shall be apportioned among the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

6.3 Expert Evidence supporting the Pan-Canadian Claimants' Compensation Plan

Expert evidence informing, in part, and supporting the development, formulation and quantification of the PCC Compensation Plan includes the Jha Report that is attached to this Plan as Schedule "L". Dr. Jha's curriculum vitae is attached to the CCAA Plan as Schedule "M".

6.4 Consideration for Settlement of *Knight* Class Action

The consideration for the settlement of the *Knight* Class Action shall be the contribution to the Cy-près Fund and the payment of the *Knight* Class Counsel Fee.

6.5 Investment of Contributions and Reserved Amounts pending Disbursement

The Contributions and Reserved Amounts paid into the Global Settlement Trust Account and Supplemental Trust Account, PCC Trust Account, QCAP Trust Account and Cy-près Trust Account, as well as the monies deposited into the Miscellaneous Claims Fund, CCAA Plan

Administration Reserve Account and PCC Compensation Plan Reserve Account, shall be invested in accordance with approved investment guidelines, pending disbursement to the Claimants and any other applicable payees.

ARTICLE 7. ESTABLISHMENT AND ADMINISTRATION OF QUEBEC CLASS ACTION ADMINISTRATION PLAN

7.1 Purpose of the Quebec Administration Plan

The Quebec Administration Plan will provide direct compensation in the form of monetary payments to QCAPs who meet the criteria to qualify as *Blais* Class Members pursuant to the judgments in the Quebec Class Actions. The Quebec Administration Plan is attached to the CCAA Plan as Schedule "N".

The Court-Appointed Mediator and the Monitors recommend that Epiq be approved by the CCAA Court for appointment as the Claims Administrator to manage the administration of the claims processes for both the Quebec Administration Plan and the PCC Compensation Plan. Attached to the CCAA Plan as Schedule "O" is an overview of Epiq's complex claims administration experience, an eleven page list of Epiq's legal administration projects, a description of Epiq's Tobacco Claims Pre-Settlement Support Program, and the resumes of the key professional management personnel who will be assigned to the administration of the Quebec Administration Plan and the PCC Compensation Plan.

The Court-Appointed Mediator and the Monitors recommend that Daniel Shapiro, K.C. be approved for appointment as the Administrative Coordinator in respect of the administration of both the Quebec Administration Plan and the PCC Compensation Plan. Mr. Shapiro's curriculum vitae is attached to the CCAA Plan as Schedule "P".

The following table summarizes the compensation available to Eligible *Blais* Class Members under the Quebec Administration Plan:

[Remainder of page intentionally left blank]

Quebec Class Action Administration Plan		
Column 1 **Compensable Disease**	**Compensation 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 Payment for Eligible *Blais* Class Members who started to smoke before January 1, 1976**	**Column 3** **Compensation Payment for Eligible *Blais* Class Members who started to smoke on or after January 1, 1976 (80% of Column 2)**
Lung Cancer	$100,000	$80,000
Throat Cancer	$100,000	$80,000
Emphysema/COPD (GOLD Grade III or IV)	$30,000	$24,000

7.2 Quebec Administration Plan is subject to the Approval of the CCAA Court

The CCAA Court shall hear and determine the proceedings relating to the approval of the Quebec Administration Plan, including the approval of the retainer agreement respecting fees and disbursements between the Quebec Class Counsel and the representative plaintiffs in the Quebec Class Actions, and the approval of the Quebec Class Counsel Fee.

Matters relating to the ongoing supervision of the Quebec Administration Plan shall be heard and determined jointly by the CCAA Court and the Quebec Superior Court. In performing this function, the CCAA Court and the Quebec Superior Court may communicate with one another in accordance with a protocol to be worked out and established by them.

No changes, modifications or revisions shall be made to the Quebec Administration Plan without the joint approval of the CCAA Court and the Quebec Superior Court as set out in an Order issued by the CCAA Court.

7.3 Release of Cash Security Deposits

The Cash Security Deposits, which form part of the Upfront Contributions, shall be released from suretyship prior to the Plan Implementation Date and shall be deposited into the Global Settlement Trust Account.

7.4 QCAP Trust Account

The QCAP Settlement Amount, less the QCAP Cy-près Contribution, shall be paid from the Global Settlement Trust Account and deposited into the QCAP Trust Account for the benefit of the *Blais* Class Members.

From time to time, upon the submission of a requisition by the Claims Administrator, the CCAA Plan Administrators shall authorize the advancement of instalments of funds from the QCAP Trust Account to the Claims Administrator's trust account designated for the Quebec Administration Plan, which shall be held in the Bank for the benefit of the *Blais* Class Members, to enable the Claims Administrator to make Compensation Payments to Eligible *Blais* Class Members.

7.5 Payment of QCAP Cy-près Contribution to Cy-près Trust Account

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 constituting the indirect benefit to the *Létourneau* Class Members. 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.

7.6 No Solicitation of *Blais* Class Members

No Persons other than the Quebec Class Counsel, their agent Raymond Chabot, the Claims Administrator, or any Person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit *Blais* Class Members in order to assist them with the preparation or submission of their Proofs of Claim under the Quebec Administration Plan.

ARTICLE 8. ESTABLISHMENT AND ADMINISTRATION OF PAN-CANADIAN CLAIMANTS' COMPENSATION PLAN

8.1 Purpose of the PCC Compensation Plan

The Pan-Canadian Claimants' Compensation Plan ("**PCC Compensation Plan**") will provide direct compensation in the form of monetary payments to PCCs who fulfill all of the following criteria ("**PCC Eligibility Criteria**"):

(a) On the date that a PCC submits their claim to the PCC Compensation Plan:

  (i) If the PCC is alive, they must reside in a Province or Territory in Canada, or

  (ii) If the PCC is deceased, they must have resided in a Province or Territory in Canada on the date of their death;

(b) The PCC was alive on March 8, 2019;

(c) Between January 1, 1950 and November 20, 1998, the PCC smoked a minimum of Twelve Pack-Years of cigarettes sold by the Tobacco Companies;

(d) Between March 8, 2015 and March 8, 2019 ("**PCC Claims Period**"), the PCC was diagnosed with:

(i) Primary lung cancer ("**Lung Cancer**"),

(ii) Primary cancer (squamous cell carcinoma) of the Larynx, Oropharynx or Hypopharynx ("**Throat Cancer**"), or

(iii) Chronic obstructive pulmonary disease (GOLD Grade III or IV only) (collectively, the "**PCC Compensable Diseases**"); and

(e) On the date of the diagnosis with a PCC Compensable Disease the PCC resided in a Province or Territory in Canada.

The following table summarizes the compensation which will be 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 following documents are attached as Schedules to the CCAA Plan:

(a) The document entitled "Pan-Canadian Claimants' Compensation Plan: Methodology and Analysis" dated December 5, 2024 is attached to the CCAA Plan as Schedule "Q";

(b) The Jha Report is attached to the CCAA Plan as Schedule "L"; and

(c) The Analysis of Limitations Law applicable to Pan-Canadian Claimants dated September 2, 2020 is attached to the CCAA Plan as Schedule "R".

8.2 PCC Compensation Plan

The CCAA Court shall hear and determine the proceedings relating to the approval of the PCC Compensation Plan. The PCC Compensation Plan is attached to the CCAA Plan as Schedule "S". The Court-Appointed Mediator and the Monitors recommend that Epiq be approved by the CCAA Court for appointment as the Claims Administrator to manage the administration of the claims processes for both the Quebec Administration Plan and the PCC Compensation Plan.

Matters relating to the ongoing supervision of the PCC Compensation Plan shall be heard and determined solely by the CCAA Court.

8.3 PCC Trust Account

The PCC Compensation Plan Amount shall be paid from the Global Settlement Trust Account and deposited into a segregated interest-bearing trust account or trust accounts ("**PCC Trust Account**") held in the Bank for the benefit of the Pan-Canadian Claimants.

From time to time, upon the submission of a requisition by the Claims Administrator, the CCAA Plan Administrators shall authorize the advancement of instalments of funds from the PCC Trust Account to the Claims Administrator's trust account designated for the PCC Compensation Plan, which shall be held in the Bank for the benefit of the Pan-Canadian Claimants, to enable the Claims Administrator to make Individual Payments to Eligible Pan-Canadian Claimants.

8.4 No Solicitation of Pan-Canadian Claimants

No Persons other than the PCC Representative Counsel, their agent Epiq, the Claims Administrator, or any Person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit Pan-Canadian Claimants in order to assist them with the preparation or submission of their PCC Claim Packages under the PCC Compensation Plan.

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 Tobacco Products who have not yet or may never develop a tobacco-related harm.

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 tobacco-related diseases. The Cy-près Foundation will indirectly benefit users of Tobacco Products and their affected family members or estates who are <u>not</u> directly compensated through the Quebec Administration Plan or PCC Compensation Plan. The smokers who <u>are</u> 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 tobacco 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 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 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.

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 and is not reviewable once it has received approval by the CCAA Court.

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 the present structure for diagnosis, treatment and palliation of Persons suffering from tobacco-related cancers, Emphysema/COPD and other tobacco-related harms.

- 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, 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 diseases, 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 (in the period after the Sanction Hearing and prior to Final Approval of the Cy-près Foundation)

The establishment of the Cy-près Foundation will take place in two phases as set forth herein: the first occurring at the Sanction Hearing, and the second occurring at the hearing for the final approval by the CCAA Court of the Cy-près Foundation, so as to permit the finalization of the administrative aspects of the 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, including the Chair, 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 CCAA Plan Administrators 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.

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 CCAA Plan Administrators 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 CCAA Plan Administrators shall supply reports to the CCAA Court affirming the foregoing.

9.5 Appointment of Board of Directors and Chair of Cy-près Foundation (in the period after the Sanction Hearing and prior to Final Approval of the 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, including the Chair, shall be ratified by the CCAA Plan Administrators and be subject to the approval of the CCAA Court. 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 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;

(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.

The CCAA Plan Administrators shall be empowered to retain the services of such experts as they deem necessary to advise them in regard to the foregoing and in respect of any and all endeavours in connection with the establishment and operation of the Cy-près Foundation.

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.

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 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. 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.

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.

ARTICLE 10. INFORMATION TO BE PROVIDED DURING THE CONTRIBUTION PERIOD

10.1 Annual Business Plans

Notwithstanding any terms or conditions of any Definitive Documents, RBH and any members of its Tobacco Company Group, as applicable, shall comply with all their obligations pursuant to Article 10 herein. On an annual basis during the Contribution Period, RBH shall provide to the CCAA Plan Administrator a rolling five-year operating and capital business plan approved by

RBH's Canadian senior management (the "**Business Plan**") that shall be consistent with the Definitive Documents and, without limitation, shall include the following:

(a) The same schedules and level of detail as RBH has provided to the Claimants during the pendency of the CCAA Proceedings including, for greater certainty, five-year projections for RBH's income statement, balance sheet, cash flow statement, gross margin schedule, total margin schedule, Intercompany Transaction details, taxes and government levies schedule, operating costs schedule, statement of financial position, and summary of assumptions and trends, and, until such time as RBH shall have transferred all of its assets, Indebtedness, liabilities and business relating to its current and future Alternative Products to an unrelated company, a Canadian Affiliate of its Parent, or a Canadian Subsidiary of any other company within its Tobacco Company Group pursuant to Article 4, Section 4.1 herein, the particulars of the determination of the net income attributable to the Alternative Products;

(b) RBH's plans to make capital expenditures ("**CapEx**") that:

  (i) Are reasonably necessary for the preservation of its assets, undertakings and properties or its business (including payments on account of insurance, maintenance and security services),

  (ii) Are reasonably necessary to replace or supplement its assets, undertakings or properties, or

  (iii) Are otherwise of benefit to the business; and

(c) The framework, elements and pricing of the intercompany charges for the Intercompany Services which the Parent and relevant Affiliates of RBH shall continue to provide to RBH through Intercompany Transactions, subject to the provisions of the CCAA Plan and in accordance with the Definitive Documents.

The CCAA Plan Administrator shall review the Business Plan for RBH on an annual basis, and may suggest non-binding revisions or amendments to RBH. The CCAA Plan Administrator may advise the Provinces, Territories and any Impacted Claimants of such suggestions. The suggestions of the CCAA Plan Administrator shall be considered in good faith by RBH.

10.2 Quarterly and Annual Information

10.2.1 Annual Financial Information

On or before the 90th day following the end of each fiscal year during the Contribution Period, RBH shall provide the CCAA Plan Administrator with the following financial information:

(a) An audited financial statement ("**Annual Financial Statement**");

(b) A schedule providing the particulars by Affiliate of all receipts and disbursements in respect of all of RBH's Intercompany Transactions;

(c) A report that identifies and discusses the differences between RBH's financial performance forecast in its Business Plan and its actual financial performance in each fiscal year during the Contribution Period; and

(d) All other relevant assumptions, details and schedules that support the Annual Financial Statement.

10.2.2 Information to be provided by RBH in Annual MD&A

The Business Plan which RBH shall provide annually during the Contribution Period to the CCAA Plan Administrator shall be accompanied by a management discussion and analysis ("**MD&A**") which includes disclosure of information regarding the following matters that is of a similar level of disclosure as in the CCAA Proceedings to enable the CCAA Plan Administrator and the Claimants to understand and assess the impact on and associated risk to RBH's performance of its obligations under the Definitive Documents:

(a) **Transfer Pricing Arrangements** - Any plan to change any of RBH's existing intercompany transfer pricing arrangements;

(b) **Intercompany Transaction Changes** - Any plan to enter into a new Intercompany Transaction or amend the terms of an existing Intercompany Transaction which may only be undertaken in compliance with the requirements set out in Article 5, Section 5.14 herein;

(c) **Intercompany Transaction Terminations** - Any plan to not renew, not extend or otherwise terminate an Intercompany Transaction;

(d) **Change in Location** - Any plan to move RBH's head office or other premises and/or terminate any lease of the premises housing such offices;

(e) **Disposition of Assets** - Any plan to dispose of and/or transfer material assets exceeding $5 million in any one transaction or $10 million in the aggregate, including manufacturing equipment, trademarks, intellectual property and any other intangible assets, that are material to RBH's conduct of its Ordinary Course of Business;

(f) **Termination of Employees** - Any plan to terminate an operationally significant number of employees of RBH;

(g) **Change in Executive Management Team** - Any planned or anticipated changes to RBH's executive management team in regard to both complement and personnel;

(h) **CapEx** - RBH's CapEx budget, including any plans to make material capital expenditures and dispose of and/or transfer assets;

(i) **Cash Security Arrangements** - Any planned new cash security arrangements or other treasury arrangements, or planned amendments to cash security arrangements or treasury arrangements including: the use of concentration accounts, cash sweeps, increased or new escrow, and deposit or pledged asset requirements;

(j) **Cash Commitments** - Any planned new or amended cash commitments or deposits required that are in excess of $10 million in the aggregate, whether occurring in any one situation, or series of related situations, or series of related transactions;

(k) **Financing Arrangements** - Any planned new or amended financing arrangements into which RBH proposes to enter, that are in excess of $10 million in the aggregate, whether occurring in any one situation, or series of related situations, or series of related transactions, including full particulars regarding the anticipated security and financing costs;

(l) **Material Change in Business Operations** - Any plans to permanently or temporarily cease, downsize or shutdown any businesses or operations carried on by RBH, or make any other material changes in RBH's business or operations (other than in respect of Alternative Products);

(m) **Taxes** – All notices of assessment or reassessment in respect of any taxation year ending during the Contribution Period. Any rulings and any other written communications issued by a Tax Authority relating to the deductibility of the Upfront Contributions, Annual Contributions or Reserved Amounts for income tax purposes, the receipt of Reserved Amounts, or the availability, deductibility, carryforward or carryback of a Tax Attribute (any of which, a "**Tax Matter**");

(n) **Claims and Litigation** – All notices received by RBH regarding claims or potential claims that may be brought against it, and copies of all originating processes commenced against RBH;

(o) **Settlements** – All amounts paid to settle claims made and actions commenced against RBH and whether such payments were made in whole or in part by RBH's insurer(s); and

(p) **Penalties and Fines** – All penalties and fines, and any interest charged thereon, levied against RBH by a Governmental Authority.

10.2.3 Information to be provided by RBH in Quarterly MD&A

Quarterly during the Contribution Period, RBH shall provide to the CCAA Plan Administrator:

(a) Financial statements which include the same schedules and level of detail as RBH has provided to the Claimants during the pendency of the CCAA Proceedings including, for greater certainty, income statement, balance sheet, statement of profit and loss, cash flow statement, statement of Tobacco Product shipment volumes by brand, gross margin schedule, total margin schedule, Intercompany Transaction details, Taxes and government levies schedule, operating costs schedule, statement of financial position, and summary of assumptions and trends, and the particulars of the determination of the net income attributable to the Alternative Products; and

(b) An accompanying MD&A which includes disclosure of any new information or updates relating to the matters enumerated in Article 10, Section 10.2.2(a) through Article 10, Section 10.2.2(p) herein that is sufficiently detailed to enable the CCAA Plan

Administrator and the Claimants to understand and assess the impact on and associated risk to RBH's performance of its obligations under the Definitive Documents.

10.3 Other Information to be provided by RBH

During the Contribution Period, within ten days of receipt of any communication from a Tax Authority relating to a Tax Matter, RBH shall provide copies of same to the CCAA Plan Administrators. During the Contribution Period, RBH shall also provide sufficiently detailed information and supporting data to the CCAA Plan Administrator in response to *ad hoc* requests which may be made from time to time in connection with the information produced by RBH pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3 and 10.8 herein.

10.4 Access to RBH's Management

During the Contribution Period, RBH shall provide the CCAA Plan Administrators with reasonable access to its key management personnel to answer any reasonable questions they may have arising from or in connection with the financial records and information 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. The key management personnel of RBH shall attend quarterly meetings and any meetings scheduled *ad hoc* with the CCAA Plan Administrators.

10.5 Procedure for Provinces and Territories to request Information from RBH

If, in connection with the interpretation, implementation, application, compliance with, enforcement of, or alleged breach or violation of any terms of any of the Definitive Documents, a Province or Territory wishes to make a request for financial records or other data and information ("**Information Request**") to RBH, the following procedure shall be followed:

(a) An Information Request from any public servant of, or financial, legal or other advisor to, a Province or Territory shall be delivered to the PTLC Member for the requesting Province or Territory. The Information Request shall be in writing and sufficiently particularized;

(b) The PTLC Member for the requesting Province or Territory shall submit the written Information Request to the PTLC Chair;

(c) The PTLC Chair shall review each Information Request received and, if necessary, confer with the requesting PTLC Member to clarify the particulars of the information sought, remove any duplication with other Information Requests received from other PTLC Members, and then prepare a final written Information Request ("**Final Information Request**"). Notwithstanding the foregoing responsibility, the PTLC Chair may, in their discretion, decline to send to the CCAA Plan Administrator an Information Request which, in the reasonable view of the PTLC Chair, is unreasonable, unnecessary, overly broad or imprecise. If the PTLC Chair declines to send an Information Request to the CCAA Plan Administrator, the PTLC Chair shall advise the requesting PTLC Member in writing of the reason for such decision;

(d) If the Information Request has not been declined, the PTLC Chair shall submit the Final Information Request to the CCAA Plan Administrator, and provide all PTLC Members and any Impacted Claimants with a copy of the Final Information Request;

(e) The CCAA Plan Administrator shall review and then may submit the Final Information Request to RBH. Notwithstanding the foregoing responsibility, the CCAA Plan Administrator may, in its discretion, suggest revisions, add comments or decline to send to RBH a Final Information Request which, in the reasonable view of the CCAA Plan Administrator, is unreasonable, unnecessary, overly broad or imprecise. If the CCAA Plan Administrator declines to send a Final Information Request to RBH, the CCAA Plan Administrator shall advise the PTLC Chair in writing of the reason for such decision. In that event:

(i) The PTLC Chair may reconsider whether to revise or withdraw the Final Information Request; or

(ii) The PTLC Chair may require the CCAA Plan Administrator to provide RBH with a copy of the Final Information Request, in which case the written reasons for the CCAA Plan Administrator's view that the Final Information Request is improper or irrelevant shall also be submitted to RBH.

All Final Information Requests that are submitted to RBH and any written comments or written reasons of the CCAA Plan Administrator shall be admissible in evidence in any arbitration or proceeding in the CCAA Court;

(f) RBH shall provide to the CCAA Plan Administrator data, information and any documents responsive to the Final Information Request which the CCAA Plan Administrators shall use to prepare a written response to the Final Information Request. The CCAA Plan Administrator shall deposit the written response and any documents received from RBH in the Virtual Data Room for RBH, and then notify the PTLC Chair and any Impacted Claimants of such deposit;

(g) The PTLC Chair shall notify the PTLC Members that the written response and any documents responsive to the Final Information Request have been deposited into RBH's Virtual Data Room; and

(h) The PTLC Chair, any Impacted Claimants or the CCAA Plan Administrator may request an *ad hoc* Interface Meeting to discuss RBH's response to the Final Information Request.

Under no circumstances shall a PTLC Member, other public servant of, or a financial, legal or other advisor to, any Province or Territory contact RBH or a member of RBH's Tobacco Company Group directly to make an Information Request and thereby bypass the PTLC Chair or the CCAA Plan Administrator.

10.6 Procedure for Impacted Claimants to request Information from RBH

If an Impacted Claimant wishes to make an Information Request to RBH, the following procedure shall be followed:

(a) An Information Request from an Impacted Claimant, or its financial, legal or other advisor, shall be in writing, sufficiently particularized and not duplicate any Final Information Requests from the Provinces and Territories which have been provided to the Impacted Claimant by the PTLC Chair;

(b) The Impacted Claimant shall submit its Information Request to the CCAA Plan Administrator with a copy to the PTLC Chair;

(c) The PTLC Chair shall provide a copy of the Impacted Claimant's Information Request to all PTLC Members;

(d) The CCAA Plan Administrator shall review and then may submit the Impacted Claimant's Information Request to RBH. Notwithstanding the foregoing responsibility, the CCAA Plan Administrator may, in its discretion, suggest revisions, add comments or decline to send to RBH an Information Request which, in the reasonable view of the CCAA Plan Administrator, is unreasonable, unnecessary, overly broad or imprecise. If the CCAA Plan Administrator declines to send an Information Request to RBH, the CCAA Plan Administrator shall advise the Impacted Claimant of the reason for such decision. In that event:

(i) The Impacted Claimant may reconsider whether to revise or withdraw its Information Request; or

(ii) The Impacted Claimant may require the CCAA Plan Administrator to provide RBH with a copy of its Information Request, in which case the written reasons for the CCAA Plan Administrator's view that the Information Request is unreasonable, unnecessary, overly broad or imprecise shall also be submitted to RBH.

All Information Requests of an Impacted Claimant that are submitted to RBH and any written comments or written reasons of the CCAA Plan Administrator shall be admissible in evidence in any arbitration or proceeding in the CCAA Court;

(e) RBH shall provide to the CCAA Plan Administrator data, information and any documents responsive to the Impacted Claimant's Information Request which the CCAA Plan Administrator shall use to prepare a written response to the Information Request. The CCAA Plan Administrator shall deposit the written response and any documents received from RBH in the Virtual Data Room for RBH, and then notify the Impacted Claimant and the PTLC Chair of such deposit;

(f) The PTLC Chair shall notify the PTLC Members that the written response and any documents responsive to the Impacted Claimant's Information Request have been deposited into RBH's Virtual Data Room; and

(g) The Impacted Claimant, PTLC Chair or CCAA Plan Administrator may request an *ad hoc* Interface Meeting to discuss RBH's response to the Impacted Claimant's Information Request.

Under no circumstances shall an Impacted Claimant, or any of its financial, legal or other advisors, contact RBH or any member of RBH's Tobacco Company Group directly to make an Information Request and thereby bypass the CCAA Plan Administrator.

10.7 Confidentiality of Information

In addition to their obligations pursuant to the NDAs and any confidentiality order, the PTLC Members and the Impacted Claimants shall maintain the strict confidentiality of all communications made, all information shared and all agendas, reports, records and other documents exchanged during the Interface Meetings and the Deliberation Meetings and in response to Information Requests, which shall not be disclosed in or used for any proceeding or any other purposes, other than as provided for in Article 10, Sections 10.5(e) and 10.6(d).

10.8 Information and Certification to be provided by RBH regarding Annual Contributions and Reserved Amounts

During the Contribution Period, RBH shall provide to the CCAA Plan Administrator sufficiently detailed information and supporting data regarding the quantum of the Annual Contributions and Reserved Amounts to be made by RBH in respect of each calendar year, including a certification provided by RBH's chief financial officer that the quantum of the Annual Contributions and Reserved Amounts to be made by RBH in respect of each calendar year has been calculated accurately in accordance with the Metric and all other applicable terms of the Definitive Documents. Such certification shall be delivered to the CCAA Plan Administrator at the same time as the aforesaid information and supporting data and shall not give rise to any personal liability on the part of the certifying officer.

10.9 Timing of RBH's Delivery of Business Plan, Financial Statements and MD&A to CCAA Plan Administrators

By no later than the applicable dates specified in the Table below, RBH shall deliver to the CCAA Plan Administrator the Business Plans and financial records and information that it is required to produce pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 herein:

Financial Documents	Dates by which RBH shall deliver Financial Documents to CCAA Plan Administrator
Q1 Financial Statements	May 15
Q2 Financial Statements	August 15
Q3 Financial Statements	November 15
Q4 Financial Statements	March 15
Annual Financial Statements	March 31

Financial Documents	Dates by which RBH shall deliver Financial Documents to CCAA Plan Administrator
5 year Business Plan provided annually	May 15
Calculation of Metric	June 30

10.10 Virtual Data Rooms and NDAs

As provided in Article 11, Section 11.1(b) herein, during the Contribution Period, RBH shall provide to its CCAA Plan Administrator for deposit into its virtual data room ("**Virtual Data Room**") all of the financial records and information required to be produced to the CCAA Plan Administrator pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 herein. RBH's Virtual Data Room shall only be accessed by the CCAA Plan Administrators, Provinces, Territories and Impacted Claimants and their advisors who have executed an NDA with RBH.

Provided that they have executed an NDA, any Claimant to whom any portion of its share of the Global Settlement Amount remains unpaid shall be entitled to access all of the financial records and information that RBH shall deposit in its Virtual Data Room pursuant to Article 10, Sections 10.1, 10.2.1, 10.2.2, 10.2.3, 10.3 and 10.8 and Article 11, Section 11.1(b) herein.

ARTICLE 11. COVENANTS AND OTHER PAYMENT ASSURANCE

11.1 Covenants

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

(a) RBH 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 RBH, or in response to prevailing material market changes affecting RBH, that are not contemplated by its Business Plan;

(b) In accordance with Article 10, Section 10.10 herein, RBH 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, RBH 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 RBH;

(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 RBH'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 RBH is operating in accordance with the Definitive Documents.

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

(c) RBH 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 RBH 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) RBH 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) RBH shall diligently pursue any Tax Matter raised by a Tax Authority to establish a positive outcome for RBH, 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 RBH in respect of any Tax Matter, provided that following any receipt of any such submissions, objections or appeals, the CCAA Plan Administrators shall not knowingly waive any applicable privilege in respect of such submissions, objections or appeals;

(f) The chief financial officer of RBH shall certify that the information provided to the CCAA Plan Administrator by RBH 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 RBH 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) RBH 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 RBH to satisfy its obligations under the CCAA Plan including, the ability of RBH 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 RBH'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 RBH 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 RBH 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 RBH 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 RBH 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) RBH 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) RBH 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) RBH 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) RBH shall not, and shall not permit any of its Material Subsidiaries to, assign any of its income to any other Person, and RBH's Parent and any member of its Tobacco Company Group shall not cause RBH to assign any of its income to any other Person.

11.2 Ordinary Course Operational Activities

Decisions made by RBH'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 RBH's directors' and officers' business judgment, provided that such decisions are made in the Ordinary Course of Business, are consistent with RBH'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 RBH 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 RBH 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 RBH'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 RBH's assets and business including payments on account of insurance (including directors and officers insurance), maintenance and security services;

(g) Administration of RBH'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 RBH'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 RBH'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 RBH 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 RBH to a Governmental Authority under Applicable Law;

(l) Posting of bonding collateral to satisfy regulatory or administrative requirements imposed on RBH 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, RBH 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 RBH 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, RBH 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 RBH 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.

ARTICLE 12. EVENTS OF DEFAULT, BREACHES AND REMEDIES

12.1 Aggrieved Parties in Dispute Resolution

For the purpose of the dispute resolution processes set forth in Articles 12 and 13 of the CCAA Plan, the following Persons only may be "**Aggrieved Parties**":

(a) the Provinces and Territories collectively, the collective interests of which will be advanced in the dispute resolution processes in a coordinated manner through the PTLC. Notwithstanding the foregoing, each Province and Territory retains its right to pursue a claim individually should it decide to do so and, if any Province or Territory elects to do so, it shall be designated as an Aggrieved Party hereunder. However, such right shall not extend to any assignee of an Affected Claim of a Province or Territory;

(b) the Pan-Canadian Claimants whose collective interests will be represented in the dispute resolution processes by the PCC Representative Counsel;

(c) the QCAPs whose collective interests will be represented in the dispute resolution processes by the Quebec Class Counsel;

(d) any other Impacted Claimant who has not yet been paid their full share of the Global Settlement Amount; and/or

(e) the Cy-près Foundation solely for the purpose of enforcing any non-payment of any portion of the Cy-près Fund.

Upon the occurrence of an event that may constitute an Event of Default or a Breach, any Aggrieved Party may exercise their rights and pursue any remedies available pursuant to the terms of the CCAA Plan, any other Definitive Documents and Applicable Law. For greater certainty, no Aggrieved Party shall have any rights to enforce the Contribution Security in the event of the occurrence and continuance of a Breach. In so doing, such Aggrieved Party shall consult with and communicate relevant information to all other Impacted Claimants regarding the steps to be taken, remedies sought, outcome and other significant matters relating to the resolution or determination of the Event of Default or Breach.

12.2 Events of Default

The occurrence during the Contribution Period of any of the following events ("**Events of Default**") shall constitute an Event of Default subject, where applicable, to the Monetary Cure Period, Non-Monetary Cure Period or Extended Cure Period:

(a) RBH fails to pay or cause its Upfront Contribution or any portion thereof to be paid when due in accordance with the terms of the Definitive Documents;

(b) RBH fails to pay or cause any Annual Contribution or any portion thereof to be paid when due in accordance with the terms of the Definitive Documents;

(c) RBH fails to pay or cause a Reserved Amount or any portion thereof to be paid when due in accordance with the terms of the Definitive Documents;

(d) RBH fails to provide any annual Business Plan and MD&A at all to the CCAA Plan Administrator in accordance with Article 10, Section 10.1 and Article 10, Section 10.2.2 herein;

(e) RBH fails to provide any quarterly financial statements and MD&A at all to the CCAA Plan Administrator in accordance with Article 10, Section 10.2.3 herein;

(f) RBH fails to provide any Annual Financial Statements at all to the CCAA Plan Administrator in accordance with Article 10, Section 10.2.1 herein;

(g) RBH fails to provide any information to the CCAA Plan Administrator at all regarding the calculation of the Annual Contributions and Reserved Amounts to be made by RBH in respect of each calendar year in accordance with Article 10, Section 10.8 herein;

(h) RBH fails to respond to an *ad hoc* request from the CCAA Plan Administrator for information in connection with any of RBH's Business Plan, annual MD&A, quarterly MD&A and Annual Financial Statements in accordance with Article 10, Section 10.3 herein;

(i) RBH's key management personnel fail to attend a quarterly meeting or any meeting scheduled *ad hoc* with the CCAA Plan Administrators in accordance with Article 10, Section 10.4 herein;

(j) RBH fails to provide the Contribution Security in accordance with Article 5, Section 5.13;

(k) Any material provision in the CCAA Plan or in the Contribution Security Agreement or other Definitive Documents for any reason ceases to be valid, binding and enforceable against RBH in accordance with its terms, or RBH so asserts in writing;

(l) Any representation or warranty made by RBH in the CCAA Plan or in any other Definitive Document or in any report, certificate, financial statement or other instrument, agreement or document furnished pursuant hereto or thereto is false, incorrect, incomplete or

misleading in any material respect as of the date that the representation or warranty was made or deemed to be made;

(m) RBH or its Material Subsidiary transfers any or all of its assets and business to any other entity including an unrelated company, a Canadian Affiliate of its Parent, or a Canada Newco, pursuant to its CCAA Plan or otherwise (except, for greater certainty, Permitted Transfers), or sells or otherwise disposes of its respective assets, including the disposition of manufacturing equipment and the transfer of trademarks, intellectual property and any other intangible assets, that are material to the conduct of the Ordinary Course of Business of RBH or its Material Subsidiary, other than Permitted Transfers;

(n) RBH or its Material Subsidiary ceases or threatens to cease to carry on its business or admits its inability to pay its Indebtedness generally, or is insolvent or admits that it is insolvent;

(o) Expressly excepting RBH's CCAA Proceeding, a Bankruptcy Action exists in respect of RBH or its Material Subsidiary;

(p) Any arrangement not permitted by the Definitive Documents is proposed involving a reclassification, reorganization, change or conversion of RBH's shares or its consolidation with or into another entity;

(q) A judgment, writ of execution, garnishment, sequestration, distress, attachment or similar process is issued or levied for the payment of money in a sum which exceeds $1 million against RBH or its Material Subsidiary, and the same is not released, bonded, satisfied, discharged, vacated, accepted for payment by an insurer or otherwise stayed within 30 days from the date of notice of entry thereof;

(r) Any remedial order that causes or would reasonably be expected to cause a Material Adverse Effect is issued by any Governmental Authority in respect of RBH or its Material Subsidiary pursuant to any environmental law;

(s) RBH or its Material Subsidiary violates any legal requirement which results in the issuance of an order or the cancellation of any license or certificate or approval by a Governmental Authority that causes or would reasonably be expected to cause a Material Adverse Effect;

(t) RBH conducts its business and operations, divests assets, rearranges ownership, alters its corporate structure and/or operational practices either directly or indirectly, in any manner that circumvents or is adverse to the intention underlying the CCAA Plan, including the ability of RBH to pay the Global Settlement Amount in full;

(u) Any Encumbrance for the benefit of one or more of the Claimants created upon any properties or assets of RBH or its Material Subsidiary, or intended so to be, pursuant to any Definitive Document ceases to be a valid and perfected Encumbrance, having the priority contemplated in the Definitive Documents;

(v) RBH or its Material Subsidiary creates, incurs, assumes, suffers to exist or otherwise becomes bound by or subject to any Encumbrance upon any of its properties and assets other than a Permitted Encumbrance;

(w) An encumbrancer pursuant to an Encumbrance takes possession of, or forecloses or retains, or sells or otherwise disposes of, or otherwise proceeds to enforce an Encumbrance over any of the property or assets of RBH or its Material Subsidiary;

(x) RBH or its Material Subsidiary fails to comply with an order, decision or award made by the Arbitrator or the CCAA Court; or

(y) The Parent fails to comply with its obligations pursuant to Article 5, Section 5.14, or an Order of the CCAA Court issued pursuant to Article 5, Section 5.14.

12.3 Cure of Events of Default

Upon the occurrence of an Event of Default, an Aggrieved Party may deliver written notice to RBH of such default ("**Notice of Default**") and:

(a) If the Event of Default is one referred to in Article 12, Sections 12.2(j), 12.2(k) and 12.2(m) to 12.2(o) herein, no cure period (defined in subsections (b) or (c) as applicable below) shall apply;

(b) If the Event of Default is one referred to in Article 12, Sections 12.2(a), 12.2(b) and 12.2(c) herein, and is capable of being remedied, RBH shall have 10 days following receipt of the Notice of Default to remedy such default ("**Monetary Cure Period**");

(c) If the Event of Default is one referred to in Articles 12, Sections 12.2(d) to 12.2(i), 12.2(l) and 12.2(p) to 12.2(x) herein and is capable of being remedied, RBH shall have 15 days following receipt of the Notice of Default to remedy such default ("**Non-Monetary Cure Period**") or, if the nature of such Event of Default is such that it is capable of being remedied, but is not capable of being remedied within the Non-Monetary Cure Period, then the Non-Monetary Cure Period shall be extended for a period not to exceed 45 days from the date that RBH receives the Notice of Default (the "**Extended Cure Period**") as may be required to permit RBH to remedy the Event of Default, provided that RBH makes best efforts to remedy the Event of Default during the Extended Cure Period; or

(d) If the Event of Default is the one referred to in Article 12, Section 12.2(y) herein and is capable of being remedied, the Parent shall have the Non-Monetary Cure Period to remedy such default or, if the nature of such Event of Default is such that it is capable of being remedied, but is not capable of being remedied within the Non-Monetary Cure Period, then the Non-Monetary Cure Period shall be extended for a period not to exceed the Extended Cure Period as may be required to permit the Parent to remedy the Event of Default, provided that the Parent makes best efforts to remedy the Event of Default during the Extended Cure Period.

The discontinuance or correction of an Event of Default shall constitute a cure thereof.

12.4 Breach of CCAA Plan

The occurrence during the Contribution Period of any of the following events constitutes a breach ("**Breach**") of RBH's obligations pursuant to the CCAA Plan and other Definitive Documents:

(a) On the part of RBH:

(i) The provision of an annual Business Plan and MD&A to the CCAA Plan Administrators the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.1 and Article 10, Section 10.2.2 herein;

(ii) The provision of quarterly financial statements and MD&A to the CCAA Plan Administrators the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.2.3 herein;

(iii) The provision of Annual Financial Statements to the CCAA Plan Administrators the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.2.1 herein;

(iv) The provision to the CCAA Plan Administrators of information regarding the quantum of the Contributions and Reserved Amounts to be made by RBH in respect of each calendar year, the contents of which are deficient as they do not fulfill the requirements of Article 10, Section 10.8 herein;

(v) The provision of an unsatisfactory, incomplete or deficient response to an *ad hoc* request from the CCAA Plan Administrators for information in connection with any of RBH's Business Plan, annual MD&A, quarterly MD&A and Annual Financial Statements in accordance with Article 10, Section 10.3 herein;

(vi) The making of a capital expenditure that exceeds the applicable CapEx Threshold contrary to Article 11, Section 11.3 herein;

(vii) The making of an Ordinary Course Divestiture that exceeds the applicable Ordinary Course Divestitures Threshold contrary to Article 11, Section 11.4 herein;

(viii) The application of the Metric to calculate the Annual Contributions in a manner which is contrary to the applicable provisions of the Definitive Documents; and

(ix) The calculation of the Reserved Amounts in a manner which is contrary to the applicable provisions of the Definitive Documents; and

(b) Any failure on the part of RBH and/or its Material Subsidiary to perform its obligations in any material respect under any of the Definitive Documents that is not expressly enumerated in Article 12, Sections 12.2 or 12.4 of the CCAA Plan will constitute a Breach that shall be resolved in accordance with the Dispute Resolution Procedure set out in Section 13.1.

12.5 Recourse against Parent

Notwithstanding anything to the contrary in this CCAA Plan or any other Definitive Document, recourse against any Parent and its Affiliates other than RBH and its Subsidiaries under or in respect of this CCAA Plan and the other Definitive Documents shall be limited solely to circumstances involving a default by such Person of its obligations under Section 5.14, as determined by the CCAA Court.

12.6 Waiver of Events of Default and Breaches

Any Event of Default or Breach, other than a failure to make a Contribution, may be waived in writing by the CCAA Plan Administrators, with the consent of the Provinces and Territories and any Impacted Claimants, subject to the approval of the CCAA Court.

ARTICLE 13. DISPUTE RESOLUTION PROCEDURE

13.1 Procedure for Dispute Resolution

Any question, issue, difference of opinion, disagreement, claim, complaint or dispute arising from or out of, or in any way in connection with the interpretation, implementation, application, compliance with, enforcement of, or alleged breach or violation of any terms of any of the Definitive Documents ("**Dispute**") shall be addressed and determined in accordance with Articles 12 and 13 herein which set out the procedure for the resolution of all Disputes ("**Dispute Resolution Procedure**"). Only the Aggrieved Parties, RBH, its Tobacco Company Group and the CCAA Plan Administrators, as applicable, shall be entitled to participate in any arbitration or CCAA Court proceeding conducted in accordance with the Dispute Resolution Procedure.

13.2 Investigation of Events causing a Material Adverse Effect

Without limiting the rights of the Provinces, Territories and any other Impacted Claimants as Aggrieved Parties, if the CCAA Plan Administrators are made aware of an issue, event or condition regarding RBH which caused or would reasonably be expected to cause a Material Adverse Effect, or may constitute a Breach or Event of Default, they will convene an *ad hoc* meeting with the PTLC Chair and any other Impacted Claimants to provide a preliminary report regarding the issue.

If further information is required, the PTLC and any other Impacted Claimants may consult and prepare a written request for particulars ("**Request for Particulars**") which includes a statement of the Breach or Event of Default which RBH is alleged to have committed. The PTLC Chair will provide the Request for Particulars to the CCAA Plan Administrators who shall send the Request for Particulars to RBH. Notwithstanding the foregoing responsibility, the CCAA Plan Administrators may, in their discretion, decline to send to RBH a Request for Particulars or other information request received from the PTLC Chair which, in the reasonable view of the CCAA Plan Administrators, is improper or irrelevant.

Within ten days of receipt of a Request for Particulars, RBH shall be required to provide a written response to the Request for Particulars and advise why the circumstances at issue do not constitute a Breach or an Event of Default. The deadline specified for RBH's response may be extended on a case by case basis by the CCAA Plan Administrators, in consultation with the PTLC Chair, and

will take into account the nature and complexity of the issue under review in order to set a reasonable and realistic time frame for the response.

The CCAA Plan Administrators will provide to the PTLC Chair RBH's written response to the Request for Particulars and their explanation regarding the alleged Breach or Event of Default. The PTLC Chair shall provide RBH's written response to the PTLC and any other Impacted Claimants.

The PTLC and any other Impacted Claimants will then consult and decide whether their position is that the issue:

(a) Falls within RBH's Ordinary Course Operational Activities such that it is not a Breach or an Event of Default;

(b) Is a Breach; or

(c) Is an Event of Default.

13.3 Resolution of Breaches by Parties

If an Aggrieved Party is of the view that RBH has committed a Breach and it wishes to resolve such Breach, the Aggrieved Party shall deliver a written notice ("**Notice of Breach**") to RBH providing particulars regarding the Breach to the extent they are known to the Aggrieved Party, including specifying all Sections of the Definitive Documents that are relevant to the Breach.

After receiving a Notice of Breach RBH may, within 10 days of such receipt, deliver to the Aggrieved Party a written request for further written particulars regarding the Breach. The Aggrieved Party shall have 10 days to respond to such request in writing. The deadline specified for RBH's response may be extended on a case by case basis by the CCAA Plan Administrator, in consultation with the Aggrieved Party, and will take into account the nature and complexity of the issue under review in order to set a reasonable and realistic time frame for the response.

Within 10 days after the later of the receipt of the Notice of Breach or the receipt of further particulars if any are known to the Aggrieved Party, RBH shall deliver to the Aggrieved Party a written response to the Notice of Breach ("**Response**") which provides the full particulars of RBH's position, including whether RBH disputes the position of the Aggrieved Party in whole or in part, and the grounds for the disagreement with or denial of the position of the Aggrieved Party.

The Aggrieved Party and RBH shall have a period of time not exceeding 30 days following the delivery of the Response to consider and, if they believe appropriate to do so, discuss or address the Breach. If the matter is addressed to the reasonable satisfaction of the Aggrieved Party and RBH within such 30 day period, then the issue in dispute shall be deemed to be resolved and shall not be the basis for further remedies pursuant to the Definitive Documents.

13.4 Resolution of Breaches by Arbitrator

13.4.1 Notice of Arbitration

If the Aggrieved Party and RBH fail to resolve a Breach within 30 days following RBH's delivery of the Response, and the Aggrieved Party has decided to seek a resolution of the Breach by way of arbitration pursuant to Article 13, Section 13.2(b), they shall deliver a notice of arbitration to RBH within a further thirty day period. Such notice of arbitration shall include the following information:

(a) The specific terms of the Definitive Documents that are relevant to the Breach and the relief sought;

(b) A concise summary of the material facts relevant to the issues raised in the Breach that are relied upon by the Aggrieved Party; and

(c) A statement of the material facts that RBH accepts as correct, and a concise summary of the additional material facts upon which RBH relies.

Notwithstanding the foregoing, on the CCAA Court's own motion or upon application by any of the Aggrieved Party, RBH, its Tobacco Company Group or the CCAA Plan Administrator as applicable, in exceptional circumstances the CCAA Court may, in its discretion, decide that it shall hear and determine a Breach in lieu of the Arbitrator doing so.

All Breaches referred to the Arbitrator shall be arbitrated in accordance with the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, except to the extent that those statutory provisions are expressly varied by the terms hereof or the terms of the other Definitive Documents.

13.4.2 Appointment of an Arbitrator

The Aggrieved Party and RBH shall agree upon an Arbitrator to appoint who:

(a) Is independent of the Parties and the CCAA Plan Administrators;

(b) Is not and has never been in the employ of or under contract with any Party or any CCAA Plan Administrator at any time; and

(c) Is qualified by education, experience and training to determine the subject matter of the Breach.

If the Aggrieved Party and RBH are unable to reach an agreement regarding the choice of Arbitrator, the CCAA Court shall appoint the Arbitrator from a list of five prospective Arbitrators provided by the Aggrieved Party and RBH. The five prospective Arbitrators shall fulfill the criteria set forth in subsections (a) to (c) immediately above and shall have not been rejected by the Aggrieved Party or RBH. If the Aggrieved Party and RBH are unable to agree upon the list of five prospective Arbitrators, then the CCAA Court may appoint an Arbitrator in its discretion.

The Arbitrator shall be empowered and shall have the discretion to conduct a mediation of the Breach and, in doing so, shall not be disqualified from conducting an arbitration hearing to resolve the Breach if the mediation is unsuccessful.

The Aggrieved Party shall advise the Arbitrator of the position of the CCAA Plan Administrator and provide to the Arbitrator any report prepared by the CCAA Plan Administrator in regard to the issue to be arbitrated.

13.5 Jurisdiction of Arbitrator

The Arbitrator has exclusive jurisdiction to determine:

(a) All Disputes pertaining to a Breach unless, pursuant to Article 13, Section 13.4.1, the CCAA Court, in its discretion, decides that exceptional circumstances exist which warrant the CCAA Court hearing and determining a Breach in lieu of the Arbitrator doing so;

(b) All questions pertaining to the interpretation of the terms of the Definitive Documents; and

(c) All questions of fact, law and mixed fact and law that arise in any Dispute referred to the Arbitrator for determination pursuant to Article 13, Section 13.4 herein.

In deciding a Dispute, the Arbitrator shall apply the laws of the Province of Ontario and the Applicable Laws of Canada.

The Arbitrator may receive evidence, rely upon it and determine what, if any, weight to give to the evidence, whether or not such evidence is admissible in a court of law.

All decisions of the Arbitrator shall be final and conclusive for all purposes, and shall bind the parties to the arbitration.

No appeal shall lie to the CCAA Court or any other Court in Canada from a decision of the Arbitrator on questions of fact, law or mixed fact and law.

13.6 Arbitration Remedies

The Arbitrator shall decide a Dispute regarding a Breach in accordance with Applicable Law, including equity, and may order specific performance, injunctions and other equitable remedies.

If the Arbitrator makes a finding against RBH in regard to (i) the application of the Metric to calculate the Annual Contributions [Article 12, Section 12.4(viii)], or (ii) the calculation of the Reserved Amounts [Article 12, Section 12.4(ix)], the Arbitrator may:

(a) Fix the amount of the Annual Contributions or Reserved Amounts, as applicable, that the Arbitrator shall order RBH to pay;

(b) Remit the matter back to RBH with the direction that it recalculate the Annual Contributions or Reserved Amounts in accordance with the Arbitrator's findings, and make

a finding as to the amount of the adjustment RBH owes to the Aggrieved Parties. The Arbitrator shall retain jurisdiction over the matter pending its final disposition; or

(c) Make any other order which the Arbitrator determines is appropriate.

The Arbitrator has the jurisdiction to make an order as to interest or any additional sum in respect of any amount found to be due and owing by RBH. If RBH withholds payment of all or a portion of the Annual Contributions, or Reserved Amounts, then:

(a) Interest shall accrue on the sum that is ultimately found to be owing to the Aggrieved Parties at the rate of interest payable pursuant to sections 127 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended, such interest to accrue daily until the arbitral award, inclusive of such interest, has been paid in full; and

(b) Any interest paid by RBH shall not be applied to reduce the balance of the Global Settlement Amount owing.

13.7 Enforcement of Arbitrator's Awards

A Party who is entitled to enforcement of an award made by the Arbitrator may make an application to the CCAA Court on notice to the Party or Person against whom enforcement is sought. The CCAA Court shall give a judgment enforcing the Arbitrator's award and shall have the same powers with respect to the enforcement of the Arbitrator's award as with respect to the enforcement of its own judgments.

13.8 Costs of Arbitration

The Arbitrator may award full indemnity costs of an arbitration which include the parties' legal expenses, the fees and expenses of the Arbitrator and any other expenses related to the arbitration.

13.9 Jurisdiction of CCAA Court

After the Effective Time, the CCAA Court shall retain jurisdiction over the CCAA Proceedings, be seized of the implementation of RBH's CCAA Plan and have exclusive supervisory jurisdiction over the administration of the CCAA Plan, except for the joint supervision of the Quebec Administration Plan by the CCAA Court and the Quebec Superior Court as described in Article 7, Section 7.2, until such time as the CCAA Plans have been fully implemented, including payment of the Global Settlement Amount in full.

The CCAA Court shall, in its discretion, give such directions and make such orders as are necessary to facilitate the Parties completing the implementation of the CCAA Plan, including determining any Disputes that may arise between the Tobacco Companies, any or all members of the Tobacco Company Groups, the Claimants and/or the CCAA Plan Administrators arising out of or relating to the CCAA Plan in accordance with the Dispute Resolution Procedure.

Without exception, the CCAA Court shall have the exclusive jurisdiction to determine:

(a) Whether a matter falls within the scope of Article 13, Section 13.1 herein such that it shall be determined through the Dispute Resolution Procedure;

(b) Whether, on the CCAA Court's own motion or upon application by an Aggrieved Party, RBH, a member of its Tobacco Company Group or the CCAA Plan Administrators as applicable, the CCAA Court may, in its discretion, decide to hear and determine a Breach in lieu of the Arbitrator doing so in accordance with Article 13, Section 13.4 herein; and

(c) All proceedings regarding Events of Default in accordance with Article 13, Section 13.11 herein.

13.10 Appeals from Orders or Decisions of CCAA Court

RBH, any applicable members of its Tobacco Company Group, the CCAA Plan Administrator or any Aggrieved Party who is a party to a proceeding that is determined by the CCAA Court in accordance with the Dispute Resolution Procedure may appeal from the order or decision of the CCAA Court in accordance with Sections 13, 14 and 15 of the CCAA.

13.11 Resolution of Events of Default by CCAA Court

Upon the occurrence of any Event of Default, an Aggrieved Party shall be immediately entitled to exercise all rights and remedies available pursuant to the CCAA Plan and any other Definitive Documents and the laws of Ontario and the laws of Canada, including applying to the CCAA Court for such relief as the CCAA Court finds appropriate.

In addition, upon the occurrence of any of the Events of Default enumerated in Article 12, Sections 12.2(d) to 12.2(i) herein, the CCAA Plan Administrator shall also be entitled to apply to the CCAA Court for such relief as the CCAA Court finds appropriate.

The CCAA Court shall have the exclusive jurisdiction to determine all proceedings regarding Events of Default. The CCAA Court shall have exclusive jurisdiction to determine all matters related to the enforcement of the terms of the Contribution Security Agreement and the exercise of any rights, remedies and powers that the Collateral Agent may have under the Contribution Security Agreement, at law, in equity or under the PPSA.

During the pendency of any proceeding in the CCAA Court relating to the occurrence of an Event of Default, RBH shall continue to comply with its obligations pursuant to the Definitive Documents, including the obligation to pay the Annual Contributions and Reserved Amounts for deposit into the Global Settlement Trust Account and Supplemental Trust Account.

Upon the occurrence of:

(a) An Event of Default referred to in Article 12, Section 12.3(a) herein, or

(b) An Event of Default referred to in Article 12, Section 12.3(b) or Section 12.3(c) herein, where either RBH fails to cure such Event of Default within the Monetary Cure Period, Non-Monetary Cure Period or Extended Cure Period, as applicable, or such Event of Default is incapable of being cured,

the terms of Article 5, Section 5.11 shall govern, and RBH shall fulfill its obligations thereunder. If RBH fails to deposit into the Global Settlement Trust Account or the Supplemental Trust Account, as applicable, any amount at all on account of its respective share of any of the Upfront Contribution, any Annual Contribution or any Reserved Amounts, then the balance remaining to be paid of RBH's share of the Global Settlement Amount shall accelerate and be deemed to be due and payable in full without any further action being required to be taken by any Aggrieved Party, and any and all amounts owing by RBH under or in respect of the CCAA Plan or Definitive Documents shall bear interest at the rate of interest payable pursuant to sections 127 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended. 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.

ARTICLE 14. CCAA PLAN ADMINISTRATORS

14.1 Appointment of CCAA Plan Administrators

Pursuant to the CCAA Plan Administrators' Order, the CCAA Court shall be requested to approve the appointment of an Administrator for the CCAA Plan of each Tobacco Company (collectively, the "**CCAA Plan Administrators**") which shall administer the implementation of the Tobacco Company's CCAA Plan. The CCAA Plan Administrators' Order shall specify the effective date of the CCAA Plan Administrators' appointment.

Subject to the approval of the CCAA Court, the following firms shall be appointed to serve as the CCAA Plan Administrators until such time as such firms may be replaced with the further approval of the CCAA Court:

(a) For Imperial, FTI Consulting Canada Inc;

(b) For RBH, Ernst & Young Inc.; and

(c) For JTIM, Deloitte Restructuring Inc.

14.2 Role of CCAA Plan Administrators

The CCAA Plan Administrators shall be neutral and independent from the Tobacco Companies, the Tobacco Company Groups and the Claimants and, in this capacity, shall report to the CCAA Court. From time to time, in their discretion, the CCAA Plan Administrators may seek directions from the CCAA Court regarding any matters relevant to the implementation or administration of the Tobacco Companies' CCAA Plans.

For greater certainty, in no circumstances shall the CCAA Plan Administrators:

(a) Be or be deemed to be the representatives of the Claimants, Tobacco Companies and/or Tobacco Company Groups for the purposes of the implementation and administration of the CCAA Plan (including, without limitation, in respect of any notice, consent or agreement contemplated herein), or for any other purpose;

(b) Have the authority to bind any of the Claimants in respect of any matters relating to the CCAA Plan, or any other matter; or

(c) Have the authority to bind any of the Tobacco Companies or Tobacco Company Groups in respect of any matters relating to the CCAA Plan, or any other matter.

The global settlement of all Tobacco Claims in Canada involves the concurrent resolution of the CCAA Proceedings of Imperial, RBH and JTIM in accordance with the terms of the CCAA Plans. As will be set forth with more particularity in the CCAA Plan Administrators' Order in each CCAA Proceeding, as appropriate and as necessitated by the circumstances of the matters being addressed, the CCAA Plan Administrators shall consult with each other and act jointly and in concert in fulfilling their duties and responsibilities enumerated in Article 14, Section 14.4 herein. Accordingly, in certain instances in the CCAA Plan, the joint fulfillment of the CCAA Plan Administrators' duties and responsibilities is referenced. The CCAA Plan Administrators shall have access to all documents and information provided by each Tobacco Company during the Contribution Period, including the financial and other information produced by each Tobacco Company pursuant to Article 10 of the CCAA Plan.

14.3 Trustees of the Global Settlement Trust Account, PCC Trust Account, QCAP Trust Account and Cy-près Trust Account

The CCAA Plan Administrators shall oversee the Global Settlement Trust Account, PCC Trust Account, QCAP Trust Account, Cy-près Trust Account, Miscellaneous Claims Fund, CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account. For greater certainty, the CCAA Plan Administrators shall not be trustees in any capacity other than in regard to holding the Global Settlement Trust Account, PCC Trust Account, QCAP Trust Account, Cy-près Trust Account, Miscellaneous Claims Fund, CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account. The details regarding these accounts will be set forth in greater detail in the CCAA Plan Administrators' Order.

14.4 Duties and Responsibilities of CCAA Plan Administrators

In implementing the administration of the CCAA Plans during the Contribution Period, the duties and responsibilities of the CCAA Plan Administrators shall be as set out below provided, however, that the CCAA Plan Administrators shall incur no liability of any kind whatsoever to the Provinces, Territories, any Impacted Claimants or any other Person in respect of their performance of such duties and responsibilities and shall be held harmless in this regard:

(a) On an annual basis, receiving and reviewing the Business Plan and accompanying MD&A which each Tobacco Company shall provide pursuant to Article 10, Sections 10.1 and Section 10.2.2 of their respective CCAA Plans;

(b) On a quarterly basis, receiving and reviewing the financial statements and accompanying MD&A which each Tobacco Company shall provide pursuant to Article 10, Section 10.2.3 herein;

(c) On an annual basis, receiving and reviewing the financial statements with notes that each Tobacco Company shall provide pursuant to Article 10, Section 10.2.1 herein;

(d) Receiving and reviewing the information that each Tobacco Company shall provide to the CCAA Plan Administrators regarding the calculation of the Annual Contributions and Reserved Amounts to be paid by each Tobacco Company in respect of each calendar year pursuant to Article 10, Section 10.8 herein;

(e) Receiving and reviewing the information that each Tobacco Company shall provide in response to the *ad hoc* requests made from time to time by the CCAA Plan Administrators in connection with the Tobacco Company's Business Plan, annual MD&A, quarterly MD&A and Annual Financial Statements pursuant to Article 10, Section 10.3 herein;

(f) Reporting to the Provinces, Territories and any Impacted Claimants regarding any issue, event or condition pertaining to a Tobacco Company which is disclosed to the CCAA Plan Administrators as an event which may constitute a Material Adverse Effect, or may constitute a Breach or an Event of Default;

(g) Overseeing the investment of the Upfront Contributions, Annual Contributions and Reserved Amounts in accordance with approved investment guidelines pending disbursement to the Claimants, and reporting from time to time to the Provinces, Territories and any Impacted Claimants regarding same;

(h) Reporting to the Provinces, Territories and any Impacted Claimants regarding the calculation of the amount of the Annual Contributions and Reserved Amounts payable by the Tobacco Companies in each calendar year;

(i) Overseeing and concurring with the release of funds from the Supplemental Trust Account pursuant to Article 5;

(j) Administering the distribution to the Claimants of amounts from the Global Settlement Trust Account in accordance with Article 16, Sections 16.1, 16.2 and 16.3 until such time as the implementation of all of the CCAA Plans has been completed;

(k) Overseeing the administration of the PCC Compensation Plan including:

(i) Ensuring that the PCC Compensation Plan Amount is invested in accordance with approved investment guidelines pending disbursement to the Claims Administrator for payment to the Eligible Pan-Canadian Claimants;

(ii) Entering into a written agreement, that is subject to approval by the CCAA Court, with the Claims Administrator for the provision of services to process claims made to the PCC Compensation Plan;

(iii) Reviewing the budget submitted by the Claims Administrator for the administration of the claims made to the PCC Compensation Plan;

(iv) From time to time, advancing instalments of funds from the PCC Compensation Plan Amount to the Claims Administrator to enable it to make Individual Payments to Eligible Pan-Canadian Claimants; and

(v) Receiving and reviewing reports made annually, and as circumstances warrant at any other times as requested by the CCAA Plan Administrators in their discretion or as the CCAA Court directs, by the Claims Administrator regarding, without limitation, the publication of notices, the PCC Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible Pan-Canadian Claimants, fees charged and disbursements made;

(l) Certain oversight activities regarding the Cy-près Foundation;

(m) Overseeing the administration of the Quebec Administration Plan including:

(i) Ensuring that the QCAP Settlement Amount is invested in accordance with approved investment guidelines pending disbursement to the Claims Administrator for payment to the Eligible *Blais* Class Members;

(ii) Entering into a written agreement, that is subject to approval by the CCAA Court, with the Claims Administrator for the provision of services to process claims made to the Quebec Administration Plan;

(iii) Reviewing the budget submitted by the Claims Administrator for the administration of the claims made to the Quebec Administration Plan;

(iv) From time to time, advancing instalments of funds from the QCAP Settlement Amount to the Claims Administrator to enable it to make Compensation Payments to Eligible *Blais* Class Members; and

(v) Receiving and reviewing reports made annually, and as circumstances warrant at any other times as requested by the CCAA Plan Administrators in their discretion or as the CCAA Court directs, by the Claims Administrator regarding, without limitation, the publication of notices, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible *Blais* Class Members, fees charged and disbursements made;

(n) On an annual basis, and as circumstances warrant at any other times in the discretion of the CCAA Plan Administrators, or as the CCAA Court directs, reporting to the CCAA Court regarding:

(i) The annual amounts of the Annual Contributions and Reserved Amounts paid by the Tobacco Companies for deposit into the Global Settlement Trust Account and Supplemental Trust Account, and the progress of the payment of the share of the Global Settlement Amount allocated to the Provinces and Territories;

(ii) The progress of the payment of the share of the Global Settlement Amount allocated to the Tobacco Producers;

(iii) The progress of the administration of the PCC Compensation Plan including the publication of notices, the PCC Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible Pan-Canadian Claimants, fees charged and disbursements made;

(iv) The progress of the administration of the Cy-près Fund;

(v) The progress of the administration of the Quebec Administration Plan including the publication of notices, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, disbursements made to Eligible *Blais* Class Members, fees charged and disbursements made; and

(vi) Any other matter which the CCAA Plan Administrators in their discretion deem to be appropriate.

For greater certainty, the CCAA Plan Administrators shall not conduct an audit or other assurance engagement, or otherwise attempt to verify the accuracy or completeness of the financial information in each Tobacco Company's Business Plan, annual MD&A, quarterly MD&A, Annual Financial Statements and any information produced by a Tobacco Company in response to an *ad hoc* request from the CCAA Plan Administrators.

Also for greater certainty, the duties and responsibilities of the CCAA Plan Administrators shall be fully described in orders of the CCAA Court appointing the CCAA Plan Administrators.

14.5 CCAA Plan Administrators' Communications

The CCAA Plan Administrators shall communicate with:

(a) the Chair of the Provincial and Territorial Liaison Committee representing the Provinces and Territories;

(b) the Administrative Coordinator in regard to the Quebec Administration Plan and Quebec Class Counsel representing the Quebec Class Action Plaintiffs;

(c) the Administrative Coordinator in regard to the PCC Compensation Plan and the PCC Representative Counsel for the Pan-Canadian Claimants;

(d) Dr. Robert Bell, the Chair of the Cy-près Foundation;

(e) *Knight* Class Counsel;

(f) Counsel for the Tobacco Producers; and

(g) the Tobacco Companies.

Notwithstanding the foregoing, in the performance of their duties and responsibilities under the CCAA Plan, the CCAA Plan Administrators may, in their discretion, communicate with any individuals as necessary or desirable.

14.6 Distributions to Claimants from Global Settlement Trust Account

The CCAA Plan Administrators shall, subject to the approval of the CCAA Court, administer the Global Settlement Trust Account and, from time to time, shall authorize the payment from the Global Settlement Trust Account of distributions in accordance with Article 16, Sections 16.1, 16.2 and 16.3 herein, which will be paid to the:

(a) Quebec Class Action Plaintiffs;

(b) Pan-Canadian Claimants;

(c) Provinces and Territories;

(d) Cy-près Foundation;

(e) Tobacco Producers; and

(f) *Knight* Class Action Plaintiffs.

14.7 Advisors to CCAA Plan Administrator

The CCAA Plan Administrator, in its discretion, may retain any advisors, including legal, financial, investment or other advisors, to advise and assist it to carry out its duties in relation to the administration of the CCAA Plan.

14.8 Role of Court-Appointed Mediator after Sanction Order

The Court-Appointed Mediator may provide any services after the date of the Sanction Order, as requested by either the CCAA Plan Administrators or the CCAA Court, and approved by the CCAA Court.

14.9 Payment of Costs

The professional fees, other fees, costs, disbursements, expenses, court costs and other expenditures, and all applicable Sales and Excise Taxes thereon (collectively, "**Costs**"), charged and incurred in relation to the settlement of the Tobacco Claims and the implementation and administration of the CCAA Plan shall be paid as follows:

(a) All Costs incurred in respect of:

  (i) All services which the CCAA Plan Administrator provides in relation to the implementation and administration of the CCAA Plan, including the fulfillment of its duties and responsibilities enumerated in Article 14, Section 14.4 herein, and

(ii) All services provided by all legal, financial, investment or other advisors engaged by the CCAA Plan Administrator,

shall be paid biweekly by RBH. From time to time, the CCAA Plan Administrator shall pass its accounts in the CCAA Court at intervals as the CCAA Court directs;

(b) All Costs for the services of the Court-Appointed Mediator provided after the date of the Sanction Order, including for the services of any of his legal or other advisors, shall be paid equally by the Tobacco Companies;

(c) All Costs for the services of the Claims Administrator, including for the services of any of its legal or other advisors, incurred in respect of the administration of the PCC Compensation Plan shall be paid equally by the Tobacco Companies;

(d) All Costs for the services provided by the Administrative Coordinator, including for the services of any legal or other advisors to the Administrative Coordinator, shall be paid equally by the Tobacco Companies;

(e) All Costs incurred in respect of the administration of the Cy-près Foundation shall be paid from the Cy-près Fund;

(f) The Quebec Class Counsel Fee shall be paid out of and deducted from the QCAP Settlement Amount. The Quebec Class Counsel Fee and the retainer agreement respecting fees and disbursements between the Quebec Class Counsel and the representative plaintiffs in the Quebec Class Actions are subject to the approval of the CCAA Court and shall be dealt with at the Sanction Hearing;

(g) All Costs incurred in respect of the services provided by Raymond Chabot (as agent for the Quebec Class Counsel on behalf of the QCAPs) in relation to the Quebec Administration Plan both before and after the Plan Implementation Date shall be paid by the Quebec Class Counsel out of the Quebec Class Counsel Fee;

(h) All Costs for the services of the Claims Administrator, including for the services of any of its legal or other advisors, incurred in respect of the administration of the Quebec Administration Plan shall be paid from the balance of the QCAP Settlement Amount net of the Quebec Class Counsel Fee;

(i) All Costs for the services which the PCC Representative Counsel, including their advisors, provide in connection with the performance of their duties under the CCAA Plan, including the PCC Compensation Plan, and in the CCAA Proceeding shall be paid equally by the Tobacco Companies;

(j) The Counsel for the Tobacco Producers' Fee shall be paid out of and deducted from the Tobacco Producers Settlement Amount. The Counsel for the Tobacco Producers' Fee and the retainer agreement respecting fees and disbursements between the Counsel for the Tobacco Producers and the representative plaintiffs in the Tobacco Producers' Actions are subject to the approval of the CCAA Court;

(k) All Costs and disbursements of any kind incurred in respect of the administration of the distribution of payments to eligible Tobacco Producers shall be paid from the Tobacco Producers Settlement Amount;

(l) The *Knight* Class Counsel Fee shall be paid out of and deducted from the *Knight* Class Action Plaintiffs Settlement Amount. The *Knight* Class Counsel Fee and the retainer agreement respecting fees and disbursements between the *Knight* Class Counsel and the representative plaintiff in the *Knight* Class Action are subject to the approval of the CCAA Court; and

(m) All Costs and disbursements of any kind incurred in respect of the settlement of the *Knight* Class Action shall be paid from the *Knight* Class Action Plaintiffs Settlement Amount.

The Costs enumerated in Article 14, Sections 14.9(a), (b), (c), (d) and (i) are expenses of the business and deducted from income in the calculation of the Metric.

ARTICLE 15. CCAA PLAN ADMINISTRATION RESERVE AND PCC COMPENSATION PLAN RESERVE

15.1 CCAA Plan Administration Reserve

On the Plan Implementation Date, the CCAA Plan Administration Reserve in the amount of $25.0 million, which sum shall be paid out of the Upfront Contributions, shall be established as security for the CCAA Plan Administration Reserve Costs.

The CCAA Plan Administrator will hold the CCAA Plan Administration Reserve in trust for those entitled to be paid CCAA Plan Administration Reserve Costs pursuant to the CCAA Plan. If the CCAA Plan Administration Reserve is no longer required as security after the administration of the CCAA Plan has been completed, any amount remaining in the CCAA Plan Administration Reserve shall be released by the CCAA Plan Administrator and paid to the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

15.2 PCC Compensation Plan Reserve

On the Plan Implementation Date, the PCC Compensation Plan Reserve in the amount of $5.0 million, which sum shall be paid out of the Upfront Contributions, shall be established as security for the PCC Compensation Plan Reserve Costs.

The CCAA Plan Administrators will hold the PCC Compensation Plan Reserve in trust for those entitled to be paid PCC Compensation Plan Reserve Costs pursuant to the CCAA Plan. If the PCC Compensation Plan Reserve is no longer required as security after the administration of the CCAA Plan has been completed, any amount remaining in the PCC Compensation Plan Reserve shall be released by the CCAA Plan Administrators and paid to the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

ARTICLE 16. CLAIMANT ALLOCATION

16.1 Claimant Allocation

The Global Settlement Amount shall be allocated among the Claimants and the Cy-près Foundation ("**Claimant Allocation**") as follows:

All amounts in CAD, billions

Provinces and Territories Settlement Amount:	24.725
QCAP Settlement Amount ($4.250 minus $0.131 allocated to Cy-près Foundation):	4.119
PCC Compensation Plan Amount:	2.521
Cy-près Fund (inclusive of $0.131 QCAP Cy-près Contribution):	1.000
Tobacco Producers Settlement Amount:	0.015
Knight Class Action Plaintiffs Settlement Amount:	0.015
Miscellaneous Claims Amount (may be increased to $0.060 if the Tobacco Companies make an election pursuant to Section 18.2.1):	0.025
CCAA Plan Administration Reserve	0.075
PCC Compensation Plan Reserve	0.005
Total:	32.500

[Remainder of page intentionally left blank]

Estimated Upfront Contributions Available: **12.456** [See calculation below, 2]

Period[4]	Upfront Contribution	Annual Contributions						Total
		Year 1 (2025)	Year 2 ('26)	Year 3 ('27)	Year 4 ('28)	Year 5 ('29)	Remainder to end of Contribution Period	
Amount Available[3]	12.456	1.111	1.078	1.067	1.037	1.037	14.714	32.500
Provinces & Territories	6.202	0.361	0.682	0.942	0.912	0.912	14.714	24.725
QCAPs[5, 6, 7, 8]	3.869	0.250						4.119
PCCs[6, 7, 8]	1.750	0.500	0.271					2.521
Cy-près Foundation[5, 6]	0.500		0.125	0.125	0.125	0.125		1.000
Tobacco Producers[8]	0.015							0.015
Knight Class Action Plaintiffs[8]	0.015							0.015
Miscellaneous Claims Fund[7]	0.025							0.025
CCAA Plan Administration Reserve[7]	0.075							0.075
PCC Compensation Plan Reserve[7]	0.005							0.005
Total allocated	**12.456**	**1.111**	**1.078**	**1.067**	**1.037**	**1.037**	**14.714**	**32.500**

16.2 Explanatory Notes

1. In preparing the Claimant Allocation, the Court-Appointed Mediator and Monitors have been provided with, and have relied upon, unaudited financial information prepared by the Tobacco Companies. The Monitors have reviewed this financial information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitors have not audited, or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with GAAS pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Monitors express no opinion or other form of assurance contemplated under GAAS in respect of the financial information. For clarity, the Court-Appointed Mediator has not reviewed the aforementioned financial information.

   This financial information consists of forecasts and projections. An examination or review of the financial forecast and projections, as outlined in the Chartered Professional

Accountants of Canada Handbook, has not been performed. The financial information was prepared based on the Tobacco Companies' estimates and assumptions.

Readers are cautioned that since projections are based on assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

2. In the table below, the Upfront Contributions are as estimated as at December 31, 2024 and calculated as estimated in the Spring 2024 5-year forecasts prepared by the Tobacco Companies. The Upfront Contributions will be as noted herein for all Claimants except the Provinces and Territories. The Upfront Contributions for the Provinces and Territories will be equal to the total Upfront Contributions less the Upfront Contributions being paid to the other Claimants, the Miscellaneous Claims Amount, the CCAA Plan Administration Reserve and the PCC Compensation Plan Reserve.

All amounts in CAD, billions

Projected Upfront Contributions as at December 31, 2024:

JTIM:	1.581
ITCAN:	4.849
RBH:	5.792
Cash Security Deposits:	0.984
Total:	13.206
Less: Working Capital	(0.750)
Projected Available Upfront Contributions:	**12.456**

3. The Annual Contribution percentage of Net After-Tax Income is calculated as set out in the CCAA Plan. The Claimant Allocation is based on 85% of estimated Net After-Tax Income received from the Tobacco Companies (the percentage of Net After-Tax Income to be reduced in 5.0% increments every five years pursuant to Article 5, Section 5.6 herein). The "Amount Available" is based on the 5-year financial projections provided by the Tobacco Companies in spring 2024. The projection assumes that the 2028 results are replicated thereafter. The Claimant Allocation does not include any Tax Refunds that may be available during the Contribution Period.

4. Payment is contemplated to be made within 182 days following the end of the period noted. For example, the "Year 1 (2025)" payment would be made in mid 2026.

5. The Cy-près Fund includes $131 million of the QCAP Settlement Amount funded to the Cy-près Fund (in addition to the $869 million specifically allocated to the Cy-près Fund).

6. The Year 1 and Year 2 payments to the QCAPs and the PCCs and the Year 2 payment to the Cy-près Foundation will be made in priority to those being made to the Provinces and Territories in the event of a shortfall relative to the estimated Annual Contributions available.

7. If there are any funds remaining in the QCAP Settlement Amount, the PCC Compensation Plan Amount, the CCAA Plan Administration Reserve, the PCC Compensation Plan Reserve and/or the Miscellaneous Claims Fund, such funds shall be paid to the Provinces and Territories (in accordance with the percentages set out in the table in Article 16, Section 16.3), as the foregoing is more particularly defined in paragraph 55 of the Quebec Administration Plan, paragraph 54 of the PCC Compensation Plan, Article 15, Sections 15.1 and 15.2 herein, and Article 18, Section 18.2.5 herein.

8. The Quebec Class Counsel Fee, Counsel for the Tobacco Producers' Fee and *Knight* Class Counsel Fee are subject to approval by the CCAA Court. Subject to such approval, these fees will be paid in full at the time of plan implementation.

16.3 Provincial and Territorial Allocation

The Provinces and Territories have agreed that the Provinces and Territories Settlement Amount shall be apportioned among the Provinces and Territories in accordance with the percentages set out in the table below:

Province/Territory	Percentage Share of Provinces and Territories Settlement Amount
British Columbia	14.4710%
Alberta	12.6272%
Saskatchewan	2.8787%
Manitoba	4.5252%
Ontario	28.7761%
Québec	26.8248%
New Brunswick	2.4117%
Nova Scotia	3.1740%

Province/Territory	Percentage Share of Provinces and Territories Settlement Amount
Prince Edward Island	0.6605%
Newfoundland and Labrador	2.1471%
Yukon	0.3973%
Northwest Territories	0.7269%
Nunavut	0.3795%
Total:	100.0000%

ARTICLE 17. DISTRIBUTIONS, PAYMENTS AND CURRENCY

17.1 Distributions Generally

All distributions to Affected Creditors and other payments to be effected pursuant to the CCAA Plan will be made pursuant to this Article 17. For greater certainty, all payments and distributions pursuant to this Article 17 will be subject to satisfaction or waiver of the Plan Implementation Conditions set forth in Article 19, Section 19.3 and the occurrence of the Effective Time, and will occur in accordance with the timing set out in Article 4, Section 4.2. Except as otherwise expressly stated herein, EY, whether in its capacity as the Monitor and/or as the CCAA Plan Administrator, shall have the sole discretion to determine the timing for any distributions to be made under the CCAA Plan.

17.2 Payment of Claimants' Claims

All distributions to the Claimants will be made pursuant to this Article 17 and Article 16, Sections 16.1, 16.2 and 16.3 herein.

17.3 Payment of Miscellaneous Claims

All distributions to any Putative Miscellaneous Claimants will be made pursuant to this Article 17 and Article 18, Section 18.2.1 to Section 18.2.5.

17.4 Payment of Claims secured by the Administration Charge

To the extent that such payments have not already been made, forthwith after the Plan Implementation Date, RBH shall pay in full all Claims secured by the Administration Charge as at the Plan Implementation Date.

17.5 Payment of Claims secured by the Court-Appointed Mediator Charge

To the extent that such payments have not already been made, forthwith after the Plan Implementation Date, RBH shall pay in full all Claims secured by the Court-Appointed Mediator Charge as at the Plan Implementation Date.

17.6 Method of Distribution

All distributions or other payments by the CCAA Plan Administrators to any Person entitled to receive a distribution or payment under the CCAA Plan shall be made by wire transfer in accordance with wire transfer instructions, in form satisfactory to the CCAA Plan Administrators, provided by such Person to the CCAA Plan Administrators at least fifteen (15) Business Days prior to the Plan Implementation Date. If any such Person wishes to thereafter change its wire transfer instructions, notice, in form satisfactory to the CCAA Plan Administrators, must be given to the CCAA Plan Administrators at least fifteen (15) Business Days prior to any subsequent distribution or payment date.

For greater certainty, the CCAA Plan Administrators may, prior to initiating any wire transfer, make any verifications, as they deem appropriate in their discretion, to confirm and validate the wire transfer instructions received.

Notwithstanding the foregoing, in circumstances where the CCAA Plan Administrators consider it more practical or efficient to do so, certain payments hereunder may also be made by cheque.

17.7 Addresses for Distribution

Prior to the applicable Distribution Record Date, an Affected Creditor may, in writing to RBH and EY, whether in its capacity as the Monitor and/or as the CCAA Plan Administrator, change its address on file with RBH for distribution purposes. For the avoidance of doubt, EY will not have any responsibility to track such addresses or notices in any capacity.

17.8 Withholding Rights

EY, whether in its capacity as the Monitor and/or as the CCAA Plan Administrator, RBH and any other Person facilitating payments pursuant to the CCAA Plan will be entitled to deduct and withhold from any such payment to any Person such amounts as may be required to be deducted or withheld under any Applicable Law and to remit such amounts to the appropriate Governmental Authority or other Person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate Governmental Authority or other Person, such withheld or deducted amounts will be treated for all purposes hereof as having been paid to such Person as the remainder of the payment in respect of which such withholding or deduction was made. Without in any way limiting the generality of the foregoing, EY, on behalf of RBH, shall deduct from any distribution to an Affected Creditor hereunder any amounts as indicated by Employment and Social Development Canada in a Notice of Debt and remit such amounts to Employment and Social Development Canada pursuant to the *Employment Insurance Act* (Canada). Any Affected Creditor whose address on file with RBH on the Distribution Record Date is not a Canadian address will be treated as a non-resident of Canada for purposes of any applicable non-resident withholding tax on all payments hereunder, subject to receipt by EY or RBH of information

satisfactory (in their sole discretion) that such Affected Creditor is not a non-resident. No gross-up or additional amount will be paid on any payment hereunder to the extent EY, RBH or any other Person deducts or withholds amounts pursuant to Article 17, Section 17.8. Notwithstanding any withholding or deduction, each Person receiving a payment will have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority (including income and other tax obligations on account of such distribution).

17.9 Cancellation of Certificates and Notes, etc.

At the Effective Time, all debentures, notes, certificates, indentures, guarantees, agreements, invoices and other instruments evidencing Affected Claims, Released Claims or Miscellaneous Claims (and all guarantees associated with each of the foregoing), will not entitle any holder thereof to any compensation or participation other than as expressly provided for in the CCAA Plan and will be deemed cancelled and extinguished and be null and void.

17.10 Calculations

All amounts to be paid to the Claimants by RBH pursuant to the CCAA Plan shall be calculated in accordance with Article 5, Section 5.1 to Section 5.15.

17.11 Currency Matters

Distributions to any Persons entitled to distributions under the CCAA Plan will be paid in Canadian dollars and any such Claims that are denominated in a currency other than the lawful money of Canada will be converted to the equivalent thereof in the lawful money of Canada at the noon rate of exchange as quoted by the Bank of Canada on March 8, 2019, in accordance with the Claims Procedure Order.

ARTICLE 18. RELEASES, MISCELLANEOUS CLAIMS, INJUNCTIONS AND DISPOSITION OF PENDING PROCEEDINGS

18.1 CCAA Plan Releases

18.1.1 Consideration for Release

The release ("**Release**") is given by the Releasors, individually and collectively, in consideration of (a) the Tobacco Companies' payment of the Upfront Contributions and promise to pay the Annual Contributions and Reserved Amounts to the Global Settlement Trust Account and Supplemental Trust Account in accordance with the Definitive Documents, (b) the agreement to provide shared services and other operational support to the Tobacco Companies by their respective Parents and relevant Affiliates, and (c) the other promises and commitments made by the Released Parties, or any of them as applicable, in the Definitive Documents.

18.1.2 Release

At the Effective Time, each of the Released Parties shall be, and shall be deemed to be, fully, finally, irrevocably and unconditionally released and forever discharged of and from any and all

of the Released Claims that any of the Releasors has ever had, now has, or may hereafter have against the Released Parties or any of them (either individually or with any other Person), whether or not based on conduct continuing after the Effective Time and whether or not presently known to any of the Releasors.

Nothing herein does release (and the Released Parties agree hereby that they will not assert otherwise), or is intended to release, any Claim of a Released Party (including its Representatives) that has been, could have been or could be advanced, directly or indirectly, against any other Released Party (including its Representatives) other than the Tobacco Companies and their respective Subsidiaries and Representatives (such other Released Parties, not including the Tobacco Companies and their respective Subsidiaries and Representatives, collectively, the "Other Released Parties"), in respect of:

(a) the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products outside of Canada,

(b) the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions outside of Canada,

(c) the development of any disease related to the use of Tobacco Products outside of Canada,

(d) any representation or omission in respect of Tobacco Products outside of Canada, or

(e) conduct of the Other Released Parties not related to Canada;

provided that such Claim is not, in whole or in part, based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada (and it is agreed that to the extent such Claim is based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada, then that same extent of the Claim will be hereby released).

18.1.3 Claimant Contractual Release

The Claimant Contractual Release, which is attached to the CCAA Plan as Schedule "W", shall be executed and delivered by RBH and each of the Claimants, or an authorized Person on their behalf, in favour of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, and their respective Representatives, and shall take effect as at the Effective Time. From and after the Effective Time, the Claimant Contractual Release will be binding on and enure to the benefit of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives.

18.1.4 Release of Monitors

At the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, shall be deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Monitors and the CCAA Plan

Administrators, and their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known, arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) any Claim that has been barred or extinguished pursuant to the terms of the Claims Procedure Order and/or the terms of the CCAA Plan; (ii) the CCAA Proceedings; (iii) the Chapter 15 Proceedings; (iv) the actions of the Monitors or the CCAA Plan Administrators and their legal counsel and advisors in connection with the CCAA Proceedings or the Chapter 15 Proceedings; (v) the business and affairs of the Tobacco Companies whenever or however conducted; (vi) the administration and management of the Tobacco Companies whenever or however conducted; (vii) the allocation of the Global Settlement Amount and any distributions, payments, disbursements from the Global Settlement Amount, and/or (viii) any matter or transaction involving any of the Tobacco Companies occurring in or in connection with the CCAA Proceedings or the Chapter 15 Proceedings including the CCAA Plans, the development thereof, and any and all actions, steps or transactions taken by the Monitors to implement the CCAA Plans, including in their capacity as CCAA Plan Administrators and in FTI's capacity as the Foreign Representative in the Chapter 15 Proceedings, and in each case, all Claims arising out of aforesaid actions or omissions above shall be forever waived and released (other than the right to enforce the Monitors' obligations under the CCAA Plans or any related document), all to the fullest extent permitted by Applicable Law.

Nothing in this Release shall derogate from the protections afforded to the Monitors or the CCAA Plan Administrators as officers of the CCAA Court, or in the case of FTI, as the Foreign Representative in the Chapter 15 Proceedings, and by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings. For greater certainty, the Monitors and the CCAA Plan Administrators shall not be responsible or liable for any obligations of the Tobacco Companies. The Monitors and the CCAA Plan Administrators and their respective Affiliates, shareholders, Affiliates' shareholders, employees, advisors, legal counsel, Representatives or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document.

18.1.5 Release of Court-Appointed Mediator

At the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, shall be deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Court-Appointed Mediator, and his Representatives, legal counsel, consultants and advisors, from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known to the Released Parties, Releasors, Affected Creditors and Unaffected Creditors arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence in any way in connection with the CCAA Proceedings, including: (i) any Claim that

has been barred or extinguished pursuant to the terms of the Claims Procedure Order and/or the terms of the CCAA Plan; (ii) the CCAA Proceedings; (iii) the Chapter 15 Proceedings; (iv) the actions of the Court-Appointed Mediator as an officer of the CCAA Court carrying out his mandate as a neutral third party to mediate a global settlement in the Tobacco Companies' CCAA Proceedings; (v) the business and affairs of the Tobacco Companies whenever or however conducted; (vi) the administration and management of the Tobacco Companies whenever or however conducted; (vii) the allocation of the Global Settlement Amount and any distributions, payments, disbursements from the Global Settlement Amount, and/or (viii) any matter or transaction involving any of the Tobacco Companies occurring in or in connection with the CCAA Proceedings or the Chapter 15 Proceedings including the CCAA Plans, the development thereof, and any and all actions, steps or transactions taken by the Court-Appointed Mediator to implement the CCAA Plans, and in each case, all Claims arising out of aforesaid actions or omissions above shall be forever waived and released to the fullest extent permitted by Applicable Law.

Nothing in this Release shall derogate from the protections afforded to the Court-Appointed Mediator as an officer of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings, including the orders appointing the Court-Appointed Mediator. In particular, the Court-Appointed Mediator shall not be liable to any Party or participant in the mediation for any act or omission in connection with the mediation process and shall have the immunity of a Judge of a Superior Court in Canada. For greater certainty, the Court-Appointed Mediator shall not be responsible or liable for any obligations of the Tobacco Companies. The Court-Appointed Mediator's heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document.

18.1.6 Release of Administrative Coordinator

At the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, shall be deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Administrative Coordinator and his Representatives from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known to the Released Parties, Releasors, Affected Creditors and Unaffected Creditors arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) the CCAA Proceedings; (ii) the Chapter 15 Proceedings; (iii) the development of the PCC Compensation Plan and the development of the Quebec Administration Plan; and (iv) the actions of the Administrative Coordinator in connection with the administration of the PCC Compensation Plan and the administration of the Quebec Administration Plan, and in each case, all Claims arising out of aforesaid actions or omissions above shall be forever waived and released to the fullest extent permitted by Applicable Law.

Nothing in this Release shall derogate from the protections afforded to the Administrative Coordinator by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings. For greater certainty, the Administrative Coordinator shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Administrative Coordinator's heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document.

18.1.7 Indemnity of Monitors, CCAA Plan Administrators, Foreign Representative, Court-Appointed Mediator and Administrative Coordinator

RBH shall indemnify and save harmless the Court-Appointed Mediator, the Monitors (FTI, EY and Deloitte) in their various capacities (including as the Monitors, the CCAA Plan Administrators, and Foreign Representative (as applicable)), the Administrative Coordinator and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents (collectively, the "**Indemnified Parties**"), from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of each Indemnified Party's respective activities or duties in any way in connection with the CCAA Proceeding and the Chapter 15 Proceedings, including for the avoidance of doubt: (i) the actions of the Court-Appointed Mediator, the Monitors, the CCAA Plan Administrators and the Administrative Coordinator and their respective legal counsel and advisors in connection with the CCAA Proceeding and the Chapter 15 Proceedings, (ii) the business and affairs of RBH whenever or however conducted, and (iii) any matter or transaction involving RBH occurring in or in connection with the CCAA Proceeding and the Chapter 15 Proceedings, the CCAA Plan, or the development thereof (other than enforcement of Indemnified Parties' obligations under the CCAA Plan and the Definitive Documents). This indemnity shall survive the resignation or removal of the Indemnified Parties from any role, capacity, engagement, office or position relevant to its activities or duties in connection with the CCAA Plan. To the extent any Indemnified Party is not otherwise compensated by RBH such Indemnified Party may resort to the RBH CCAA Plan Administration Reserve for compensation.

18.1.8 Injunctions

From and after the Effective Time, all Persons will be permanently and forever barred, estopped, stayed and enjoined from:

(a) Commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives with respect to any and all Affected Claims and Released Claims;

(b) Enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, or their respective property with respect to any and all Affected Claims and Released Claims;

(c) Commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to an Affected Claim or a Released Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, unless such Claim of such other Person is itself an Affected Claim or a Released Claim;

(d) Creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, their respective Representatives or any of their respective property with respect to any and all Affected Claims and Released Claims, except for the exclusions in Article 18, Section 18.1.9 in relation to obligations arising from the Definitive Documents; and

(e) Taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Released Claims.

18.1.9 Released Parties' Fulfillment of Obligations pursuant to Definitive Documents

Notwithstanding any of the provisions herein, the Released Parties are not released from the due performance of their obligations arising from the Definitive Documents, and nothing in this Release shall prevent or restrict any of the Releasors or the CCAA Plan Administrators from pursuing any legal remedies against any of the Released Parties for non-performance of their obligations pursuant to the Definitive Documents, including the covenants of each Tobacco Company, its Parent and the relevant Affiliates within its Tobacco Company Group.

18.1.10 Releases are Final and Binding

The releases and injunctions in favour of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives shall be final and binding on all the Releasors, Released Parties, Affected Creditors and Unaffected Creditors (except to the extent of their Unaffected Claims) as applicable, including any Claims resulting, directly or indirectly, from the consequences and effects relating to the acceptance of the CCAA Plan, the sanction thereof by the CCAA Court, or its implementation. The aforesaid final and binding effect of the CCAA Plan on the Releasors, Released Parties, Affected Creditors and Unaffected Creditors (except to the extent of their Unaffected Claims) shall operate for all legal purposes as and from the Effective Time.

18.1.11 CCAA Meeting Orders and Sanction Orders

To facilitate the provision of the releases and the granting of the injunctions in favour of the Released Parties, Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator:

(a) Pursuant to the Orders governing the conduct of the Meeting of the Affected Creditors to consider and vote on the CCAA Plan:

(i) Quebec Class Counsel will be appointed to act as proxy and vote on behalf of the Quebec Class Action Plaintiffs in respect of the CCAA Plan;

(ii) PCC Representative Counsel will be appointed to act as proxy and vote on behalf of the Pan-Canadian Claimants in respect of the CCAA Plan;

(iii) *Knight* Class Counsel will be appointed to act as proxy and vote on behalf of the *Knight* Class Action Plaintiffs in respect of the CCAA Plan; and

(iv) Counsel for the Tobacco Producers will be appointed to act as proxy and vote on behalf of the Tobacco Producers in respect of the CCAA Plan; and

(b) The Sanction Order will:

(i) Authorize Quebec Class Counsel, PCC Representative Counsel, *Knight* Class Counsel and Counsel for the Tobacco Producers to execute and deliver the Claimant Contractual Release on behalf of the Quebec Class Action Plaintiffs, the Pan-Canadian Claimants, the *Knight* Class Action Plaintiffs, and the Tobacco Producers and Ontario Flue-Cured Tobacco Growers' Marketing Board, respectively;

(ii) Confirm that each of (A) the affirmative vote in respect of the CCAA Plan and (B) the signing of the Claimants Contractual Release, by or on behalf of each Claimant, shall be evidence of the consent of the Claimant to the treatment of its Claims for the purposes of Section 5.1(2) and/or Section 19(2) of the CCAA to the extent that they apply; and

(iii) Order that no action, proceeding or enforcement process in any court or tribunal may be commenced or continued against (A) any Released Party, the Monitor, the CCAA Plan Administrator, the Court-Appointed Mediator, the Administrative Coordinator, or (B) any Person who claims or might reasonably be expected to claim in any manner or forum against any Released Party, the Monitor, the CCAA Plan Administrator, the Court-Appointed Mediator, or the Administrative Coordinator, in respect of the Affected Claims and Released Claims without the prior written consent of the Released Party, the Monitor, the CCAA Plan Administrator, the Court-Appointed Mediators, the Administrative Coordinator, as applicable, or leave of the CCAA Court obtained on notice to the Released Party, the Monitor, the CCAA Plan Administrator, the Court-Appointed Mediators and the Administrative Coordinator (as applicable), and the Tobacco Companies, including appropriate injunctive language with respect to same.

18.1.12 Future Legislation

The Released Parties and the Provinces and Territories recognize that a legislature's sovereign power to enact, amend and repeal legislation cannot be fettered. However, in the event that any legislation (including any regulations promulgated thereunder) similar or analogous to the HCCR Legislation may be enacted or amended by a Province or Territory at any time after the Effective Time, the Released Parties and the Provinces and Territories are *ad idem* that the enactment of such future legislation shall not render unenforceable or otherwise make ineffective any of the terms of the Claimants Contractual Release or of this Article 18.

18.2 Treatment of Miscellaneous Claims

18.2.1 Miscellaneous Claims Fund

From the Upfront Contributions deposited into the Global Settlement Trust Account, the one-time aggregate sum of **$25.0 million** ("**Miscellaneous Claims Amount**") shall be transferred to and deposited into a segregated interest-bearing trust account held in the Bank ("**Miscellaneous Claims Fund**"). The Miscellaneous Claims Amount, and interest accrued thereon, shall be held in the Miscellaneous Claims Fund for a period of three years from the Effective Time, or for such other period of time as the CCAA Plan Administrators are of the view is necessary and appropriate to permit the completion of the adjudication of any Miscellaneous Claims ("**Miscellaneous Claims Fund Period**").

The Tobacco Companies may unanimously elect to increase the Miscellaneous Claims Amount from $25.0 million to $60.0 million provided that:

(a) The $35.0 million top-up of the Miscellaneous Claims Amount shall be paid by the Tobacco Companies and shall be on top of the $32.5 billion Global Settlement Amount;

(b) The Tobacco Companies are in unanimous agreement regarding how they shall apportion payment of the $35.0 million among themselves and the source of the top-up funds; and

(c) The sourcing of the additional sum of $35.0 million shall not affect the amount nor the timing of the payments of the Upfront Contributions and the Global Settlement Amount.

If the Tobacco Companies make such election as aforesaid, this Section 18.2.1 shall be deemed to stipulate that the Miscellaneous Claims Amount is $60.0 million.

18.2.2 Determination of Miscellaneous Claims

The determination of all Miscellaneous Claims shall be governed by this Section 18.2 and the Claims Procedure Order, the Meeting Order and any other further Order of the CCAA Court, as applicable. A Putative Miscellaneous Claimant shall not be permitted to commence a proceeding in any other forum except the CCAA Court with leave and, if any such proceeding is commenced, it shall be a nullity.

18.2.3 Leave required from CCAA Court to bring a Miscellaneous Claim Proceeding

Except for (i) an application for leave to commence a proceeding brought in the CCAA Court pursuant to this Section, and (ii) any subsequent proceeding commenced with leave of the CCAA Court, any proceeding commenced in any court relating to a Miscellaneous Claim shall be a nullity.

A Putative Miscellaneous Claimant shall bring an application to the CCAA Court seeking leave to commence a proceeding relating to the Miscellaneous Claim.

On the application for leave, the Putative Miscellaneous Claimant shall serve on RBH and file with the CCAA Court:

(a) An affidavit setting out a concise statement of the material facts upon which the Putative Miscellaneous Claimant intends to rely; and

(b) An affidavit of documents disclosing, to the full extent of the Putative Miscellaneous Claimant's knowledge, information and belief, all documents relevant to any matter in issue in the proceeding relating to the Miscellaneous Claim that are or have been in the Putative Miscellaneous Claimant's possession, control or power.

On the application for leave, RBH may serve on the Putative Miscellaneous Claimant and file an affidavit setting out a concise statement of the material facts on which RBH intends to rely for the defence of the Miscellaneous Claim, but is not required to do so.

The CCAA Court shall not grant leave unless it finds that:

(a) The application for leave has been brought before the CCAA Court either prior to or no later than two years after the issuance of the Sanction Order;

(b) The Miscellaneous Claim was not fully, finally, irrevocably and unconditionally released and forever discharged, and permanently barred and enjoined pursuant to the terms of the CCAA Plan, Claims Procedure Order, Sanction Order, the Claimant Contractual Release and/or any other orders made in the CCAA Proceeding;

(c) The Miscellaneous Claim is being brought in good faith; and

(d) There is a reasonable possibility that the Miscellaneous Claim will be resolved in the Putative Miscellaneous Claimant's favour.

The Putative Miscellaneous Claimant shall bear the onus of establishing that leave should be granted.

If leave is granted, the CCAA Court shall have exclusive jurisdiction to adjudicate and determine the proceeding relating to the Miscellaneous Claim on its merits. Notwithstanding the foregoing, the CCAA Court in its discretion may decide how the Miscellaneous Claim will be heard and determined.

Either the Putative Miscellaneous Claimant or RBH may appeal from the decision of the CCAA Court on the application for leave or, if leave is granted, from any order or decision of the CCAA Court made in the proceeding relating to the Miscellaneous Claim, in accordance with Sections 13, 14 and 15 of the CCAA.

Both the Putative Miscellaneous Claimant and RBH shall bear their own costs of the application for leave and any appeal from the decision of the CCAA Court on the application for leave.

If by final decision of the CCAA Court leave is not granted, and any appeal from such decision is dismissed, the Putative Miscellaneous Claimant shall be permanently and forever barred, estopped, stayed and enjoined from commencing any proceeding in any court relating to or arising from the Miscellaneous Claim.

18.2.4 Payment from Miscellaneous Claims Fund

Any judgments or awards made, or other amounts ordered to be paid in regard to Miscellaneous Claims shall be paid solely from the Miscellaneous Claims Fund.

18.2.5 Distribution of any Residual Monies from Miscellaneous Claims Fund

After the expiry of the Miscellaneous Claims Fund Period, to the extent that there remains any residual funds in the Miscellaneous Claims Fund after the payment of all judgments, awards and any other amounts ordered to be paid in regard to proven Miscellaneous Claims, any such residual funds shall be apportioned among the Provinces and Territories in accordance with the percentages set out in the table in Article 16, Section 16.3.

18.2.6 Sole Recourse for Miscellaneous Claims

All Putative Miscellaneous Claimants shall only have recourse to the Miscellaneous Claims Fund in regard to any Miscellaneous Claims and shall have no recourse in relation to any Miscellaneous Claims as against the Released Parties, the Claimants or their Representatives, or any other funds paid, held or administered pursuant to the CCAA Plan and all other Definitive Documents.

18.3 Disposition of Pending Proceedings

18.3.1 Termination of Pending Litigation other than Quebec Class Actions

As soon as possible after the Plan Implementation Date, the Parties shall take all steps and actions that are necessary and appropriate to dismiss with prejudice and without costs to any party or counsel the following proceedings pending in courts in the Provinces and Territories against the Tobacco Companies, certain members of their respective Tobacco Company Groups and the Canadian Tobacco Manufacturers' Council ("**Pending Litigation**"):

(a) The actions which the Provinces commenced pursuant to the HCCR Legislation claiming the recovery of expenditures for Health Care Benefits provided for Insured Persons resulting from Tobacco-related Disease or the risk of Tobacco-related Disease caused by the Tobacco Companies' tobacco-related wrongs, including any related motions,

applications, leave applications or appeals, that are listed in Schedule "X" to the CCAA Plan;

(b) The *Knight* Class Action;

(c) The actions commenced by Individuals under the class proceedings legislation in British Columbia (other than the *Knight* Class Action), Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, and Newfoundland and Labrador, that are listed in Schedule "Y" to the CCAA Plan;

(d) The Tobacco Producers' Actions; and

(e) Any action, other than the Quebec Class Actions, regardless of whether the statement of claim was served, commenced by Individuals in Ontario, Quebec and Nova Scotia, or any other Province or Territory relating to Tobacco Claims or the subject matter of the CCAA Plan, that are listed in Schedule "Z" to the CCAA Plan.

RBH and the Claimants shall consent to the inclusion of orders in the Sanction Order providing that:

(a) Effective from Plan Implementation Date, all parties to the Pending Litigation, including each plaintiff, class representative, class member and defendant therein, shall be deemed to have given all consents necessary to effect the termination with prejudice and without costs of the Pending Litigation,

(b) The Sanction Order shall have full force and effect in all Provinces and Territories, the United States and elsewhere, and as against all Persons against whom it may apply; and

(c) Each applicable court in the Provinces and Territories in which the Pending Litigation was commenced is requested to:

(i) Aid, recognize and assist the CCAA Court to confirm that, effective as and from the Plan Implementation Date, the CCAA Plan has fully and finally resolved and definitively settled the Pending Litigation,

(ii) Provide such assistance to RBH and its CCAA Plan Administrator, as an officer of the CCAA Court, as may be necessary or desirable to give effect to the Sanction Order or to assist RBH and its CCAA Plan Administrator in carrying out the terms of the Sanction Order and CCAA Plan, and

(iii) Issue such orders as may be necessary to terminate all of the Pending Litigation by a with prejudice dismissal without costs. Such dismissals shall be effected by the filing of the appropriate documents with each applicable court in each jurisdiction.

18.3.2 Disposition of Quebec Class Actions

As soon as possible after the Plan Implementation Date, RBH and the QCAPs shall take all steps and actions that are necessary and appropriate to, if applicable, dismiss with prejudice and without

costs to any party or counsel any leave applications or appeals from the judgments in the Quebec Class Actions or any related motions pending in the Quebec Superior Court, the Court of Appeal of Quebec and/or the Supreme Court of Canada.

After the QCAP Claims Process has ended and the Eligible *Blais* Class Members have been paid their Compensation Payments, RBH and the QCAPs shall consent to motions seeking the Closing Judgment to be brought in the Quebec Superior Court by the Quebec Class Counsel in the *Blais* Class Action and the *Létourneau* Class Action.

RBH and the QCAPs shall consent to the inclusion in the Sanction Order of orders providing that:

(a) The *Blais* Judgment and the *Létourneau* Judgment are fully and finally satisfied, resolved, compromised and settled;

(b) The Sanction Order shall have full force and effect in Quebec as against all Persons against whom it may apply; and

(c) The Quebec Superior Court is requested to:

(i) Aid, recognize and assist the CCAA Court to confirm that, effective as and from the Plan Implementation Date, the CCAA Plan has fully and finally resolved and definitively settled the Quebec Class Actions;

(ii) Provide such assistance to RBH and the CCAA Plan Administrator, as an officer of the CCAA Court, as may be necessary or desirable to give effect to the Sanction Order or to assist RBH and its CCAA Plan Administrator in carrying out the terms of the CCAA Plan Sanction Order and the CCAA Plan; and

(iii) Upon the completion of the QCAP Claims Process and the payment of Compensation Payments thereunder, issue such orders, including the Closing Judgment, as may be necessary to terminate with prejudice and without costs the Quebec Class Actions.

ARTICLE 19. COURT SANCTION, CONDITIONS PRECEDENT AND CCAA PLAN IMPLEMENTATION

19.1 Application for Sanction Order

If the CCAA Plan is approved by the Required Majority of the Affected Creditor Class at the Meeting, the Court-Appointed Mediator and the Monitor shall apply for the Sanction Order on or before the date set for the Sanction Order hearing or such later date as the CCAA Court may set.

19.2 Sanction Order

The Court-Appointed Mediator and the Monitor will apply for a Sanction Order that shall, among other things:

(a) Order that: (i) the CCAA Plan has been approved by the Required Majority of the Affected Creditor Class in conformity with the CCAA; (ii) the activities of RBH and the Monitor have been in compliance with the provisions of the CCAA and the Orders of the CCAA Court made in this CCAA Proceeding in all respects; (iii) neither RBH nor the Monitor has done or purported to do anything that is not authorized by the CCAA; and (iv) the CCAA Plan and the transactions contemplated thereby are fair and reasonable;

(b) Order that the CCAA Plan and all associated steps, compromises, transactions, arrangements, releases and reorganizations effected thereby are sanctioned and approved, and at the Effective Time will be binding and effective upon and with respect to RBH, all Affected Creditors, the Released Parties and all other Persons named or referred to in, or subject to, the CCAA Plan or the Sanction Order;

(c) Confirm that the CCAA Court is satisfied that: (i) the hearing regarding the Sanction Hearing was open to all of the Affected Creditors and all other Persons, including Putative Miscellaneous Claimants, with an interest in RBH and that such Affected Creditors and other Persons were permitted to be heard at the Sanction Hearing; and (ii) all of the Affected Creditors and all other Persons on the Common Service List were given adequate notice thereof;

(d) Approve and authorize the Restructuring Steps;

(e) Approve the Quebec Administration Plan;

(f) Approve the PCC Compensation Plan;

(g) Approve the appointment of the Monitor as the CCAA Plan Administrator as set out in the CCAA Plan Administrators' Order;

(h) Approve the appointment of the Court-Appointed Mediator to provide services with respect to the implementation of the CCAA Plan and perform such other functions as may be requested by the CCAA Plan Administrator or the CCAA Court;

(i) Approve the appointment of Epiq as the Claims Administrator;

(j) Approve the appointment of Daniel Shapiro, K.C. as the Administrative Coordinator;

(k) Approve the appointment of Dr. Robert Bell as the initial Chair of the Cy-près Foundation;

(l) Order that any Affected Claim for which a Miscellaneous Claimant Proof of Claim or Notice of Dispute of Negative Notice Claim has not been filed by the Miscellaneous Claims Bar Date or the Negative Notice Bar Date, as applicable, in accordance with the Claims Procedure Order is forever barred and extinguished, and all such Affected Claims are released and discharged;

(m) Order that, on a date to be agreed between RBH and the CCAA Plan Administrators, the Alternative Products Business transferred by RBH to Newco vests absolutely in Newco in accordance with Article 4, Section 4.1 of the CCAA Plan;

(n) Order that, as of the Effective Time, any and all Released Claims are and are deemed to be fully, finally, irrevocably and forever compromised, released, discharged and barred, and the ability of any Person to proceed against any of the Released Parties in respect of or relating to any Released Claims, whether directly, indirectly, derivatively or otherwise is forever barred, estopped, stayed and enjoined, and all proceedings with respect to, in connection with or relating to such Released Claims are permanently stayed, subject only to the right of the Affected Creditors to receive distributions pursuant to the CCAA Plan in respect of their Affected Claims and to exercise their rights under the CCAA Plan;

(o) Order that, as of the Effective Time, no action, proceeding or enforcement process in any court or tribunal may be commenced or continued against any Released Party, or any Person who claims or might reasonably be expected to claim in any manner or forum against any Released Party, in respect of the Released Claims without the prior written consent of the Released Party or leave of the CCAA Court obtained on notice to the Released Party and the Tobacco Companies, including appropriate injunctive language with respect to same;

(p) Authorize and approve the releases and injunctions set forth in Article 18, Sections 18.1.1 to 18.1.10 herein and order that such releases and injunctions shall become effective at the Effective Time;

(q) Authorize Quebec Class Counsel, PCC Representative Counsel, Knight Class Counsel and Counsel for the Tobacco Producers to execute and deliver the Claimant Contractual Release on behalf of the Quebec Class Action Plaintiffs, the Pan-Canadian Claimants, the Knight Class Action Plaintiffs, and the Tobacco Producers and Ontario Flue-Cured Tobacco Growers' Marketing Board, respectively;

(r) Confirm that each of (i) the affirmative vote in respect of the CCAA Plan and (ii) the signing of the Claimant Contractual Release, by or on behalf of each Claimant, shall be evidence of the consent of the Claimant to the treatment of its Claims for the purposes of Section 5.1(2) and/or Section 19(2) of the CCAA to the extent that they apply;

(s) Grant the Monitor, in addition to its rights and obligation under the CCAA, the powers, duties and protections contemplated by and required under the CCAA Plan and authorize and direct the Monitor to perform its duties and fulfil its obligations under the CCAA Plan as the CCAA Plan Administrator for RBH to facilitate the implementation of the CCAA Plan;

(t) Authorize RBH and EY, either in its capacity as the Monitor or the CCAA Plan Administrator, to take all steps and actions, and to do all things, necessary or appropriate to implement the CCAA Plan in accordance with and subject to its terms and conditions, and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, payments, deliveries, allocation, instruments and agreements contemplated by, and subject to the terms and conditions of, the CCAA Plan;

(u) Order that in no circumstance will the Monitor have any liability for any of RBH's tax or other liabilities regardless of how or when such liability may have arisen;

(v) Approve the form of the Monitor's Plan Implementation Date Certificate, and order that the Monitor, in its capacity as Monitor, following the fulfilment or waiver of the conditions precedent to implementation of the CCAA Plan as set out in Article 19, Sections 19.3 and 19.4 of the CCAA Plan, shall deliver the Monitor's Plan Implementation Date Certificate to RBH and serve a copy thereof on the Common Service List;

(w) Order that upon completion by EY of its duties as the Monitor and the CCAA Plan Administrator in respect of RBH pursuant to the CCAA and any Order of the CCAA Court made in connection with the CCAA Proceeding or the CCAA Plan, EY may file with the CCAA Court a certificate ("**Certificate of Plan Completion**") stating that all of its duties in respect of RBH pursuant to the CCAA, the CCAA Plan and any Orders of the CCAA Court in respect thereof, have been completed and thereupon, EY shall be deemed to be discharged from its duties as the Monitor and as the CCAA Plan Administrator and released of all claims relating to its activities as the Monitor and as the CCAA Plan Administrator;

(x) Approve the form of the Certificate of Plan Completion, and order that EY, in its capacities as the Monitor and the CCAA Plan Administrator has completed its duties to fully and finally effect all distributions, disbursements and payments in accordance with the CCAA Plan, shall file the Certificate of Plan Completion with the CCAA Court;

(y) Order that, in carrying out the terms of the Sanction Order and the CCAA Plan, (i) EY, in its capacities as the Monitor and the CCAA Plan Administrator, shall benefit from all the protections given to it by the CCAA, the Initial Order and any other Order in the CCAA Proceeding, and as an officer of the CCAA Court, (ii) EY shall incur no liability or obligation as a result of carrying out the provisions of the Sanction Order and/or CCAA Plan, and (iii) EY shall be entitled to rely on the books and records of RBH and any information provided by RBH without independent investigation and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;

(z) Order that each Putative Miscellaneous Claimant will be limited to recovering from the Miscellaneous Claims Fund in respect of all Miscellaneous Claims in accordance with the CCAA Plan and any other Definitive Documents, and such Putative Miscellaneous Claimant will have no right to and shall not make any claim against or seek any recovery from any Released Party in respect of such Miscellaneous Claim;

(aa) Order that each of the Sales and Excise Tax Charge and Directors' Charge will be terminated, discharged, expunged and released at the applicable time set out in the Sanction Order upon receipt by RBH of an acknowledgement of payment in full and in the appropriate currency of the claims secured thereby;

(bb) Approve the CCAA Plan Administration Reserve;

(cc) Approve the PCC Compensation Plan Reserve;

(dd) Order that, notwithstanding: (i) the pendency of the CCAA Proceeding or the Chapter 15 Proceedings; (ii) any applications for a bankruptcy, receivership or other order now or hereafter issued pursuant to the BIA, the CCAA, the US Bankruptcy Code or otherwise in

respect of RBH and any bankruptcy, receivership or other order issued pursuant to any such applications; and (iii) any assignment in bankruptcy made or deemed to be made in respect of RBH, the transactions contemplated by the CCAA Plan shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect RBH or its assets and shall not be void or voidable by creditors of RBH, nor shall the CCAA Plan or the payments and distributions contemplated pursuant thereto constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA, CCAA or any other applicable federal or provincial legislation, nor shall the CCAA Plan constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation;

(ee) Order that, subject to the performance by RBH of its obligations under the CCAA Plan, all obligations, contracts, leases, agreements and other arrangements to which (i) RBH is a party at the Effective Time or (ii) Newco becomes a party on a date to be agreed between RBH and the CCAA Plan Administrators as a result of the transfer of the Alternative Products Business to Newco in accordance with the terms of Article 4, Section 4.1, and that have not been terminated or disclaimed pursuant to the applicable paragraph of the Initial Order and related provision of the CCAA will be and remain in full force and effect, unamended as of the Effective Time, and no Person who is a party to any such obligation, contract, lease, agreement or other arrangement shall at or following the Effective Time accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(i) any event that occurred at or prior to the Effective Time and is not continuing thereafter, or which is or continues to be suspended or waived under the CCAA Plan, that would have entitled such Person to enforce those rights or remedies (including defaults or events or default arising as a result of the insolvency of RBH); or

(ii) the insolvency of RBH or the fact that RBH sought or obtained relief under the CCAA;

(iii) any compromises or arrangements effected pursuant to the CCAA Plan, or any action taken or transaction effected pursuant to the CCAA Plan; or

(iv) the fact that RBH has sought or obtained relief or taken steps as part of the CCAA Proceedings.

(ff) Approve all conduct of the Directors of RBH during the CCAA Proceeding;

(gg) Approve all conduct of the Monitor and the Monitor's Representatives in relation to RBH and its Tobacco Company Group and bar all claims against them arising from or relating to the services provided to RBH and its Tobacco Company Group up to and including the date of the Sanction Order;

(hh) Order that, in regard to the services that it provides after the date of the Sanction Order, EY, whether in its capacity as the Monitor and/or the CCAA Plan Administrator, shall have the benefit of all the protections afforded to the Monitors as officers of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings. For greater certainty, EY, whether in its capacity as the Monitor, and/or the CCAA Plan Administrator, shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Monitor or its respective Affiliates, shareholders, Affiliates' shareholders, employees, advisors, legal counsel, representatives or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document;

(ii) Approve all conduct of the Court-Appointed Mediator and the Court-Appointed Mediator's Representatives in relation to RBH and its Tobacco Company Group and bar all claims against them arising from or relating to the services provided during the pendency of the Court-supervised mediation up to and including the date of the Sanction Order;

(jj) Order that in the event that the Court-Appointed Mediator provides any services after the date of the Sanction Order, as requested by either the CCAA Plan Administrators or the CCAA Court, and approved by the CCAA Court, the Court-Appointed Mediator shall have the benefit of all the protections afforded to the Court-Appointed Mediator as an officer of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any Orders made in the CCAA Proceedings, including the orders appointing the Court-Appointed Mediator. In particular, the Court-Appointed Mediator shall not be liable to any Party, participant in the mediation, or any other Person, for any act or omission in connection with the mediation process and/or in connection with any services provided after date of the Sanction Order, and shall have the immunity of a Judge of a Superior Court in Canada. For greater certainty, the Court-Appointed Mediator shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Court-Appointed Mediator's heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document;

(kk) Order that, in regard to the services that the Administrative Coordinator provides after the date of the Sanction Order, the Administrative Coordinator shall have the benefit of all the protections afforded to him as an officer of the CCAA Court and by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings. For greater certainty, the Administrative Coordinator shall not be responsible or liable for any obligations of the Tobacco Companies. None of the Administrative Coordinator's heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document;

(ll) Authorize RBH to seek an order of any court of competent jurisdiction to recognize the CCAA Plan and the Sanction Order and to confirm the CCAA Plan and the Sanction Order as binding and effective in any appropriate foreign jurisdiction, including in the Chapter 15 Proceedings;

(mm) Order that any obligation of RBH to provide financial reporting pursuant to any Order or agreement shall cease at the Effective Time and be replaced with the obligations set forth in Article 10, Section 10.1 to Section 10.10 of the CCAA Plan;

(nn) Order that the CCAA stay of proceedings provided for in the Initial Order shall be extended until the Effective Time; and

(oo) Order that RBH, the Court-Appointed Mediator or EY, whether in its capacity as the Monitor and/or the CCAA Plan Administrator, may apply to the CCAA Court for advice and direction in respect of any matters arising from or in relation to the CCAA Plan.

19.3 Conditions Precedent to Implementation of CCAA Plan

The implementation of the CCAA Plan shall be conditional upon the satisfaction, prior to or at the Effective Time, of the following conditions precedent ("**Plan Implementation Conditions**"):

(a) The CCAA Plan will have been approved by the Required Majority of the Affected Creditors at the Meeting;

(b) The CCAA Plans of Imperial and JTIM will have been approved by the Required Majority of the Affected Creditors of Imperial and JTIM at the Meetings in respect of the CCAA Plans of Imperial and JTIM;

(c) The Sanction Order will have been granted by the CCAA Court, consistent with the terms of Article 19, Section 19.2 herein, and will have become a final Order;

(d) The Sanction Orders in respect of the CCAA Plans of Imperial and JTIM will have been granted by the CCAA Court and will have become final Orders;

(e) All applicable appeal periods in respect of the Sanction Order will have expired and any appeals or motions for leave to appeal therefrom will have been finally disposed of by the applicable appellate court;

(f) The Plan Implementation Date will have occurred by no later than a date to be set by the Court-Appointed Mediator and the Monitors, unless otherwise ordered by the CCAA Court;

(g) The Effective Time of the CCAA Plans of Imperial and JTIM shall become effective at the same time or immediately prior or immediately subsequent to the Effective Time of the CCAA Plan;

(h) The with prejudice dismissal of all Pending Litigation will have occurred by no later than a date to be set by the Court-Appointed Mediator and the Monitors, unless otherwise ordered by the CCAA Court;

(i) The CCAA Plan Administrators will have established the Global Settlement Trust Account, the PCC Trust Account, the Cy-près Trust Account and the QCAP Trust Account;

(j) RBH shall have deposited its share of the Upfront Contributions into the Global Settlement Trust Account;

(k) The amount of $25.0 million in respect of the CCAA Plan of each Tobacco Company shall have been paid out of the Upfront Contributions and deposited into the CCAA Plan Administration Reserve Account to establish the CCAA Plan Administration Reserve;

(l) The amount of $5.0 million shall have been paid out of the Upfront Contributions and deposited into the PCC Compensation Plan Reserve Account to establish the PCC Compensation Plan Reserve;

(m) Imperial's and RBH's Cash Security Deposits will have been released from suretyship and deposited into the Global Settlement Trust Account;

(n) All relevant Persons will have executed, delivered and filed all documents and other instruments that, in the opinion of the Court-Appointed Mediator and the Monitor, acting reasonably, are necessary to implement the provisions of the CCAA Plan and the Sanction Order, including the Contribution Security Agreement, Deeds of Hypothec and the Demand Debenture;

(o) The Claimant Contractual Release will have been executed, delivered and become effective in accordance with its terms, subject only to the occurrence of the Plan Implementation Date, on terms satisfactory to each Claimant, to the extent that RBH and such Claimant are parties receiving or giving the applicable releases;

(p) No action or proceeding will be pending by any third party to enjoin or prohibit the implementation of the CCAA Plan and the transactions contemplated by the CCAA Plan;

(q) There shall not exist or have occurred any Material Adverse Effect upon RBH;

(r) Except as expressly set out in the CCAA Plan, RBH shall not have (i) issued or authorized the issuance of any shares, notes, options, warrants or other securities of any kind, (ii) become subject to any Encumbrance with respect to its assets or property, (iii) acquired any assets or become liable to pay any Indebtedness or liability of any kind (other than as expressly set out in the CCAA Plan), or (iv) entered into any agreement for any of the foregoing; and

(s) All applicable approvals and orders of, and all applicable submissions and filings with, Governmental Authorities having jurisdiction for the completion of the steps and transactions contemplated by the CCAA Plan (including the steps and transactions which are Plan Implementation Conditions) will have been obtained or made, as the case may be,

in each case to the extent deemed necessary or advisable by the Court-Appointed Mediator and the Monitor, in form and substance satisfactory to the Court-Appointed Mediator and the Monitor.

Except in the case of Article 19, Sections 19.3 (a), (b), (c), (d), (f) and (g) which may not be waived, the Plan Implementation Conditions may be waived in whole or in part only with the consent, in writing, of the Court-Appointed Mediator and the Monitor provided that the waiver relates to matters of a non-material nature. In the event that the Court-Appointed Mediator and the Monitor seek to waive any material Plan Implementation Conditions, they shall provide notice to the Provinces and Territories, the Impacted Claimants and the Tobacco Company and will bring the issue before the CCAA Court for determination. In respect of Article 19, Section 19.3(p), the obligation of the Claimants to execute the Claimant Contractual Release cannot be waived without RBH's consent.

19.4 Monitor's Certificate – Plan Implementation

As soon as practicable following fulfilment of the Plan Implementation Conditions, the Monitor shall deliver to RBH, serve on the Common Service List, post on the Monitor's website and file with the CCAA Court a certificate confirming that the Plan Implementation Date has occurred ("**Plan Implementation Date Certificate**").

ARTICLE 20. GENERAL

20.1 Binding Effect

At the Effective Time, the CCAA Plan will become effective and binding on and enure to the benefit of the Released Parties and any other Person named or referred to in or subject to the CCAA Plan and their Representatives. Without limiting the generality of the foregoing, at the Effective Time:

(a) The treatment of Affected Claims, Released Claims and Miscellaneous Claims under the CCAA Plan will be final and binding for all purposes and enure to the benefit of the Released Parties, the Affected Creditors and all other Persons named or referred to in or subject to the CCAA Plan and their Representatives;

(b) All Affected Claims shall be and shall be deemed to be forever compromised, released, discharged and barred, excepting only the obligations to make distributions in respect of such Affected Claims in the manner and to the extent provided for in the CCAA Plan;

(c) All Released Claims will be forever discharged, released, enjoined and barred;

(d) Each Affected Creditor and each Person holding a Released Claim or Miscellaneous Claim and all other Persons named or referred to in or subject to the CCAA Plan will be deemed to have:

(i) Consented and agreed to all of the provisions of the CCAA Plan in its entirety,

(ii) Executed and delivered to RBH and to the other Released Parties, as applicable, all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the CCAA Plan in its entirety,

(iii) Waived any default by or rescinded any demand for payment against RBH that has occurred on or prior to the Effective Time pursuant to, based on, or as a result of any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Affected Creditor, Person or Putative Miscellaneous Claimant and RBH with respect to an Affected Claim, Released Claim or Miscellaneous Claim (as the case may be), and

(iv) Agreed that, if there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing as at the moment before the Effective Time between an Affected Creditor or a Person holding a Released Claim or Miscellaneous Claim and RBH with respect to an Affected Claim, Released Claim or Miscellaneous Claim (as the case may be) and the provisions of the CCAA Plan, then the provisions of the CCAA Plan take precedence and priority and the provisions of such agreement or other arrangement are amended accordingly; and

(e) Each Person named or referred to in, or subject to, the CCAA Plan shall be deemed to have received from the Released Parties, all statements, notices, declarations and notifications, statutory or otherwise, required to implement and carry out the CCAA Plan in its entirety.

20.2 Deeming Provisions

In the CCAA Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

20.3 Interest and Fees

Interest shall not accrue or be paid on Affected Claims after the Filing Date, and no holder of an Affected Claim, Released Claim or Miscellaneous Claim shall be entitled to interest accruing nor to fees and expenses incurred in respect of an Affected Claim, Released Claim or Miscellaneous Claim on or after the Filing Date, and any Claim in respect of interest accruing or fees and expenses incurred on or after the Filing Date shall be deemed to be forever extinguished and released.

20.4 Modification of the CCAA Plan

(a) The Court-Appointed Mediator and the Monitor reserve the right, at any time and from time to time (including prior to, at or following the Meeting), to amend, restate, modify and/or supplement the CCAA Plan, provided that any such amendment, restatement, modification or supplement is contained in a notice which is filed with the CCAA Court and posted on the Monitor's website and,

(i) If made prior to the Meeting Order, such amendment, restatement, modification or supplement is communicated to the Affected Creditors and RBH ; or

(ii) If made following the Meeting Order, such amendment, restatement, modification or supplement shall be subject to approval by the CCAA Court following notice to the Affected Creditors and RBH.

(b) Notwithstanding Article 20, Section 20.4(a), any amendment, restatement, modification or supplement to the CCAA Plan may be made by the Court-Appointed Mediator and the Monitor, at any time and from time to time, provided that it: (i) concerns a matter which is of an administrative nature required to better give effect to the implementation of the CCAA Plan; or (ii) is to cure any errors, omissions or ambiguities, and in either case is not materially adverse to the financial or economic interests of the Affected Creditors or the Unaffected Creditors.

(c) Any amended, restated, modified or supplementary CCAA Plan filed with the CCAA Court and, if required by this Section, approved by the CCAA Court, will for all purposes be and be deemed to be a part of and incorporated in the CCAA Plan.

20.5 Paramountcy

From and after the Effective Time, any conflict between any of:

(a) The CCAA Plan;

(b) The Sanction Order; and/or

(c) The covenants, warranties, representations, terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, trust indenture, note, loan agreement, commitment letter, agreement for sale, lease or other agreement, written or oral and any and all amendments or supplements thereto existing between one or more of the Affected Creditors and RBH as at the moment before the Effective Time,

will be deemed to be governed by the terms, conditions and provisions of the Sanction Order, which will take precedence and priority.

20.6 Severability of CCAA Plan Provisions

If, prior to the Plan Implementation Date, any term or provision of the CCAA Plan is held by the CCAA Court to be invalid, void or unenforceable, the CCAA Court, at the request of the Court-Appointed Mediator, the Monitor or RBH, will have the power to either: (a) sever such term or provision from the balance of the CCAA Plan and provide the Court-Appointed Mediator and the Monitor with the option to proceed with the implementation of the balance of the CCAA Plan, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as so altered or interpreted. Notwithstanding any such holding, alteration or interpretation, and provided that the Court-Appointed Mediator and the Monitor are authorized by the CCAA Court to proceed with implementation of the CCAA Plan, the remainder of the terms and provisions of the CCAA Plan

will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

20.7 Transition Period - Responsibilities and Protections of EY as Monitor and CCAA Plan Administrator

EY is acting and will continue to act in all respects in its capacity as Monitor in the CCAA Proceedings with respect to RBH (and not in its personal capacity). Subject to the approval by the CCAA Court of EY's appointment as the CCAA Plan Administrator pursuant to Article 14, Section 14.1, subsequent to the Effective Time EY will transform from the Monitor into the CCAA Plan Administrator and will fulfill the duties and responsibilities of the CCAA Plan Administrator set forth in the CCAA Plan, any other Definitive Documents and any Order made in the CCAA Proceeding. Notwithstanding the foregoing, during the period of time subsequent to the Effective Time during which EY transitions from its capacity as Monitor to its capacity as CCAA Plan Administrator, from time to time as required and applicable, EY may act in both its capacities as the Monitor and the CCAA Plan Administrator depending upon the duties and responsibilities that it is fulfilling.

In both its capacities as the Monitor and the CCAA Plan Administrator, EY shall not be responsible or liable for any obligations of RBH and its Tobacco Company Group. EY will have the powers and protections granted to it by the Initial Order, the CCAA Plan, the CCAA, the Sanction Order and any other Order made in the CCAA Proceeding, including the protections expressly set forth in Article 18, Sections 18.1.1 to 18.1.10 of the CCAA Plan. EY and its Affiliates, shareholders, Affiliates' shareholders, employees, legal counsel, advisors, representatives and agents will incur no personal liability whatsoever whether on their own part or in respect of any failure on the part of RBH and its Tobacco Company Group to observe, perform or comply with any of their obligations under the CCAA Plan. Any release, discharge or other benefit conferred upon EY pursuant to the CCAA Plan will enure to the benefit of EY and its Affiliates, shareholders, Affiliates' shareholders, employees, legal counsel, advisors, representatives and agents. EY in its personal capacity, and each of its Affiliates, shareholders, Affiliates' shareholders, employees, legal counsel, advisors, representatives and agents, will be third party beneficiaries to the CCAA Plan entitled to enforce such releases, discharges and other benefits in accordance with the terms of the CCAA Plan.

20.8 Transition Period - Responsibilities and Protections of the Court-Appointed Mediator

The Court-Appointed Mediator is acting and will continue to act in all respects in his capacity as the Court-Appointed Mediator in the CCAA Proceeding with respect to RBH (and not in his personal capacity). Subsequent to the Effective Time, if (i) requested by EY in its capacity as the Monitor or the CCAA Plan Administrator, or (ii) directed by the CCAA Court, the Court-Appointed Mediator will perform such duties and provide such services as may arise from or relate to the fulfillment of his mandate to mediate and give effect to the global settlement of all Tobacco Claims.

The Court-Appointed Mediator shall not be responsible or liable for any obligations of RBH and its Tobacco Company Group. The Court-Appointed Mediator will have the powers and protections granted to him by the Initial Order, the CCAA Plan, the CCAA, the Sanction Order and any other

Order made in the CCAA Proceeding, including the protections expressly set forth in Article 18, Sections 18.1.1 to 18.1.10 of the CCAA Plan. The Court-Appointed Mediator and his heirs, successors, assigns, representatives, advisors, legal counsel, consultants and agents will incur no personal liability whatsoever whether on their own part or in respect of any failure on the part of RBH and its Tobacco Company Group to observe, perform or comply with any of their obligations under the CCAA Plan. Any release, discharge or other benefit conferred upon the Court-Appointed Mediator pursuant to the CCAA Plan will enure to the benefit of the Court-Appointed Mediator and his heirs, successors, assigns, representatives, advisors, legal counsel, consultants and agents. The Court-Appointed Mediator and his heirs, successors, assigns, representatives, advisors, legal counsel, consultants or agents, will be third party beneficiaries to the CCAA Plan entitled to enforce such releases, discharges and other benefits in accordance with the terms of the CCAA Plan.

20.9 Miscellaneous Claims Bar Date

Nothing in the CCAA Plan extends or shall be interpreted as extending or amending the Miscellaneous Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order and the Meeting Order.

20.10 Different Capacities

Persons who are impacted by the CCAA Plan may be impacted in more than one capacity. Unless expressly provided herein to the contrary, a Person will be entitled to participate hereunder in each such capacity. Any action taken by a Person in one capacity will not impact such Person in any other capacity, unless otherwise provided in the Meeting Order expressly agreed by the Court-Appointed Mediator, the Monitor and the Person in writing, or unless its Claims overlap or are otherwise duplicative.

20.11 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the CCAA Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by email addressed to the respective parties as follows:

(a) If to RBH:

Rothmans, Benson & Hedges Inc.
1500 Don Mills Road
Toronto ON M3B 3L1

Attention: Gwenno Lloyd
Email: gwenno.lloyd@rbhinc.ca

With a copy to (which will not constitute notice):

McCarthy Tétrault LLP
Suite 5300, Toronto Dominion Tower
Toronto ON M5K 1E6

Attention: James D. Gage
Email: jgage@mccarthy.ca

(b) If to an Affected Creditor: to the mailing address or email address provided on such Affected Creditor's Statement of Negative Notice Claim or other proof of claim, or such more recent address particulars of an Affected Creditor as noted in the files of RBH or the Monitor.

(c) If to the Monitor:

Ernst & Young Inc.
100 Adelaide Street West
Toronto ON M5H 0B3

Email: rbh@ca.ey.com

With a copy to (which will not constitute notice):

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto ON M5H 0B4

Email: rbh@cassels.com

or to such other address as any party may from time to time notify the others in accordance with this Section, or, in the case of an address change for RBH or the Monitor or CCAA Plan Administrator, by posting notice of such address change on the Monitor's website (www.ey.com/ca/rbh). Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of sending by means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered or sent before 5:00 p.m. (Eastern Time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

20.12 Further Assurances

Each of the Persons named or referred to in, or subject to, the CCAA Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the CCAA Plan and to give effect to the transactions contemplated by the CCAA Plan and the Definitive Documents notwithstanding any provision of the CCAA Plan that deems any event or transaction to occur without further formality.

20.13 Language

The CCAA Plan, as well as any notices, schedules or other documents related thereto have been and will be prepared in the English and French languages. To the extent a French language or other translation is prepared, any such translation will be for informational purposes only, it being intended that the English language version will govern and prevail in all respects.

20.14 Acts to Occur on Next Business Day

If any distribution, payment or act under the CCAA Plan is required to be made or performed on a date that is not a Business Day, then the making of such distribution, payment or the performance of such act may be completed on the next succeeding Business Day, but will be deemed to have been completed as of the required date.

20.15 Non-Consummation of the CCAA Plan

The Court-Appointed Mediator and the Monitor reserve the right to revoke or withdraw the CCAA Plan at any time prior to the date on which the CCAA Court grants the Sanction Order. If the Court-Appointed Mediator and the Monitor revoke or withdraw the CCAA Plan, or if the Sanction Order is not issued or if the Plan Implementation Date does not occur, (a) the CCAA Plan and all transactions contemplated in the CCAA Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the CCAA Plan, or any document or agreement executed pursuant to or in connection with the CCAA Plan shall be deemed to be null and void, and (c) nothing contained in the CCAA Plan, and no acts taken in preparation for consummation of the CCAA Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against RBH or any member of its Tobacco Company Group or any other Person, (ii) prejudice in any manner the rights of RBH or any member of its Tobacco Company Group or any other Person in any further proceedings involving any of RBH or any member of its Tobacco Company Group, or (iii) constitute an admission of any sort by RBH or any member of its Tobacco Company Group or any other Person.

20.16 Deemed Waiver of Defaults from Plan Implementation Date

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of RBH then existing or previously committed by RBH, or caused directly or indirectly by RBH, the commencement of the CCAA Proceeding or the Chapter 15 Proceedings, any matter pertaining to the CCAA Proceeding or the Chapter 15 Proceedings, any of the provisions in the CCAA Plan or the Definitive Documents or steps or transactions contemplated in the CCAA Plan or the Definitive Documents, or any non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and RBH and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect; provided that, nothing herein shall be deemed to limit or excuse RBH from performing their obligations

thereunder and under the CCAA Plan or be a waiver of any defaults by RBH under the CCAA Plan or the other Definitive Documents.

DATED as of the 27th day of February, 2025.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	THURSDAY, THE 6TH
	)	
JUSTICE MORAWETZ	)	DAY OF MARCH, 2025

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.**

SANCTION ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of the Applicant (the "**Monitor**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order to, among other things, approve and sanction the third amended and restated Court-Appointed Mediator's and Monitor's CCAA Plan of Compromise and Arrangement in respect of the Applicant dated February 27, 2025 (the "**CCAA Plan**"), attached hereto as **Schedule "A"**.

ON READING the Motion Record of the Monitor, including the Twenty-Second Report of the Monitor dated January 15, 2025 and the Twenty-Fifth Report of the Monitor dated February 27, 2025, and the materials filed by those other parties listed on the Participant Information Form, and upon hearing the submissions of counsel to the Honourable Warren K. Winkler K.C. (the "**Court-Appointed Mediator**"), counsel to the Monitor, counsel to the Applicant, and those other parties listed on the Participant Information Form, no one appearing for any other person on the

Common Service List, although properly served with the Monitor's Motion Record dated January 15, 2025, as appears from the Lawyer's Certificates of Service of Jake Harris, certified January 16, 2025 and February 27, 2025, respectively;

INTERPRETATION

1. **THIS COURT ORDERS** that certain capitalized terms in this Sanction Order shall have the following meanings, which correspond to the defined terms in the CCAA Plan, and any other capitalized terms in this Sanction Order shall have the meanings ascribed to them in the CCAA Plan:

a. **"Affected Claim"** means any Claim, other than an Unaffected Claim, against JTIM. For greater certainty, all Tobacco Claims, including the Provincial HCCR Claims, Territorial HCCR Claims, QCAP Claims, PCC Claims, *Knight* Claims, Tobacco Producers Claims and Miscellaneous Claims are Affected Claims.

b. **"Affected Creditor"** means a creditor who holds an Affected Claim.

c. **"Claimant Contractual Release"** means the release in the form attached to the CCAA Plan as Schedule "W" which the Claimants shall provide to the Released Parties that will fully, finally, irrevocably and unconditionally release and forever discharge the Released Parties of and from the Claimants' respective Released Claims, provided that such Claimant Contractual Release shall not release any of the Non-Released Claims.

d. **"Claims"** means any and all manner of requests, demands, complaints, claims

(including claims for contribution or indemnity), rights, 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, whether asserted or unasserted, 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 or civil law, in equity, or under statute, and "**Claim**" means any one of them.

e. **"Director"** means any Person who, as at the Effective Time, is a former or present director or officer of JTIM or any other Person of a similar position or who by Applicable Law is deemed to be or is treated similarly to a director or officer of JTIM or who currently manages or supervises the management of the business and affairs of JTIM or did so in the past.

f. **"Effective Time"** means such time on the Plan Implementation Date as the Court-Appointed Mediator and the Monitor may determine and designate.

g. **"Global Settlement Amount"** means the amount of $32.5 billion contemplated under the CCAA Plan.

h. **"Initial Order"** means the initial order commencing the CCAA Proceeding of JTIM, as amended and restated from time to time.

i. **"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 Plan, the Sanction Order and the other Definitive Documents are to be implemented, as evidenced by the Monitor's Plan Implementation Date Certificate to be delivered to JTIM and filed with the CCAA Court.

j. **"Released Claims"** means, collectively, any and all of the following Claims, excluding Unaffected Claims:

(a) any Tobacco Claims; and

(b) any Claims:

(i) in respect of the assets, obligations, business or affairs of the Released Parties in Canada or, in the case of JTIM, anywhere else in the world, relating to Tobacco Products, which are based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter);

(ii) in respect of the CCAA Proceedings and the Chapter 15 Proceedings up to the Effective Time, provided that such Released Party is not determined by (A) a final order of the CCAA Court to have

committed fraud in the CCAA Proceedings, or (B) a final order of the US Bankruptcy Court to have committed fraud in the Chapter 15 Proceedings;

(iii) existing at or prior to the Effective Time that have been advanced, that could have been advanced or could be advanced in the CCAA Proceeding; and

(iv) released as against the Monitors, the CRO, Foreign Representative, CCAA Plan Administrators, Court-Appointed Mediator and Administrative Coordinator pursuant to Article 18, Sections 18.1.4, 18.1.5, 18.1.6 and 18.1.7 of the CCAA Plan.

For greater certainty, Released Claims include all Tobacco Claims in respect of fraud, misrepresentation or omission that have been or could have been asserted in any proceeding initiated prior to the Effective Time, including all Claims released by the Release and the Claimant Contractual Release.

k. **"Released Parties"**, collectively, means:

(a) ITCAN,

(b) ITCO,

(c) RBH,

(d) JTIM,

(e) British American Tobacco p.l.c.,

(f) Philip Morris International Inc.,

(g) JT International Holding B.V.,

(h) the ITCAN Subsidiaries,

(i) B.A.T. Investment Finance p.l.c.,

(j) B.A.T Industries p.l.c.,

(k) British American Tobacco (Investments) Limited,

(l) Carreras Rothmans Limited,

(m) Philip Morris U.S.A. Inc.,

(n) Philip Morris Incorporated,

(o) Philip Morris Global Brands Inc.,

(p) Philip Morris S.A.,

(q) Rothmans Inc.,

(r) Ryesekks p.l.c.,

(s) Altria Group, Inc.,

(t) R.J. Reynolds Tobacco Company,

(u) R.J. Reynolds Tobacco International Inc.,

(v) RJR Nabisco, Inc.,

(w) JT International SA,

(x) JT Canada LLC Inc.,

(y) Japan Tobacco Inc.,

(z) JTIM TM,

(aa) Canadian Tobacco Manufacturers' Council, and

(bb) every other current or former Affiliate of any of the companies listed in subparagraphs (a) to (z) herein, and each of their respective indemnitees,

and "**Released Party**" means any of them. Each Released Party includes their respective Representatives.

l. **"Releasors"**, collectively, means:

(a) the Provinces and Territories,

(b) the Quebec Class Action Plaintiffs,

(c) the Pan-Canadian Claimants,

(d) the Knight Class Action Plaintiffs,

(e) the Tobacco Producers, and

(f) every other Person having an Affected Claim or a Released Claim,

and "**Releasor**" means any one of them. "**Releasors**" and "**Releasor**" shall include their respective Representatives.

m. **"Tobacco Claim"** means any Claim of any Person against or in respect of a Tobacco Company and/or any Director thereof, or any member of its Tobacco Company Group and/or any Director thereof, that has been advanced (including, without limitation, in any outstanding or pending litigation), that could have been advanced or that could be advanced, and whether such Claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced by a Government, or an agency, insurer, employer or otherwise, under or in connection with Applicable Law, or under any current or future statute to recover damages or any other remedy or costs in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products, the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions, the development of any disease related to the use of Tobacco Products, or any representation or omission in respect of Tobacco

Products, including any misrepresentations, breach of duty or fraud in respect thereof by any member of the Tobacco Company Group or its Representatives in Canada or, in the case of the Tobacco Company, anywhere else in the world, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) and including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim. For greater certainty, Tobacco Claim includes:

(a) any Provincial HCCR Claim;

(b) any Territorial HCCR Claim;

(c) any QCAP Claim;

(d) any PCC Claim;

(e) any Knight Claim; and

(f) any Tobacco Producers Claim.

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

o. **"Unaffected Creditor"** means a Person who has an Unaffected Claim.

2. **THIS COURT ORDERS** that all references to the word "including" or "includes" shall mean "including without limitation" or "includes without limitation" as the case may be.

3. **THIS COURT ORDERS** that, unless the context otherwise requires, words importing the singular shall include the plural and *vice versa*, and words importing any gender shall include all genders.

4. **THIS COURT ORDERS** that, unless otherwise specified, all references to currency are in Canadian dollars.

NOTICE AND CONDUCT OF CLAIMS PROCEDURE AND MEETING

5. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service, and/or delivery of the CCAA Plan, the Claims Procedure Order, the Claims Package (as defined in the Claims Procedure Order) and the Meeting Materials (as defined in the Meeting Order dated October 31, 2024 (the "**Meeting Order**")) to all Persons upon which notice, service, and/or delivery were required.

6. **THIS COURT ORDERS AND DECLARES** that the Meeting was duly called, convened, held, and conducted on December 12, 2024 and complied with the Meeting Order, the CCAA and all other Orders of the Court in this CCAA Proceeding.

NOTICE AND CONDUCT OF SANCTION HEARING

7. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service, and/or delivery of the Omnibus Sanction Hearing Notice, the form of Sanction

Hearing Objection Notice and Sanction Protocol Order dated December 23, 2024 (the "**Sanction Protocol Order**") to all Persons upon which notice, service, and/or delivery were required.

8. **THIS COURT ORDERS AND DECLARES** that the Sanction Hearing complied with the Sanction Protocol Order, the CCAA and all other Orders of the Court in this CCAA Proceeding, and:

(a) the Sanction Hearing was open to all of the Affected Creditors and all other Persons, including Putative Miscellaneous Claimants, with an interest in JTIM, and that such Affected Creditors and other Persons were permitted to be heard at the Sanction Hearing; and

(b) all of the Affected Creditors and all other Persons on the Common Service List were given adequate notice thereof.

SANCTION OF THE CCAA PLAN

9. **THIS COURT ORDERS AND DECLARES** that:

(a) the CCAA Plan has been approved by the Required Majority of the Affected Creditor Class in compliance with the Meeting Order and the CCAA Plan and in accordance with the CCAA;

(b) the Applicant, the Court-Appointed Mediator, the Monitor and their Representatives have complied with the provisions of the CCAA and the Orders of the Court made in this CCAA Proceeding;

(c) the activities and conduct of the Directors during this CCAA Proceeding be and are hereby ratified and approved;

(d) the activities and conduct of the Court-Appointed Mediator, the Monitor and their Representatives in this CCAA Proceeding including, without limitation, in relation to conducting and administering the Mediation, be and are hereby ratified and approved, and that the Court-Appointed Mediator and the Monitor have satisfied all of their obligations up to and including the date of this Sanction Order;

(e) the Applicant, the Court-Appointed Mediator and Monitor and their Representatives have acted, and continue to act, in good faith and with due diligence, and have not done or purported to do anything, nor does the CCAA Plan do or purport to do anything, that is not authorized by the CCAA or the Orders of the Court in this CCAA Proceeding; and

(f) the CCAA Plan and all of the matters and transactions contemplated thereby are fair and reasonable.

10. **THIS COURT ORDERS** that the CCAA Plan, its terms and conditions, including all associated steps, compromises, transactions, arrangements, agreements, releases, injunctions, and reorganizations effected thereby (including the appointment of Deloitte as the CCAA Plan Administrator pursuant to the terms of the CCAA Plan Administrator Appointment Order) are hereby sanctioned and approved pursuant to Section 6 of the CCAA.

11. **THIS COURT ORDERS** that, as at the Effective Time, the CCAA Plan and all associated steps, compromises, arrangements, releases, injunctions, transactions and reorganizations effected thereby will be binding and effective upon and with respect to the Applicant, all the Affected

Creditors, the Released Parties and all other Persons named or referred to in, or subject to, the CCAA Plan or the Sanction Order.

12. **THIS COURT ORDERS** that any omission in this Order to refer to a specific provision of the CCAA Plan shall not diminish or impair the effectiveness of such provision, it being the intent of the CCAA Court that the CCAA Plan be approved in its entirety. Notwithstanding and without limitation to the foregoing, certain administrative matters contemplated in the CCAA Plan that are not specifically addressed in this Sanction Order or the CCAA Plan Administrator Appointment Order, including, but not limited to, matters related to the Cy-Pres Foundation as described in Section 9.4 of the CCAA Plan, shall be the subject of further Order(s) of the Court.

13. **THIS COURT ORDERS** that, without limitation to paragraphs 9 – 12 of this Sanction Order, the Quebec Administration Plan and the PCC Compensation Plan are hereby approved and all applicable Persons are authorized and directed to comply with and implement the Quebec Administration Plan and the PCC Compensation Plan.

14. **THIS COURT ORDERS** that, subject to the performance by the Applicant of its obligations under the CCAA Plan, all obligations, contracts, leases, agreements and other arrangements to which the Applicant is a party at the Effective Time and that have not been terminated or disclaimed pursuant to the applicable paragraph of the Initial Order and related provisions of the CCAA shall remain in full force and effect, and unamended as of the Effective Time, and no Person who is a party to any such obligation, contract, lease, agreement or other arrangement shall, at or following the Effective Time, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off, dilution or

other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred at or prior to the Effective Time and is not continuing thereafter, or which is or continues to be suspended or waived under the CCAA Plan, that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Applicant);

(b) the insolvency of the Applicant or the fact that the Applicant sought or obtained relief under the CCAA or the US Bankruptcy Code;

(c) any compromises or arrangements effected pursuant to the CCAA Plan, or any action taken or transaction effected pursuant to the CCAA Plan; or

(d) the fact that the Applicant has sought or obtained relief or taken steps as part of this CCAA Proceeding or the Chapter 15 Proceedings.

PLAN IMPLEMENTATION

15. **THIS COURT ORDERS** that:

(a) each of the Applicant, the Monitor and the CRO (including in the CRO's capacity as the Foreign Representative in the Chapter 15 Proceedings) and each of their respective Representatives, is hereby authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to implement the CCAA Plan, in accordance with and subject to its respective terms and conditions, and to enter into, execute, deliver, complete, implement and consummate all of the steps,

transactions, distributions, payments, deliveries, allocations, instruments and agreements contemplated by, and subject to, the terms and conditions of the CCAA Plan;

(b) all distributions and payments under the CCAA Plan shall be free and clear of all claims, rights and interests of any Person, including, without limitation all the CCAA Charges;

(c) the Applicant, the Monitor and their respective Representatives, shall not incur any liability as a result of acting in accordance with the terms of the CCAA Plan and this Sanction Order;

(d) all conduct of the Monitor and the Monitor's Representatives in relation to JTIM is approved and all claims against them arising from or relating to the services provided to JTIM up to and including the date of the Sanction Order are barred; and

(e) the Monitor, the CCAA Plan Administrator and their respective Representatives shall be entitled to rely on the books, records or information of the Applicant and any information provided by the Applicant, without independent investigation, and shall incur no liability as a result of any errors or omissions in such books, records or information.

16. **THIS COURT ORDERS** that the restructuring steps as set out in Article 4 of the CCAA Plan (the "**Restructuring Steps**") including the transactions, arrangements, reorganizations, transfers, assignments, compromises, settlements, payments, discharges, injunctions and releases to be effected on the Plan Implementation Date in accordance with Section 4.2 of the CCAA Plan, are hereby authorized and approved, and the Restructuring Steps are, and shall be deemed, to occur

and be effected in accordance with the terms of the CCAA Plan (and, to the extent applicable, in the sequence and at the times contemplated by the CCAA Plan), without any further act or formality.

17. **THIS COURT ORDERS** that, following the Effective Time, the Monitor, the Court-Appointed Mediator and their respective counsel shall continue to be entitled to receive payment of their respective fees and disbursements incurred in respect of the implementation of the CCAA Plan and this CCAA Proceeding, and the Applicant is hereby authorized and directed to make such payments on a bi-weekly basis and, in respect of the Court-Appointed Mediator and its counsel, their fees and disbursements shall be allocated equally among the Tobacco Companies.

18. **THIS COURT ORDERS** that, at the Effective Time, any obligations of the Applicant to provide financial reporting pursuant to any Order or agreement entered into in connection with this CCAA Proceeding shall cease and be replaced with the obligations set forth in Article 10, Section 10.1 to Section 10.10 of the CCAA Plan (provided that any reporting of non-public information will be subject to non-disclosure arrangements as set out in paragraph 19 below).

19. **THIS COURT ORDERS** that (i) the terms of any existing non-disclosure arrangement or agreement ("**Existing NDAs**") between JTIM and a Province, Territory, Impacted Claimant, and their advisors, shall continue to apply regarding the disclosure of financial reporting and any other non-public information pursuant to the CCAA Plan and (ii) the terms of any new non-disclosure arrangement or agreement required between JTIM and a Province, Territory, Impacted Claimant, and their advisors shall be on terms and conditions substantially similar to the Existing NDAs.

Reserves

20. **THIS COURT ORDERS** that the establishment of the CCAA Plan Administration Reserve is hereby approved.

21. **THIS COURT ORDERS** that the establishment of the PCC Compensation Plan Reserve is hereby approved.

22. **THIS COURT ORDERS** that the CCAA Plan Administrator shall hold the CCAA Plan Administration Reserve in trust for those entitled to be paid CCAA Plan Administration Reserve Costs in accordance with the provisions of Section 15.1 of the CCAA Plan and the CCAA Plan Administrator Appointment Order.

23. **THIS COURT ORDERS** that the CCAA Plan Administrators shall hold the PCC Compensation Plan Reserve in trust for those entitled to be paid PCC Compensation Plan Reserve Costs, in accordance with the provisions of Section 15.2 of the CCAA Plan and the CCAA Plan Administrator Appointment Order.

24. **THIS COURT ORDERS** that the CCAA Plan Administrator is hereby authorized and directed to distribute funds from the CCAA Plan Administration Reserve and the PCC Compensation Plan Reserve in accordance with the provisions of the CCAA Plan and the CCAA Plan Administrator Appointment Order.

Claims Administrator and Administrative Coordinator

25. **THIS COURT ORDERS** that, in accordance with the terms of the CCAA Plan,

(a) Epiq Class Actions Services Canada Inc. is hereby appointed as the Claims Administrator; and

(b) Daniel Shapiro, K.C. is hereby appointed as the Administrative Coordinator.

and such parties shall have the powers, rights and obligations as set out in the CCAA Plan.

26. **THIS COURT ORDERS** that all Persons shall co-operate fully with the Monitor, the Claims Administrator and Administrative Coordinator in the exercise of their powers and discharge of their obligations and provide such parties with the assistance that is necessary to enable them to adequately carry out their functions.

27. **THIS COURT ORDERS** that the Claims Administrator shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

28. **THIS COURT ORDERS** that the Administrative Coordinator shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order.

Plan Implementation Date Certificate

29. **THIS COURT ORDERS** that the certificate substantially in the form attached hereto as **Schedule "B"** (the "**Plan Implementation Date Certificate**") is hereby approved and, upon the Monitor receiving confirmation that all conditions precedent to implementation of the CCAA Plan as set out in Section 19.3 of the CCAA Plan have been fulfilled or waived, the Monitor shall deliver the Plan Implementation Date Certificate to the Applicant certifying that the Plan Implementation Date has occurred.

30. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed as soon as practicable to serve on the Common Service List and post on the Monitor's Website the Plan Implementation Date Certificate. The Monitor shall file the Plan Implementation Date Certificate with this Court as soon as reasonably practicable following service thereof to the Common Service List.

EFFECT ON AFFECTED CLAIMS AND MISCELLANEOUS CLAIMS

31. **THIS COURT ORDERS** that each Affected Creditor and each Person holding a Released Claim or Miscellaneous Claim and all other Persons named or referred to in or subject to the CCAA Plan is hereby deemed to have consented to all of the provisions of the CCAA Plan, in its entirety, and each Affected Creditor is hereby deemed to have executed and delivered to the Applicant all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the CCAA Plan in its entirety.

32. **THIS COURT ORDERS** that any Person that did not file a Miscellaneous Claimant Proof of Claim in respect of a Miscellaneous Claim by the Miscellaneous Claims Bar Date in accordance with the Claims Procedure Order shall be and is hereby fully, finally, irrevocably and forever barred, estopped, stayed and enjoined from making any such Miscellaneous Claim and shall not be entitled to any consideration under the CCAA Plan, and such Person's Miscellaneous Claim shall be and is hereby fully, finally, irrevocably and forever barred and extinguished.

33. **THIS COURT ORDERS** that, from and after the Effective Time, each Putative Miscellaneous Claimant that filed a Miscellaneous Claimant Proof of Claim in respect of a Miscellaneous Claim by the Miscellaneous Claims Bar Date in accordance with the Claims

Procedure Order will be limited to recovering from the Miscellaneous Claims Fund in respect of such Miscellaneous Claim in accordance with the CCAA Plan, and such Putative Miscellaneous Claimant must comply with and shall be bound by the Miscellaneous Claims Procedure and will have no other right to seek any recovery, and shall not make any claim against or from any Released Party in respect of such Miscellaneous Claim.

34. **THIS COURT ORDERS** that, subject to Section 7.2 of the CCAA Plan, at the Effective Time, all parties to the Pending Litigation, including each plaintiff, class representative, class member and defendant therein, shall be deemed to have given all consents necessary to effect the termination and dismissal with prejudice and without costs of the Pending Litigation.

35. **THIS COURT ORDERS** that, as at the Effective Time, the *Blais* Judgment and the *Létourneau* Judgment and Quebec Class Actions are fully and finally satisfied, resolved, compromised and settled.

RELEASES

36. **THIS COURT ORDERS** that, as at the Effective Time, each of the Released Parties shall be, and shall be deemed to be, fully, finally, irrevocably and unconditionally released and forever discharged of and from any and all of the Released Claims that any of the Releasors has ever had, now has, or may hereafter have against the Released Parties or any of them (either individually or with any other Person), whether or not based on conduct continuing after the Effective Time and whether or not presently known to any of the Releasors. Nothing herein does release, or is intended to release, any Claim of a Released Party (including its Representatives) that has been, could have been or could be advanced, directly or indirectly, against any other

Released Party (including its Representatives) other than the Tobacco Companies and their respective Subsidiaries and Representatives (such other Released Parties, not including the Tobacco Companies and their respective Subsidiaries and Representatives, collectively the "**Other Released Parties**"), in respect of:

(a) the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products outside of Canada,

(b) the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions outside of Canada,

(c) the development of any disease related to the use of Tobacco Products outside of Canada,

(d) any representation or omission in respect of Tobacco Products outside of Canada, or

(e) conduct of the Other Released Parties not related to Canada,

provided that such Claim is not, in whole or in part, based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada (and it is agreed that to the extent such Claim is based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada, then that same extent of the Claim will be hereby released).

Claimant Contractual Release

37. **THIS COURT ORDERS AND DIRECTS** each of the Applicant and each of the Claimants, or an authorized Person on their behalf, to execute and deliver the Claimant Contractual

Release, in favour of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator, the CRO and the Administrative Coordinator, and their respective Representatives, which Claimant Contractual Release shall take effect as at the Effective Time. From and after the Effective Time, the Claimant Contractual Release will be binding on and enure to the benefit of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator, the CRO and the Administrative Coordinator and their respective Representatives and the execution and delivery of the Claimant Contractual Release, by or on behalf of each Claimant and the affirmative vote in respect of the CCAA Plan, shall be evidence of the consent of the Claimant to the treatment of its Claims for the purposes of Section 5.1(2) and Section 19(2) of the CCAA to the extent they apply.

Releases in Favour of the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the CRO

38. **THIS COURT ORDERS** that, as at the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, are hereby deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Monitors, the CRO, the CCAA Plan Administrators and the Court-Appointed Mediator, and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known, arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA

Proceedings, including: (i) any Claim that has been barred or extinguished pursuant to the terms of the Claims Procedure Order and/or the terms of the CCAA Plan; (ii) the CCAA Proceedings; (iii) the Chapter 15 Proceedings; (iv) in respect of the Monitors or the CCAA Plan Administrators and their legal counsel and advisors, their actions in connection with the CCAA Proceedings or the Chapter 15 Proceedings; (v) in respect of the CRO, the actions of the CRO in connection with the CCAA Proceedings or the Chapter 15 Proceedings; (vi) in respect of the Court-Appointed Mediator, his actions as an officer of the CCAA Court carrying out his mandate as a neutral third party to mediate a global settlement in the Tobacco Companies' CCAA Proceedings; (vii) the business and affairs of the Tobacco Companies whenever or however conducted; (viii) the administration and management of the Tobacco Companies whenever or however conducted; (ix) the allocation of the Global Settlement Amount and any distributions, payments or disbursements of all or any portion of the Global Settlement Amount, and/or (x) any matter or transaction involving any of the Tobacco Companies occurring in or in connection with the CCAA Proceedings or the Chapter 15 Proceedings, if applicable, including the CCAA Plans, the development thereof, and any and all actions, steps or transactions taken by the Court-Appointed Mediator, the CRO or the Monitors, as applicable, to implement the CCAA Plans, including in their capacity as CCAA Plan Administrators and in the CRO's capacity as the Foreign Representative in the Chapter 15 Proceedings, and in each case, all Claims arising out of such aforesaid actions or omissions shall be forever waived and released (other than in the case of the Monitors, the right to enforce the Monitors' obligations under the CCAA Plans or any related document), all to the fullest extent permitted by Applicable Law.

39. **THIS COURT ORDERS** that nothing in paragraph 38 shall derogate from the protections afforded to the Court-Appointed Mediator, the Monitors or the CCAA Plan Administrators as

officers of the CCAA Court, or in the case of the CRO, as the Foreign Representative in the Chapter 15 Proceedings, and by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings, if applicable.

40. **THIS COURT ORDERS** that the Monitors, CCAA Plan Administrators and Court-Appointed Mediator and their respective Affiliates, shareholders, Affiliates' shareholders, employees, heirs, successors, assigns, advisors, legal counsel, Representatives, consultants or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document, the Mediation or the CCAA Proceedings.

41. **THIS COURT ORDERS AND DECLARES** that any payments or deliveries under the CCAA Plan or this Sanction Order made or assisted by the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not constitute a "distribution" and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not constitute a "legal representative" or "representative" of the Applicant or an "other person" for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), section 22 of the *Retail Sales Tax Act* (Ontario), section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the "**Statutes**"), and none of the Monitors, CCAA Plan Administrators and Court-Appointed Mediator in making any such payments or deliveries of funds or assets in relation to the CCAA Plan is "distributing", nor shall it be considered to have "distributed", such funds or

assets for the purposes of the Statutes, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not incur any liability under the Statutes for making any payments or deliveries under the CCAA Plan or failing to withhold amounts, ordered or permitted hereunder, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not have any liability for any of the Applicant's tax liabilities regardless of how or when such liabilities may have arisen.

Releases in Favour of the Administrative Coordinator

42. **THIS COURT ORDERS** that, as at the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, are hereby deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Administrative Coordinator and his Representatives from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known to the Released Parties, Releasors, Affected Creditors and Unaffected Creditors arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) the CCAA Proceedings; (ii) the Chapter 15 Proceedings, if applicable; (iii) the development of the PCC Compensation Plan and the development of the Quebec Administration Plan; and (iv) the actions of the Administrative Coordinator in connection with the administration of the PCC Compensation Plan and the administration of the Quebec Administration Plan, and in each case, all Claims arising

out of such aforesaid actions or omissions above shall be forever waived and released to the fullest extent permitted by Applicable Law.

43. **THIS COURT ORDERS** that nothing in paragraph 42 hereof shall derogate from the protections afforded to the Administrative Coordinator by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings.

44. **THIS COURT ORDERS** that none of the Administrative Coordinator or his heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document, the Mediation or the CCAA Proceedings.

Indemnity in Favour of the Monitors, CCAA Plan Administrators, the CRO, the Court-Appointed Mediator and the Administrative Coordinator

45. **THIS COURT ORDERS** that the Applicant shall indemnify and save harmless the Court-Appointed Mediator, the CRO, the CCAA Plan Administrators, the Monitors (including in their capacity as Foreign Representative (as applicable)), and the Administrative Coordinator and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents (collectively, the "**Indemnified Parties**"), from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of each

Indemnified Party's respective activities or duties in any way in connection with the CCAA Proceedings and the Chapter 15 Proceedings, including for the avoidance of doubt: (i) the actions of the CRO, the Court-Appointed Mediator, the Monitors, the CCAA Plan Administrators and the Administrative Coordinator and their respective legal counsel and advisors in connection with the CCAA Proceedings and the Chapter 15 Proceedings, (ii) the business and affairs of the Applicant whenever or however conducted, and (iii) any matter or transaction involving the Tobacco Companies occurring in or in connection with the CCAA Proceedings and the Chapter 15 Proceedings, the CCAA Plans, or the development thereof (other than enforcement of Indemnified Parties' obligations under the CCAA Plan and the Definitive Documents). To the extent any Indemnified Party is not otherwise compensated by the applicable Applicant(s) such Indemnified Party may resort to their respective CCAA Plan Administration Reserve for compensation.

46. **THIS COURT ORDERS** that the indemnity in paragraph 45 hereof shall survive the resignation or removal of the Indemnified Parties from any role, capacity, engagement, office or position relevant to its activities or duties in connection with the CCAA Plan.

Injunctions

47. **THIS COURT ORDERS** that, as at the Effective Time, subject to the right of the Affected Creditors to receive distributions and exercise their rights pursuant to the CCAA Plan or subject to obtaining the written consent of the applicable parties or leave of the Court as contemplated in Section 18.1.11(b)(iii) of the CCAA Plan, all Persons (including Putative Miscellaneous Claimants) are hereby permanently and forever barred, estopped, stayed and enjoined from:

(a) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties, the CRO, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives with respect to any and all Affected Claims and Released Claims;

(b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties, the CRO, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, or their respective property with respect to any and all Affected Claims and Released Claims;

(c) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to an Affected Claim or a Released Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties, the CRO, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, unless such Claim of such other Person is itself an Affected Claim or a Released Claim;

(d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties, the CRO, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, their respective Representatives or any of their respective property with respect to any and all Affected Claims and Released Claims, except for the exclusions in Article 18, Section 18.1.10 of the CCAA Plan in relation to obligations arising from the Definitive Documents; and

(e) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Released Claims.

48. **THIS COURT ORDERS** that, notwithstanding anything in the foregoing paragraphs 34 to 45, the Released Parties are not released from the due performance of any of their respective obligations arising from the Definitive Documents and that nothing in the Release shall prevent or restrict any of the Releasors or the CCAA Plan Administrators from pursuing any legal remedies against any of the Released Parties for non-performance of their obligations pursuant to the Definitive Documents, including the covenants of each Tobacco Company, its Parent and the relevant Affiliates within its Tobacco Company Group.

49. **THIS COURT ORDERS** that, as at the Effective Time, the releases and injunctions set out in paragraphs 36 to 47 herein, as applicable, shall be final and binding upon each of the Releasors, Released Parties, Affected Creditors and Unaffected Creditors (except to the extent of their Unaffected Claims) as applicable, including any Claims resulting, directly or indirectly, from the consequences and effects relating to the acceptance of the CCAA Plan, the sanction thereof by the CCAA Court, the recognition thereof by the US Bankruptcy Court, or its implementation.

COURT-APPOINTED MEDIATOR AND MEDIATION

50. **THIS COURT ORDERS** that, following the granting of the Sanction Order, the Court-Appointed Mediator is hereby authorized and empowered to continue to provide services with respect to the implementation of the CCAA Plan and perform such other functions as may be requested by the Monitors, the CCAA Plan Administrators or the Court or any other Party at the discretion of the Court-Appointed Mediator (the "**Court-Appointed Mediator's Ongoing Services**").

51. **THIS COURT ORDERS** that in the event that the Court-Appointed Mediator provides Court-Appointed Mediator's Ongoing Services, the Court-Appointed Mediator shall:

(a) have the benefit of all the protections given to him by the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, any Orders in these CCAA Proceedings, including the Sanction Order, the CCAA Plan and as an officer of the Court; and

(b) incur no liability in connection with any Court-Appointed Mediator's Ongoing Services, and shall have the immunity of a Judge of a Superior Court in Canada.

52. **THIS COURT ORDERS** that the protections afforded to the Court-Appointed Mediator and his heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents pursuant to the terms of the Initial Order and the other Orders made in these CCAA Proceedings, as applicable, shall not expire or terminate and, subject to the terms hereof, shall remain effective and in full force and effect.

PLAN COMPLETION

53. **THIS COURT ORDERS** that the certificate substantially in the form attached hereto as **Schedule "C"** (the "**Certificate of Plan Completion**") is hereby approved and, upon completion by Deloitte of its duties as the Monitor and the CCAA Plan Administrator in respect of the Applicant pursuant to the CCAA and any Order of the CCAA Court in this CCAA Proceeding or the CCAA Plan, Deloitte may file with the CCAA Court the Certificate of Plan Completion stating that all of its duties in respect of the Applicant pursuant to the CCAA, the CCAA Plan and any Orders of the CCAA Court, have been completed and thereupon, (a) Deloitte shall be deemed to be discharged from its duties as the Monitor and as the CCAA Plan Administrator and released of all claims relating to its activities as the Monitor and as the CCAA Plan Administrator and (b) this CCAA Proceeding shall terminate.

EXTENSION OF STAY PERIOD

54. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order) be and is hereby extended until the Effective Time.

CCAA ORDERS

55. **THIS COURT ORDERS** that, other than as expressly set out herein, the provisions of the Initial Order, including the Stay Period, the Endorsement of Justice McEwen regarding interim suspension of Intercompany Royalty and Interest Payments dated March 19, 2019, and the Order of Justice McEwen regarding professional fee disclosure dated May 14, 2019 shall terminate at the Effective Time except with respect to the protections granted in the Initial Order in favour of the Monitor or the Court-Appointed Mediator and their Representatives. All other Orders of the

Court made in this CCAA Proceeding shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by or are inconsistent with this Sanction Order or any further Order of this Court in this CCAA Proceeding.

TERMINATION OF CCAA CHARGES

56. **THIS COURT ORDERS** that, subject to the occurrence of the Effective Time:

(a) the Administration Charge and the Court-Appointed Mediator Charge (each as provided for in the Initial Order) shall be terminated, discharged, expunged and released, effective upon the later of: (i) the payment of all amounts on account of outstanding fees and expenses owing to the beneficiaries of the Administration Charge and Court-Appointed Mediator Charge up to the Plan Implementation Date; (ii) Court approval of the fees and expenses of the Monitor and its counsel up to the Plan Implementation Date; and (iii) funding of the CCAA Plan Administration Reserve; and

(b) each of the Sales and Excise Tax Charge and the Directors' Charge will be terminated, discharged, expunged and released upon receipt by JTIM of an acknowledgement of payment in full and in the appropriate currency of the claims secured thereby up to the Plan Implementation Date.

FOREIGN REPRESENTATIVE

57. **THIS COURT ORDERS** that the CRO is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the "**Foreign Representative")** in

respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

58. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized, but not required, to apply for foreign recognition and approval of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

NOTICE OF THE SANCTION ORDER

59. **THIS COURT ORDERS** that, as soon as practicable after the granting of this Sanction Order, the Monitor shall cause a copy of this Sanction Order to be posted on the Monitor's Website and shall serve a copy on the parties on the Common Service List. From and after the Effective Time, any notices, motions or documents which may be filed with the Court need only be served on the Applicant, Deloitte (in its capacity as the Monitor and the CCAA Plan Administrator), the parties on the Common Service List and such Persons who deliver a Notice of Appearance to the Applicant and Deloitte (in its capacity as the Monitor and the CCAA Plan Administrator), and file it with the Court, after the Effective Time.

60. **THIS COURT ORDERS** that the measures set out in the preceding paragraph 59 shall constitute good and sufficient service and notice of this Sanction Order on all Persons who may be entitled to receive notice thereof or who may have an interest in this CCAA Proceeding, and no other form of notice or service need be made on such Persons and no other document or material need be served on such Persons in respect of this CCAA Proceeding.

GENERAL PROVISIONS

61. **THIS COURT ORDERS AND DECLARES** that notwithstanding: (i) the pendency of this CCAA Proceeding or the Chapter 15 Proceedings; (ii) any applications for a bankruptcy, receivership or other order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), the CCAA, the US Bankruptcy Code, or otherwise in respect of the Applicant and any bankruptcy, receivership or other order issued pursuant to any such applications; and (iii) any assignment in bankruptcy made or deemed to be made in respect of the Applicant, the transactions contemplated by the CCAA Plan will be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Applicant or its assets and shall not be void or voidable by creditors of the Applicant, nor shall the CCAA Plan, or the payments and distributions contemplated pursuant thereto constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA, CCAA or any other applicable federal or provincial legislation, nor will the CCAA Plan constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

62. **THIS COURT ORDERS** that in the event of a conflict between (i) this Sanction Order, (ii) the CCAA Plan Administrator Appointment Order, (iii) the CCAA Plan, and (iv) the terms of any agreement existing between any Person and the Applicant as at the Plan Implementation Date, the terms of the Sanction Order shall govern, subject to any subsequent Order of this Court.

63. **THIS COURT ORDERS** that, notwithstanding any other provision of this Sanction Order, the Applicant, the Court-Appointed Mediator or Deloitte, in its capacity as the Monitor or

the CCAA Plan Administrator, may apply to the CCAA Court for advice and direction in respect of any matters arising from or in relation to the CCAA Plan or this CCAA Proceeding.

64. **THIS COURT ORDERS** that this Sanction Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

65. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, including but not limited to the Courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Sanction Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Sanction Order and the CCAA Plan. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Sanction Order and the CCAA Plan or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Sanction Order and the CCAA Plan.

66. **THIS COURT ORDERS** that the Applicant and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order, and for the assistance in carrying out the terms of this Order and/or to confirm the CCAA Plan and the Sanction Order as binding and effective in any appropriate foreign jurisdiction.

67. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

Chief Justice Morawetz

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	THURSDAY, THE 6TH
	)	
JUSTICE MORAWETZ	)	DAY OF MARCH, 2025

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 **IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED**

Applicants

SANCTION ORDER

THIS MOTION, made by FTI Consulting Canada Inc. ("**FTI**") in its capacity as court-appointed Monitor of the Applicant (the "**Monitor**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order to, among other things, approve and sanction the third amended and restated Court-Appointed Mediator's and Monitor's CCAA Plan of Compromise and Arrangement in respect of the Applicant dated February 27, 2025 (the "**CCAA Plan**"), attached hereto as **Schedule "A"**.

ON READING the Motion Record of the Monitor, the Twenty-Fifth Report of the Monitor dated January 15, 2025, the Twenty-Eighth Report of the Monitor dated February 27, 2025, the materials filed by those other parties listed on the Participant Information Form, and upon hearing the submissions of counsel to the Honourable Warren K. Winkler K.C. (the "**Court-Appointed Mediator**"), counsel to the Monitor, counsel to the Applicant, and those other parties listed on the Participant Information Form, no one appearing for any other person on the Common Service

List, although properly served with the Monitor's Motion Record dated January 15, 2025 (the "**Motion Record**"), as appears from the Lawyer's Certificates of Service of Anisha Visvanatha, certified January 15, 2025 and February 27, 2025, respectively;

INTERPRETATION

1. **THIS COURT ORDERS** that certain capitalized terms in this Sanction Order shall have the following meanings, which correspond to the defined terms in the CCAA Plan, and any other capitalized terms in this Sanction Order shall have the meanings ascribed to them in the CCAA Plan:

a. **"Affected Claim"** means any Claim, other than an Unaffected Claim, against Imperial. For greater certainty, all Tobacco Claims, including the Provincial HCCR Claims, Territorial HCCR Claims, QCAP Claims, PCC Claims, *Knight* Claims, Tobacco Producers Claims and Miscellaneous Claims are Affected Claims.

b. **"Affected Creditor"** means a creditor who holds an Affected Claim.

c. **"Claimant Contractual Release"** means the release in the form attached to the CCAA Plan as Schedule "T" which the Claimants shall provide to the Released Parties that will fully, finally, irrevocably and unconditionally release and forever discharge the Released Parties of and from the Claimants' respective Released Claims, provided that such Claimant Contractual Release shall not release any of the Non-Released Claims.

d. **"Claims"** means any and all manner of requests, demands, complaints, claims (including claims for contribution or indemnity), rights, 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, whether asserted or unasserted, 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 or civil law, in equity, or under statute, and "**Claim**" means any one of them.

e. **"Director"** means any Person who, as at the Effective Time, is a former or present director or officer of Imperial or any other Person of a similar position or who by Applicable Law is deemed to be or is treated similarly to a director or officer of Imperial or who currently manages or supervises the management of the business and affairs of Imperial or did so in the past.

f. **"Effective Time"** means such time on the Plan Implementation Date as the Court-Appointed Mediator and the Monitor may determine and designate.

g. **"Global Settlement Amount"** means the amount of $32.5 billion contemplated under the CCAA Plan.

h. **"Initial Order"** means the initial order commencing the CCAA Proceeding of Imperial, as amended and restated from time to time.

i. **"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 Plan,

the Sanction Order and the other Definitive Documents are to be implemented, as evidenced by the Monitor's Plan Implementation Date Certificate to be delivered to Imperial and filed with the CCAA Court.

j. **"Released Claims"** means, collectively, any and all of the following Claims, excluding Unaffected Claims:

(a) any Tobacco Claims; and

(b) any Claims:

(i) in respect of the assets, obligations, business or affairs of the Released Parties in Canada or, in the case of Imperial, anywhere else in the world, relating to Tobacco Products, which are based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter);

(ii) in respect of the CCAA Proceedings and the Chapter 15 Proceedings up to the Effective Time, provided that such Released Party is not determined by (A) a final order of the CCAA Court to have committed fraud in the CCAA Proceedings or (B) a final order of the US Bankruptcy Court to have committed fraud in the Chapter 15 Proceedings;

(iii) existing at or prior to the Effective Time that have been advanced, that could have been advanced or could be advanced in the CCAA Proceeding; and

(iv) released as against the Monitors, CCAA Plan Administrators, Foreign Representative, Court-Appointed Mediator and

Administrative Coordinator pursuant to Article 18, Sections 18.1.4, 18.1.5 and 18.1.6 of the CCAA Plan.

For greater certainty, Released Claims include all Tobacco Claims in respect of fraud, misrepresentation or omission that have been or could have been asserted in any proceeding initiated prior to the Effective Time, including all Claims released by the Release and the Claimant Contractual Release.

k. **"Released Parties"**, collectively, means:

(a) ITCAN,

(b) ITCO,

(c) RBH,

(d) JTIM,

(e) British American Tobacco p.l.c.,

(f) Philip Morris International Inc.,

(g) JT International Holding B.V.,

(h) the ITCAN Subsidiaries,

(i) B.A.T. Investment Finance p.l.c.,

(j) B.A.T Industries p.l.c.,

(k) British American Tobacco (Investments) Limited,

(l) Carreras Rothmans Limited,

(m) Philip Morris U.S.A. Inc.,

(n) Philip Morris Incorporated,

(o) Philip Morris Global Brands Inc.,

(p) Philip Morris S.A.,

(q) Rothmans Inc.,

(r) Ryesekks p.l.c.,

(s) Altria Group, Inc.,

(t) R.J. Reynolds Tobacco Company,

(u) R.J. Reynolds Tobacco International Inc.,

(v) RJR Nabisco, Inc.,

(w) JT International SA,

(x) JT Canada LLC Inc.,

(y) Japan Tobacco Inc.,

(z) JTIM TM,

(aa) Canadian Tobacco Manufacturers' Council, and

(bb) every other current or former Affiliate of any of the companies listed in subparagraphs (a) to (z) herein, and each of their respective indemnitees,

and "**Released Party**" means any of them. Each Released Party includes their respective Representatives.

l. **"Releasors"**, collectively, means:

(a) the Provinces and Territories,

(b) the Quebec Class Action Plaintiffs,

(c) the Pan-Canadian Claimants,

(d) the Knight Class Action Plaintiffs,

(e) the Tobacco Producers, and

(f) every other Person having an Affected Claim or a Released Claim,

and "**Releasor**" means any one of them. "**Releasors**" and "**Releasor**" shall include their respective Representatives.

m. **"Tobacco Claim"** means any Claim of any Person against or in respect of a Tobacco Company and/or any Director thereof, or any member of its Tobacco Company Group and/or any Director thereof, that has been advanced (including,

without limitation, in any outstanding or pending litigation), that could have been advanced or that could be advanced, and whether such Claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced by a Government, or an agency, insurer, employer or otherwise, under or in connection with Applicable Law, or under any current or future statute to recover damages or any other remedy or costs in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products, the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions, the development of any disease related to the use of Tobacco Products, or any representation or omission in respect of Tobacco Products, including any misrepresentations, breach of duty or fraud in respect thereof by any member of the Tobacco Company Group or its Representatives in Canada or, in the case of the Tobacco Company, anywhere else in the world, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) and including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim. For greater certainty, Tobacco Claim includes:

(a) any Provincial HCCR Claim;

(b) any Territorial HCCR Claim;

(c) any QCAP Claim;

(d) any PCC Claim;

(e) any *Knight* Claim; and

(f) any Tobacco Producers Claim.

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

o. **"Unaffected Creditor"** means a Person who has an Unaffected Claim.

2. **THIS COURT ORDERS** that all references to the word "including" or "includes" shall mean "including without limitation" or "includes without limitation" as the case may be.

3. **THIS COURT ORDERS** that, unless the context otherwise requires, words importing the singular shall include the plural and *vice versa*, and words importing any gender shall include all genders.

4. **THIS COURT ORDERS** that, unless otherwise specified, all references to currency are in Canadian dollars.

NOTICE AND CONDUCT OF CLAIMS PROCEDURE AND MEETING

5. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service, and/or delivery of the CCAA Plan, the Claims Procedure Order, the Claims Package (as defined in the Claims Procedure Order) and the Meeting Materials (as defined in the Meeting Order dated October 31, 2024 (the "**Meeting Order**")) to all Persons upon which notice, service, and/or delivery were required.

6. **THIS COURT ORDERS AND DECLARES** that the Meeting was duly called, convened, held, and conducted on December 12, 2024 and complied with the Meeting Order, the CCAA and all other Orders of the Court in this CCAA Proceeding.

NOTICE AND CONDUCT OF SANCTION HEARING

7. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service, and/or delivery of the Omnibus Sanction Hearing Notice, the form of Sanction Hearing Objection Notice and Sanction Protocol Order dated December 23, 2024 (the "**Sanction Protocol Order**") to all Persons upon which notice, service, and/or delivery were required.

8. **THIS COURT ORDERS AND DECLARES** that the Sanction Hearing complied with the Sanction Protocol Order, the CCAA and all other Orders of the Court in this CCAA Proceeding, and:

(a) the Sanction Hearing was open to all of the Affected Creditors and all other Persons, including Putative Miscellaneous Claimants, with an interest in Imperial, and that such Affected Creditors and other Persons were permitted to be heard at the Sanction Hearing; and

(b) all of the Affected Creditors and all other Persons on the Common Service List were given adequate notice thereof.

SANCTION OF THE CCAA PLAN

9. **THIS COURT ORDERS AND DECLARES** that:

(a) the CCAA Plan has been approved by the Required Majority of the Affected Creditor Class in compliance with the Meeting Order and the CCAA Plan and in accordance with the CCAA;

(b) the Applicant, the Court-Appointed Mediator, the Monitor and their Representatives have complied with the provisions of the CCAA and the Orders of the Court made in this CCAA Proceeding;

(c) the activities and conduct of the Directors during this CCAA Proceeding and the Chapter 15 Proceedings be and are hereby ratified and approved;

(d) the activities and conduct of the Court-Appointed Mediator, the Monitor and their Representatives in this CCAA Proceeding including, without limitation, in relation to conducting and administering the Mediation, be and are hereby ratified and approved, and that the Court-Appointed Mediator and the Monitor have satisfied all of their obligations up to and including the date of this Sanction Order;

(e) the Applicant, the Court-Appointed Mediator and Monitor and their Representatives have acted, and continue to act, in good faith and with due diligence, and have not done or purported to do anything, nor does the CCAA Plan do or purport to do anything, that is not authorized by the CCAA or the Orders of the Court in this CCAA Proceeding; and

(f) the CCAA Plan and all of the matters and transactions contemplated thereby are fair and reasonable.

10. **THIS COURT ORDERS** that the CCAA Plan, its terms and conditions, including all associated steps, compromises, transactions, arrangements, agreements, releases, injunctions, and reorganizations effected thereby (including the appointment of FTI as the CCAA Plan Administrator pursuant to the terms of the CCAA Plan Administrator Appointment Order) are hereby sanctioned and approved pursuant to Section 6 of the CCAA.

11. **THIS COURT ORDERS** that, as at the Effective Time, the CCAA Plan and all associated steps, compromises, arrangements, releases, injunctions, transactions and reorganizations effected thereby will be binding and effective upon and with respect to the Applicant, all the Affected Creditors, the Released Parties and all other Persons named or referred to in, or subject to, the CCAA Plan or the Sanction Order.

12. **THIS COURT ORDERS** that any omission in this Order to refer to a specific provision of the CCAA Plan shall not diminish or impair the effectiveness of such provision, it being the intent of the CCAA Court that the CCAA Plan be approved in its entirety. Notwithstanding and without limitation to the foregoing, certain administrative matters contemplated in the CCAA Plan that are not specifically addressed in this Sanction Order or the CCAA Plan Administrator Appointment Order, including, but not limited to, matters related to the Cy-Près Foundation as described in Section 9.4 of the CCAA Plan and the transfer of the Alternative Products Business to NewCo as described in Section 4.1 of the CCAA Plan shall be the subject of further Order(s) of the Court.

13. **THIS COURT ORDERS** that, without limitation to paragraphs 9 – 12 of this Sanction Order, the Quebec Administration Plan and the PCC Compensation Plan are hereby approved and all applicable Persons are authorized and directed to comply with and implement the Quebec Administration Plan and the PCC Compensation Plan.

14. **THIS COURT ORDERS** that, subject to the performance by the Applicant of its obligations under the CCAA Plan, all obligations, contracts, leases, agreements and other arrangements to which the Applicant is a party at the Effective Time and that have not been terminated or disclaimed pursuant to the applicable paragraph of the Initial Order and related provisions of the CCAA shall remain in full force and effect, and unamended as of the Effective Time, and no Person who is a party to any such obligation, contract, lease, agreement or other arrangement shall, at or following the Effective Time, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred at or prior to the Effective Time and is not continuing thereafter, or which is or continues to be suspended or waived under the CCAA Plan, that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of the Applicant);

(b) the insolvency of the Applicant or the fact that the Applicant sought or obtained relief under the CCAA or the US Bankruptcy Code;

(c) any compromises or arrangements effected pursuant to the CCAA Plan, or any action taken or transaction effected pursuant to the CCAA Plan; or

(d) the fact that the Applicant has sought or obtained relief or taken steps as part of this CCAA Proceeding or the Chapter 15 Proceedings.

PLAN IMPLEMENTATION

15. **THIS COURT ORDERS** that:

(a) each of the Applicant and the Monitor including in its capacity as the Foreign Representative in the Chapter 15 Proceedings, and their respective Representatives, is hereby authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to implement the CCAA Plan, in accordance with and subject to its respective terms and conditions, and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, payments, deliveries, allocations, instruments and agreements contemplated by, and subject to, the terms and conditions of the CCAA Plan;

(b) all distributions and payments under the CCAA Plan shall be free and clear of all claims, rights and interests of any Person, including, without limitation all the CCAA Charges;

(c) the Applicant, the Monitor and their respective Representatives, shall not incur any liability as a result of acting in accordance with the terms of the CCAA Plan and this Sanction Order;

(d) all conduct of the Monitor and the Monitor's Representatives in relation to Imperial is approved and all claims against them arising from or relating to the services provided to Imperial up to and including the date of the Sanction Order are barred; and

(e) the Monitor, the CCAA Plan Administrator and their respective Representatives shall be entitled to rely on the books, records or information of the Applicant and any information provided by the Applicant, without independent investigation, and shall incur no liability as a result of any errors or omissions in such books, records or information.

16. **THIS COURT ORDERS** that the restructuring steps as set out in Article 4 of the CCAA Plan (the "**Restructuring Steps**") including the transactions, arrangements, reorganizations, transfers, assignments, compromises, settlements, payments, discharges, injunctions and releases to be effected on the Plan Implementation Date in accordance with Section 4.2 of the CCAA Plan, are hereby authorized and approved, and the Restructuring Steps are, and shall be deemed, to occur and be effected in accordance with the terms of the CCAA Plan (and, to the extent applicable, in the sequence and at the times contemplated by the CCAA Plan), without any further act or formality.

17. **THIS COURT ORDERS** that, following the Effective Time, the Monitor, the Court-Appointed Mediator and their respective counsel shall continue to be entitled to receive payment of their respective fees and disbursements incurred in respect of the implementation of the CCAA Plan and this CCAA Proceeding, and the Applicant is hereby authorized and directed to make such payments on a bi-weekly basis and, in respect of the Court-Appointed Mediator and its counsel, their fees and disbursements shall be allocated equally among the Tobacco Companies.

18. **THIS COURT ORDERS** that, at the Effective Time, any obligations of the Applicant to provide financial reporting pursuant to any Order or agreement entered into in connection with the CCAA Proceeding shall cease and be replaced with the obligations set forth in Article 10, Section 10.1 to Section 10.10 of the CCAA Plan (provided that any reporting of non-public information will be subject to non-disclosure arrangements as set out in paragraph 19 below).

19. **THIS COURT ORDERS** that (i) the terms of any existing non-disclosure arrangement or agreement ("**Existing NDAs**") between Imperial and a Province, Territory, Impacted Claimant, and their advisors, shall continue to apply regarding the disclosure of financial reporting and any other non-public information pursuant to the CCAA Plan and (ii) the terms of any new non-disclosure arrangement or agreement required between Imperial and a Province, Territory, Impacted Claimant, and their advisors shall be on terms and conditions substantially similar to the Existing NDAs.

Reserves

20. **THIS COURT ORDERS** that the establishment of the CCAA Plan Administration Reserve is hereby approved.

21. **THIS COURT ORDERS** that the establishment of the PCC Compensation Plan Reserve is hereby approved.

22. **THIS COURT ORDERS** that the CCAA Plan Administrator shall hold the CCAA Plan Administration Reserve in trust for those entitled to be paid CCAA Plan Administration Reserve Costs in accordance with the provisions of Section 15.1 of the CCAA Plan and the CCAA Plan Administrator Appointment Order.

23. **THIS COURT ORDERS** that the CCAA Plan Administrator shall hold the PCC Compensation Plan Reserve in trust for those entitled to be paid PCC Compensation Plan Reserve Costs, in accordance with the provisions of Section 15.2 of the CCAA Plan and the CCAA Plan Administrator Appointment Order.

24. **THIS COURT ORDERS** that the CCAA Plan Administrator is hereby authorized and directed to distribute funds from the CCAA Plan Administration Reserve and the PCC Compensation Plan Reserve in accordance with the provisions of the CCAA Plan and the CCAA Plan Administrator Appointment Order.

Claims Administrator and Administrative Coordinator

25. **THIS COURT ORDERS** that, in accordance with the terms of the CCAA Plan,

(a) Epiq Class Actions Services Canada Inc. is hereby appointed as the Claims Administrator; and

(b) Daniel Shapiro, K.C. is hereby appointed as the Administrative Coordinator;

and such parties shall have the powers, rights and obligations as set out in the CCAA Plan.

26. **THIS COURT ORDERS** that all Persons shall co-operate fully with the Monitor, the Claims Administrator and Administrative Coordinator in the exercise of their powers and discharge of

their obligations and provide such parties with the assistance that is necessary to enable them to adequately carry out their functions.

27. **THIS COURT ORDERS** that the Claims Administrator, shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

28. **THIS COURT ORDERS** that the Administrative Coordinator, shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order.

Plan Implementation Date Certificate

29. **THIS COURT ORDERS** that the certificate substantially in the form attached hereto as **Schedule "B"** (the "**Plan Implementation Date Certificate**") is hereby approved and, upon the Monitor receiving confirmation that all conditions precedent to implementation of the CCAA Plan as set out in Section 19.3 of the CCAA Plan have been fulfilled or waived, the Monitor shall deliver the Plan Implementation Date Certificate to the Applicant certifying that the Plan Implementation Date has occurred.

30. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed as soon as practicable to serve on the Common Service List and post on the Monitor's Website the Plan Implementation Date Certificate. The Monitor shall file the Plan Implementation Date Certificate with this Court as soon as reasonably practicable following service thereof to the Common Service List.

EFFECT ON AFFECTED CLAIMS AND MISCELLANEOUS CLAIMS

31. **THIS COURT ORDERS** that each Affected Creditor and each Person holding a Released Claim or Miscellaneous Claim and all other Persons named or referred to in or subject to the

CCAA Plan is hereby deemed to have consented to all of the provisions of the CCAA Plan, in its entirety, and each Affected Creditor is hereby deemed to have executed and delivered to the Applicant all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the CCAA Plan in its entirety.

32. **THIS COURT ORDERS** that any Person that did not file a Miscellaneous Claimant Proof of Claim in respect of a Miscellaneous Claim by the Miscellaneous Claims Bar Date in accordance with the Claims Procedure Order shall be and is hereby fully, finally, irrevocably and forever barred, estopped, stayed and enjoined from making any such Miscellaneous Claim and shall not be entitled to any consideration under the CCAA Plan, and such Person's Miscellaneous Claim shall be and is hereby fully, finally, irrevocably and forever barred and extinguished.

33. **THIS COURT ORDERS** that, from and after the Effective Time, each Putative Miscellaneous Claimant that filed a Miscellaneous Claimant Proof of Claim in respect of a Miscellaneous Claim by the Miscellaneous Claims Bar Date in accordance with the Claims Procedure Order will be limited to recovering from the Miscellaneous Claims Fund in respect of such Miscellaneous Claim in accordance with the CCAA Plan, and such Putative Miscellaneous Claimant must comply with and shall be bound by the Miscellaneous Claims Procedure and will have no other right to seek any recovery, and shall not make any claim against or from any Released Party in respect of such Miscellaneous Claim.

34. **THIS COURT ORDERS** that, subject to Section 7.2 of the CCAA Plan, at the Effective Time, all parties to the Pending Litigation, including each plaintiff, class representative, class member and defendant therein, shall be deemed to have given all consents necessary to effect the termination and dismissal with prejudice and without costs of the Pending Litigation.

35. **THIS COURT ORDERS** that, as at the Effective Time, the *Blais* Judgment and the *Létourneau* Judgment and Quebec Class Actions are fully and finally satisfied, resolved, compromised and settled.

RELEASES

36. **THIS COURT ORDERS** that, as at the Effective Time, each of the Released Parties shall be, and shall be deemed to be, fully, finally, irrevocably and unconditionally released and forever discharged of and from any and all of the Released Claims that any of the Releasors has ever had, now has, or may hereafter have against the Released Parties or any of them (either individually or with any other Person), whether or not based on conduct continuing after the Effective Time and whether or not presently known to any of the Releasors. Nothing herein does release, or is intended to release, any Claim of a Released Party (including its Representatives) that has been, could have been or could be advanced, directly or indirectly, against any other Released Party (including its Representatives) other than the Tobacco Companies and their respective Subsidiaries and Representatives (such other Released Parties, not including the Tobacco Companies and their respective Subsidiaries and Representatives, collectively, the "**Other Released Parties**"), in respect of:

(a) the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products outside of Canada,

(b) the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions outside of Canada,

(c) the development of any disease related to the use of Tobacco Products outside of Canada,

(d) any representation or omission in respect of Tobacco Products outside of Canada, or

(e) conduct of the Other Released Parties not related to Canada;

provided that such Claim is not, in whole or in part, based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada (and it is agreed that to the extent such Claim is based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada, then that same extent of the Claim will be hereby released).

Claimant Contractual Release

37. **THIS COURT ORDERS AND DIRECTS** each of the Applicant and each of the Claimants, or an authorized Person on their behalf, to execute and deliver the Claimant Contractual Release, in favour of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, and their respective Representatives, which Claimant Contractual Release shall take effect as at the Effective Time. From and after the Effective Time, the Claimant Contractual Release will be binding on and enure to the benefit of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives and the execution and delivery of the Claimant Contractual Release, by or on behalf of each Claimant and the affirmative vote in respect of the CCAA Plan, shall be evidence of the consent of the Claimant to the treatment of its Claims for the purposes of Section 5.1(2) and Section 19(2) of the CCAA to the extent they apply.

Releases in Favour of the Monitors, the CCAA Plan Administrators, and the Court-Appointed Mediator

38. **THIS COURT ORDERS** that, as at the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, are hereby deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Monitors, the CCAA Plan Administrators and the Court-Appointed Mediator, and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known, arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) any Claim that has been barred or extinguished pursuant to the terms of the Claims Procedure Order and/or the terms of the CCAA Plan; (ii) the CCAA Proceedings; (iii) the Chapter 15 Proceedings; (iv) in respect of the Monitors or the CCAA Plan Administrators and their legal counsel and advisors, their actions in connection with the CCAA Proceedings or the Chapter 15 Proceedings; (v) in respect of the Court-Appointed Mediator, his actions as an officer of the CCAA Court carrying out his mandate as a neutral third party to mediate a global settlement in the Tobacco Companies' CCAA Proceedings; (vi) the business and affairs of the Tobacco Companies whenever or however conducted; (vii) the administration and management of the Tobacco Companies whenever or however conducted; (viii) the allocation of the Global Settlement Amount and any distributions, payments or disbursements of all or any portion of the Global Settlement Amount, and/or (ix) any matter or transaction involving any of the Tobacco Companies occurring in or in connection with the CCAA Proceedings or the Chapter 15 Proceedings, if applicable, including the CCAA Plans, the development thereof, and any and all actions, steps or transactions taken by the Court-Appointed Mediator or the Monitors, as applicable, to implement the CCAA Plans, including in their capacity as CCAA Plan Administrators and in FTI's capacity as the

Foreign Representative in the Chapter 15 Proceedings, and in each case, all Claims arising out of such aforesaid actions or omissions shall be forever waived and released (other than in the case of the Monitors, the right to enforce the Monitors' obligations under the CCAA Plans or any related document), all to the fullest extent permitted by Applicable Law.

39. **THIS COURT ORDERS** that nothing in paragraph 38 shall derogate from the protections afforded to the Court-Appointed Mediator, the Monitors or the CCAA Plan Administrators as officers of the CCAA Court, or in the case of FTI, as the Foreign Representative in the Chapter 15 Proceedings, and by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings, if applicable.

40. **THIS COURT ORDERS** that the Monitors, CCAA Plan Administrators and Court-Appointed Mediator and their respective Affiliates, shareholders, Affiliates' shareholders, employees, heirs, successors, assigns, advisors, legal counsel, Representatives, consultants or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document, the Mediation or the CCAA Proceedings.

41. **THIS COURT ORDERS AND DECLARES** that any payments or deliveries under the CCAA Plan or this Sanction Order made or assisted by the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not constitute a "distribution" and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not constitute a "legal representative" or "representative" of the Applicant or an "other person" for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), section 22 of the *Retail Sales Tax Act* (Ontario), section 107 of the

Corporations Tax Act (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the "**Statutes**"), and none of the Monitors, CCAA Plan Administrators and Court-Appointed Mediator in making any such payments or deliveries of funds or assets in relation to the CCAA Plan is "distributing", nor shall it be considered to have "distributed", such funds or assets for the purposes of the Statutes, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not incur any liability under the Statutes for making any payments or deliveries under the CCAA Plan or failing to withhold amounts, ordered or permitted hereunder, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not have any liability for any of the Applicant's tax liabilities regardless of how or when such liabilities may have arisen.

Releases in Favour of the Administrative Coordinator

42. **THIS COURT ORDERS** that, as at the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, are hereby deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Administrative Coordinator and his Representatives from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known to the Released Parties, Releasors, Affected Creditors and Unaffected Creditors arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) the CCAA Proceedings; (ii) the Chapter 15 Proceedings, if applicable; (iii) the development of the PCC Compensation Plan and the development of the Quebec Administration Plan; and (iv) the actions of the Administrative Coordinator in connection with the administration of the PCC Compensation Plan and the administration of the Quebec Administration Plan, and in each case, all Claims

arising out of such aforesaid actions or omissions above shall be forever waived and released to the fullest extent permitted by Applicable Law.

43. **THIS COURT ORDERS** that nothing in paragraph 42 hereof shall derogate from the protections afforded to the Administrative Coordinator by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings.

44. **THIS COURT ORDERS** that none of the Administrative Coordinator or his heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document, the Mediation or the CCAA Proceedings.

Indemnity in Favour of the Monitors, CCAA Plan Administrators, Foreign Representative, Court-Appointed Mediator and Administrative Coordinator

45. **THIS COURT ORDERS** that the Applicant shall indemnify and save harmless the Court-Appointed Mediator, the CCAA Plan Administrators, the Monitors (including in their capacity as Foreign Representative (as applicable)), and the Administrative Coordinator and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents (collectively, the "**Indemnified Parties**"), from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of each Indemnified Party's respective activities or duties in any way in connection with the CCAA Proceedings and the Chapter 15 Proceedings, including for the avoidance of doubt: (i) the actions of the Court-Appointed Mediator, the Monitors, the CCAA Plan Administrators and the Administrative

Coordinator and their respective legal counsel and advisors in connection with the CCAA Proceedings and the Chapter 15 Proceedings, (ii) the business and affairs of the Applicant whenever or however conducted, and (iii) any matter or transaction involving the Tobacco Companies occurring in or in connection with the CCAA Proceedings and the Chapter 15 Proceedings, the CCAA Plans, or the development thereof (other than enforcement of Indemnified Parties' obligations under the CCAA Plan and the Definitive Documents). To the extent any Indemnified Party is not otherwise compensated by the applicable Applicant(s) such Indemnified Party may resort to their respective CCAA Plan Administration Reserve for compensation.

46. **THIS COURT ORDERS** that the indemnity in paragraph 45 hereof shall survive the resignation or removal of the Indemnified Parties from any role, capacity, engagement, office or position relevant to its activities or duties in connection with the CCAA Plan.

Injunctions

47. **THIS COURT ORDERS** that, as at the Effective Time, subject to the right of the Affected Creditors to receive distributions and exercise their rights pursuant to the CCAA Plan or subject to obtaining the written consent of the applicable parties or leave of the Court as contemplated in Section 18.1.11(b)(iii) of the CCAA Plan, all Persons (including Putative Miscellaneous Claimants) are hereby permanently and forever barred, estopped, stayed and enjoined from:

(a) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives with respect to any and all Affected Claims and Released Claims;

(b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, or their respective property with respect to any and all Affected Claims and Released Claims;

(c) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to an Affected Claim or a Released Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, unless such Claim of such other Person is itself an Affected Claim or a Released Claim;

(d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, their respective Representatives or any of their respective property with respect to any and all Affected Claims and Released Claims, except for the exclusions in Article 18, Section 18.1.9 of the CCAA Plan in relation to obligations arising from the Definitive Documents; and

(e) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Released Claims.

48. **THIS COURT ORDERS** that, notwithstanding anything in the foregoing paragraphs 36 to 47, the Released Parties are not released from the due performance of any of their respective obligations arising from the Definitive Documents and nothing in the Release shall prevent or restrict any of the Releasors or the CCAA Plan Administrators from pursuing any legal remedies against any of the Released Parties for non-performance of their obligations pursuant to the Definitive Documents, including the covenants of each Tobacco Company, its Parent and the relevant Affiliates within its Tobacco Company Group.

49. **THIS COURT ORDERS** that, as at the Effective Time, the releases and injunctions set out in paragraphs 36 to 47 herein, as applicable, shall be final and binding upon each of the Releasors, Released Parties, Affected Creditors and Unaffected Creditors (except to the extent of their Unaffected Claims) as applicable, including any Claims resulting, directly or indirectly, from the consequences and effects relating to the acceptance of the CCAA Plan, the sanction thereof by the CCAA Court, the recognition thereof by the US Bankruptcy Court, or its implementation.

COURT-APPOINTED MEDIATOR AND MEDIATION

50. **THIS COURT ORDERS** that, following the granting of the Sanction Order, the Court-Appointed Mediator is hereby authorized and empowered to continue to provide services with respect to the implementation of the CCAA Plan and perform such other functions as may be requested by the Monitors, the CCAA Plan Administrators or the Court or any other Party at the discretion of the Court-Appointed Mediator (the "**Court-Appointed Mediator's Ongoing Services**").

51. **THIS COURT ORDERS** that in the event that the Court-Appointed Mediator provides Court-Appointed Mediator's Ongoing Services, the Court-Appointed Mediator shall:

(a) have the benefit of all the protections given to him by the CCAA, any other applicable legislation including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, any Orders in the CCAA Proceedings, including the Sanction Order, the CCAA Plan and as an officer of the Court; and

(b) incur no liability in connection with any Court-Appointed Mediator's Ongoing Services, and shall have the immunity of a Judge of a Superior Court in Canada.

52. **THIS COURT ORDERS** that the protections afforded to the Court-Appointed Mediator and his heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents pursuant to the terms of the Initial Order and the other Orders made in the CCAA Proceedings, as applicable, shall not expire or terminate and, subject to the terms hereof, shall remain effective and in full force and effect.

PLAN COMPLETION

53. **THIS COURT ORDERS** that the certificate substantially in the form attached hereto as **Schedule "C"** (the "**Certificate of Plan Completion**") is hereby approved and, upon completion by FTI of its duties as the Monitor and the CCAA Plan Administrator in respect of the Applicant pursuant to the CCAA and any Order of the CCAA Court in this CCAA Proceeding or the CCAA Plan, FTI may file with the CCAA Court the Certificate of Plan Completion stating that all of its duties in respect of the Applicant pursuant to the CCAA, the CCAA Plan and any Orders of the CCAA Court, have been completed and thereupon, (a) FTI shall be deemed to be discharged from its duties as the Monitor and as the CCAA Plan Administrator and released of all claims relating to its activities as the Monitor and as the CCAA Plan Administrator and (b) the CCAA Proceeding shall terminate.

EXTENSION OF STAY PERIOD

54. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order) be and is hereby extended until the Effective Time.

CCAA ORDERS

55. **THIS COURT ORDERS** that, other than as expressly set out herein, the provisions of the Initial Order, including the Stay Period, and the Order of Justice McEwen regarding professional fee disclosure dated May 14, 2019 shall terminate at the Effective Time except with respect to the protections granted in the Initial Order in favour of the Monitor or the Court-Appointed Mediator and their Representatives. All other Orders of the Court made in this CCAA Proceeding shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by or are inconsistent with this Sanction Order or any further Order of this Court in this CCAA Proceeding.

TERMINATION OF CCAA CHARGES

56. **THIS COURT ORDERS** that, subject to the occurrence of the Effective Time:

(a) the Administration Charge and the Court-Appointed Mediator Charge (each as provided for in the Initial Order) shall be terminated, discharged, expunged and released, effective upon the later of: (i) the payment of all amounts on account of outstanding fees and expenses owing to the beneficiaries of the Administration Charge and Court-Appointed Mediator Charge up to the Plan Implementation Date; (ii) Court approval of the fees and expenses of the Monitor and its counsel up to the Plan Implementation Date; and (iii) funding of the CCAA Plan Administration Reserve; and

(b) each of the Sales and Excise Tax Charge and the Directors' Charge will be terminated, discharged, expunged and released upon receipt by Imperial of an acknowledgement of payment in full and in the appropriate currency of the claims secured thereby up to the Plan Implementation Date.

NOTICE OF THE SANCTION ORDER

57. **THIS COURT ORDERS** that, as soon as practicable after the granting of this Sanction Order, the Monitor shall cause a copy of this Sanction Order to be posted on the Monitor's Website and shall serve a copy on the parties on the Common Service List. From and after the Effective Time, any notices, motions or documents which may be filed with the Court need only be served on the Applicant, FTI (in its capacity as the Monitor and the CCAA Plan Administrator), the parties on the Common Service List and such Persons who deliver a Notice of Appearance to the Applicant and FTI (in its capacity as the Monitor and the CCAA Plan Administrator), and file it with the Court, after the Effective Time.

58. **THIS COURT ORDERS** that the measures set out in the preceding paragraph 57 shall constitute good and sufficient service and notice of this Sanction Order on all Persons who may be entitled to receive notice thereof or who may have an interest in this CCAA Proceeding, and no other form of notice or service need be made on such Persons and no other document or material need be served on such Persons in respect of this CCAA Proceeding.

GENERAL PROVISIONS

59. **THIS COURT ORDERS AND DECLARES** that notwithstanding: (i) the pendency of this CCAA Proceeding; (ii) any applications for a bankruptcy, receivership or other order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), the CCAA, or otherwise in respect of the Applicant and any bankruptcy, receivership or other order issued

pursuant to any such applications; and (iii) any assignment in bankruptcy made or deemed to be made in respect of the Applicant, the transactions contemplated by the CCAA Plan will be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Applicant or its assets and shall not be void or voidable by creditors of the Applicant, nor shall the CCAA Plan, or the payments and distributions contemplated pursuant thereto constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA, CCAA or any other applicable federal or provincial legislation, nor will the CCAA Plan constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

60. **THIS COURT ORDERS** that in the event of a conflict between (i) this Sanction Order, (ii) the CCAA Plan Administrator Appointment Order, (iii) the CCAA Plan, and (iv) the terms of any agreement existing between any Person and the Applicant as at the Plan Implementation Date, the terms of the Sanction Order shall govern, subject to any subsequent Order of this Court.

61. **THIS COURT ORDERS** that, notwithstanding any other provision of this Sanction Order, the Applicant, the Court-Appointed Mediator or FTI, in its capacity as the Monitor or the CCAA Plan Administrator, may apply to the CCAA Court for advice and direction in respect of any matters arising from or in relation to the CCAA Plan or this CCAA Proceeding.

62. **THIS COURT ORDERS** that this Sanction Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

63. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, including but not limited to the Courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Sanction Order and to assist the Applicant, the Monitor and their

respective agents in carrying out the terms of this Sanction Order and the CCAA Plan. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Sanction Order and the CCAA Plan or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Sanction Order and the CCAA Plan.

64. **THIS COURT ORDERS** that the Applicant, the Monitor or the Foreign Representative shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for the assistance in carrying out the terms of this Order and/or to confirm the CCAA Plan and the Sanction Order as binding and effective in any appropriate foreign jurisdiction, including in the Chapter 15 Proceedings.

65. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

C.J.

Chief Justice G. B. Morawetz

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	THURSDAY, THE 6TH
	)	
JUSTICE MORAWETZ	)	DAY OF MARCH, 2025

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 **ROTHMANS, BENSON & HEDGES INC.**

SANCTION ORDER

THIS MOTION, made by Ernst & Young Inc. ("**EYI**") in its capacity as court-appointed Monitor of the Applicant (the "**Monitor**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order to, among other things, approve and sanction the third amended and restated Court-Appointed Mediator's and Monitor's CCAA Plan of Compromise and Arrangement in respect of the Applicant dated February 27, 2025 (the "**CCAA Plan**"), attached hereto as **Schedule "A"**.

ON READING the Motion Record of the Monitor, including the Twenty-Third Report of the Monitor dated January 15, 2025, and the Twenty-Sixth Report of the Monitor dated February 27, 2025, and the materials filed by those other parties listed on the Participant Information Form, and upon hearing the submissions of counsel to the Honourable Warren K. Winkler K.C. (the "**Court-Appointed Mediator**"), counsel to the Monitor, counsel to the Applicant, and those other parties listed on the Participant Information Form, no one appearing for any other person on the

Common Service List, although properly served with the Monitor's Motion Record dated January 15, 2025, as appears from the Affidavits of Service of Alec Hoy, sworn January 15, 2025 and February 27, 2025, respectively;

INTERPRETATION

1. **THIS COURT ORDERS** that certain capitalized terms in this Sanction Order shall have the following meanings, which correspond to the defined terms in the CCAA Plan, and any other capitalized terms in this Sanction Order shall have the meanings ascribed to them in the CCAA Plan:

a. **"Affected Claim"** means any Claim, other than an Unaffected Claim, against RBH. For greater certainty, all Tobacco Claims, including the Provincial HCCR Claims, Territorial HCCR Claims, QCAP Claims, PCC Claims, *Knight* Claims, Tobacco Producers Claims and Miscellaneous Claims are Affected Claims.

b. **"Affected Creditor"** means a creditor who holds an Affected Claim.

c. **"Claimant Contractual Release"** means the release in the form attached to the CCAA Plan as Schedule "W" which the Claimants shall provide to the Released Parties that will fully, finally, irrevocably and unconditionally release and forever discharge the Released Parties of and from the Claimants' respective Released Claims, provided that such Claimant Contractual Release shall not release any of the Non-Released Claims.

d. **"Claims"** means any and all manner of requests, demands, complaints, claims (including claims for contribution or indemnity), rights, 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, whether asserted or unasserted, 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 or civil law, in equity, or under statute, and "**Claim**" means any one of them.

e. **"Director"** means any Person who, as at the Effective Time, is a former or present director or officer of RBH or any other Person of a similar position or who by Applicable Law is deemed to be or is treated similarly to a director or officer of RBH or who currently manages or supervises the management of the business and affairs of RBH or did so in the past.

f. **"Effective Time"** means such time on the Plan Implementation Date as the Court-Appointed Mediator and the Monitor may determine and designate.

g. **"Global Settlement Amount"** means the amount of $32.5 billion contemplated under the CCAA Plan.

h. **"Initial Order"** means the initial order commencing the CCAA Proceeding of RBH, as amended and restated from time to time.

i. **"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 Plan, the Sanction Order and the other Definitive Documents are to be implemented, as evidenced by the Monitor's Plan Implementation Date Certificate to be delivered to RBH and filed with the CCAA Court.

j. **"Released Claims"** means, collectively, any and all of the following Claims, excluding Unaffected Claims:

(a) any Tobacco Claims; and

(b) any Claims:

(i) in respect of the assets, obligations, business or affairs of the Released Parties in Canada or, in the case of RBH, anywhere else in the world, relating to Tobacco Products, which are based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact, matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter);

(ii) in respect of the CCAA Proceedings up to the Effective Time, provided that such Released Party is not determined by a final order of the CCAA Court to have committed fraud in the CCAA Proceedings;

(iii) existing at or prior to the Effective Time that have been advanced, that could have been advanced or could be advanced in the CCAA

Proceeding; and

(iv) released as against the Monitors, CCAA Plan Administrators, Foreign Representative, Court-Appointed Mediator and Administrative Coordinator pursuant to Article 18, Sections 18.1.4, 18.1.5 and 18.1.6 of the CCAA Plan.

For greater certainty, Released Claims include all Tobacco Claims in respect of fraud, misrepresentation or omission that have been or could have been asserted in any proceeding initiated prior to the Effective Time, including all Claims released by the Release and the Claimant Contractual Release.

k. **"Released Parties"**, collectively, means:

(a) ITCAN,

(b) ITCO,

(c) RBH,

(d) JTIM,

(e) British American Tobacco p.l.c.,

(f) Philip Morris International Inc.,

(g) JT International Holding B.V.,

(h) the ITCAN Subsidiaries,

(i) B.A.T. Investment Finance p.l.c.,

(j) B.A.T Industries p.l.c.,

(k) British American Tobacco (Investments) Limited,

(l) Carreras Rothmans Limited,

(m) Philip Morris U.S.A. Inc.,

(n) Philip Morris Incorporated,

(o) Philip Morris Global Brands Inc.,

(p) Philip Morris S.A.,

(q) Rothmans Inc.,

(r) Ryesekks p.l.c.,

(s) Altria Group, Inc.,

(t) R.J. Reynolds Tobacco Company,

(u) R.J. Reynolds Tobacco International Inc.,

(v) RJR Nabisco, Inc.,

(w) JT International SA,

(x) JT Canada LLC Inc.,

(y) Japan Tobacco Inc.,

(z) JTIM TM,

(aa) Canadian Tobacco Manufacturers' Council, and

(bb) every other current or former Affiliate of any of the companies listed in subparagraphs (a) to (z) herein, and each of their respective indemnitees,

and "**Released Party**" means any of them. Each Released Party includes their respective Representatives.

l. **"Releasors"**, collectively, means:

(a) the Provinces and Territories,

(b) the Quebec Class Action Plaintiffs,

(c) the Pan-Canadian Claimants,

(d) the Knight Class Action Plaintiffs,

(e) the Tobacco Producers, and

(f) every other Person having an Affected Claim or a Released Claim,

and "**Releasor**" means any one of them. "**Releasors**" and "**Releasor**" shall include their respective Representatives.

m. **"Tobacco Claim"** means any Claim of any Person against or in respect of a Tobacco Company and/or any Director thereof, or any member of its Tobacco Company Group and/or any Director thereof, that has been advanced (including, without limitation, in any outstanding or pending litigation), that could have been advanced or that could be advanced, and whether such Claim is on such Person's own account, on behalf of another Person, as a dependent of another Person, or on behalf of a certified or proposed class, or made or advanced by a Government, or an agency, insurer, employer or otherwise, under or in connection with Applicable Law, or under any current or future statute to recover damages or any other remedy or costs in respect of the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products, the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions, the development of any disease related to the use of Tobacco Products, or any representation or omission in respect of Tobacco Products, including any misrepresentations, breach of duty or fraud in respect thereof by any member of the Tobacco Company Group or its Representatives in Canada or, in the case of the Tobacco Company, anywhere else in the world, in each case based on, arising from or in respect of any conduct, act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, dealing, fact,

matter or occurrence existing or taking place at or prior to the Effective Time (whether or not continuing thereafter) and including any such Claim that is a Section 5.1(2) Claim or Section 19(2) Claim. For greater certainty, Tobacco Claim includes:

(a) any Provincial HCCR Claim;

(b) any Territorial HCCR Claim;

(c) any QCAP Claim;

(d) any PCC Claim;

(e) any Knight Claim; and

(f) any Tobacco Producers Claim.

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

o. **"Unaffected Creditor"** means a Person who has an Unaffected Claim.

2. **THIS COURT ORDERS** that all references to the word "including" or "includes" shall mean "including without limitation" or "includes without limitation" as the case may be.

3. **THIS COURT ORDERS** that, unless the context otherwise requires, words importing the singular shall include the plural and *vice versa*, and words importing any gender shall include all genders.

4. **THIS COURT ORDERS** that, unless otherwise specified, all references to currency are in Canadian dollars.

NOTICE AND CONDUCT OF CLAIMS PROCEDURE AND MEETING

5. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service, and/or delivery of the CCAA Plan, the Claims Procedure Order, the Claims Package (as defined in the Claims Procedure Order) and the Meeting Materials (as defined in the Meeting Order dated October 31, 2024 (the "**Meeting Order**")) to all Persons upon which notice, service, and/or delivery were required.

6. **THIS COURT ORDERS AND DECLARES** that the Meeting was duly called, convened, held, and conducted on December 12, 2024 and complied with the Meeting Order, the CCAA and all other Orders of the Court in this CCAA Proceeding.

NOTICE AND CONDUCT OF SANCTION HEARING

7. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service, and/or delivery of the Omnibus Sanction Hearing Notice, the form of Sanction Hearing Objection Notice and Sanction Protocol Order dated December 23, 2024 (the "**Sanction Protocol Order**") to all Persons upon which notice, service, and/or delivery were required.

8. **THIS COURT ORDERS AND DECLARES** that the Sanction Hearing complied with the Sanction Protocol Order, the CCAA and all other Orders of the Court in this CCAA Proceeding, and:

(a) the Sanction Hearing was open to all of the Affected Creditors and all other Persons, including Putative Miscellaneous Claimants, with an interest in RBH, and that such Affected Creditors and other Persons were permitted to be heard at the Sanction Hearing; and

(b) all of the Affected Creditors and all other Persons on the Common Service List were given adequate notice thereof.

SANCTION OF THE CCAA PLAN

9. **THIS COURT ORDERS AND DECLARES** that:

(a) the CCAA Plan has been approved by the Required Majority of the Affected Creditor Class in compliance with the Meeting Order and the CCAA Plan and in accordance with the CCAA;

(b) the Applicant, the Court-Appointed Mediator, the Monitor and their Representatives have complied with the provisions of the CCAA and the Orders of the Court made in this CCAA Proceeding;

(c) the activities and conduct of the Directors during this CCAA Proceeding be and are hereby ratified and approved;

(d) the activities and conduct of the Court-Appointed Mediator, the Monitor and their Representatives in this CCAA Proceeding including, without limitation, in relation to conducting and administering the Mediation, be and are hereby ratified and approved, and that the Court-Appointed Mediator and the Monitor have satisfied all of their obligations up to and including the date of this Sanction Order;

(e) the Applicant, the Court-Appointed Mediator and Monitor and their Representatives have acted, and continue to act, in good faith and with due diligence, and have not done or purported to do anything, nor does the CCAA Plan do or purport to do anything, that is not authorized by the CCAA or the Orders of the Court in this CCAA Proceeding; and

(f) the CCAA Plan and all of the matters and transactions contemplated thereby are fair and reasonable.

10. **THIS COURT ORDERS** that the CCAA Plan, its terms and conditions, including all associated steps, compromises, transactions, arrangements, agreements, releases, injunctions, and reorganizations effected thereby (including the appointment of EYI as the CCAA Plan Administrator pursuant to the terms of the CCAA Plan Administrator Appointment Order) are hereby sanctioned and approved pursuant to Section 6 of the CCAA.

11. **THIS COURT ORDERS** that, as at the Effective Time, the CCAA Plan and all associated steps, compromises, arrangements, releases, injunctions, transactions and reorganizations effected thereby will be binding and effective upon and with respect to the Applicant, all the Affected Creditors, the Released Parties and all other Persons named or referred to in, or subject to, the CCAA Plan or the Sanction Order.

12. **THIS COURT ORDERS** that any omission in this Order to refer to a specific provision of the CCAA Plan shall not diminish or impair the effectiveness of such provision, it being the intent of the CCAA Court that the CCAA Plan be approved in its entirety. Notwithstanding and without limitation to the foregoing, certain administrative matters contemplated in the CCAA Plan that are not specifically addressed in this Sanction Order or the CCAA Plan Administrator

Appointment Order, including, but not limited to, matters related to the Cy-Pres Foundation as described in Section 9.4 of the CCAA Plan and the transfer of the Alternative Products Business to NewCo as described in Section 4.1 of the CCAA Plan shall be the subject of further Order(s) of the Court.

13. **THIS COURT ORDERS** that, without limitation to paragraphs 9 – 12 of this Sanction Order, the Quebec Administration Plan and the PCC Compensation Plan are hereby approved and all applicable Persons are authorized and directed to comply with and implement the Quebec Administration Plan and the PCC Compensation Plan.

14. **THIS COURT ORDERS** that, subject to the performance by the Applicant of its obligations under the CCAA Plan, all obligations, contracts, leases, agreements and other arrangements to which the Applicant is a party at the Effective Time and that have not been terminated or disclaimed pursuant to the applicable paragraph of the Initial Order and related provisions of the CCAA shall remain in full force and effect, and unamended as of the Effective Time, and no Person who is a party to any such obligation, contract, lease, agreement or other arrangement shall, at or following the Effective Time, accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise repudiate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

(a) any event that occurred at or prior to the Effective Time and is not continuing thereafter, or which is or continues to be suspended or waived under the CCAA Plan, that would have entitled such Person to enforce those rights or remedies

(including defaults or events of default arising as a result of the insolvency of the Applicant);

(b) the insolvency of the Applicant or the fact that the Applicant sought or obtained relief under the CCAA;

(c) any compromises or arrangements effected pursuant to the CCAA Plan, or any action taken or transaction effected pursuant to the CCAA Plan; or

(d) the fact that the Applicant has sought or obtained relief or taken steps as part of this CCAA Proceeding.

PLAN IMPLEMENTATION

15. **THIS COURT ORDERS** that:

(a) each of the Applicant and the Monitor, and each of their respective Representatives, is hereby authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to implement the CCAA Plan, in accordance with and subject to its respective terms and conditions, and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, payments, deliveries, allocations, instruments and agreements contemplated by, and subject to, the terms and conditions of the CCAA Plan;

(b) all distributions and payments under the CCAA Plan shall be free and clear of all claims, rights and interests of any Person, including, without limitation all the CCAA Charges;

(c) the Applicant, the Monitor and their respective Representatives, shall not incur any liability as a result of acting in accordance with the terms of the CCAA Plan and this Sanction Order;

(d) all conduct of the Monitor and the Monitor's Representatives in relation to RBH is approved and all claims against them arising from or relating to the services provided to RBH up to and including the date of the Sanction Order are barred; and

(e) the Monitor, the CCAA Plan Administrator and their respective Representatives shall be entitled to rely on the books, records or information of the Applicant and any information provided by the Applicant, without independent investigation, and shall incur no liability as a result of any errors or omissions in such books, records or information.

16. **THIS COURT ORDERS** that the restructuring steps as set out in Article 4 of the CCAA Plan (the "**Restructuring Steps**") including the transactions, arrangements, reorganizations, transfers, assignments, compromises, settlements, payments, discharges, injunctions and releases to be effected on the Plan Implementation Date in accordance with Section 4.2 of the CCAA Plan, are hereby authorized and approved, and the Restructuring Steps are, and shall be deemed, to occur and be effected in accordance with the terms of the CCAA Plan (and, to the extent applicable, in the sequence and at the times contemplated by the CCAA Plan), without any further act or formality.

17. **THIS COURT ORDERS** that, following the Effective Time, the Monitor, the Court-Appointed Mediator and their respective counsel shall continue to be entitled to receive payment of their respective fees and disbursements incurred in respect of the implementation of the CCAA

Plan and this CCAA Proceeding, and the Applicant is hereby authorized and directed to make such payments on a bi-weekly basis and, in respect of the Court-Appointed Mediator and its counsel, their fees and disbursements shall be allocated equally among the Tobacco Companies.

18. **THIS COURT ORDERS** that, at the Effective Time, any obligations of the Applicant to provide financial reporting pursuant to any Order or agreement entered into in connection with this CCAA Proceeding shall cease and be replaced with the obligations set forth in Article 10, Section 10.1 to Section 10.10 of the CCAA Plan (provided that any reporting of non-public information will be subject to non-disclosure arrangements as set out in paragraph 19 below).

19. **THIS COURT ORDERS** that (i) the terms of any existing non-disclosure arrangement or agreement ("**Existing NDAs**") between RBH and a Province, Territory, Impacted Claimant, and their advisors, shall continue to apply regarding the disclosure of financial reporting and any other non-public information pursuant to the CCAA Plan and (ii) the terms of any new non-disclosure arrangement or agreement required between RBH and a Province, Territory, Impacted Claimant, and their advisors shall be on terms and conditions substantially similar to the Existing NDAs.

Reserves

20. **THIS COURT ORDERS** that the establishment of the CCAA Plan Administration Reserve is hereby approved.

21. **THIS COURT ORDERS** that the establishment of the PCC Compensation Plan Reserve is hereby approved.

22. **THIS COURT ORDERS** that the CCAA Plan Administrator shall hold the CCAA Plan Administration Reserve in trust for those entitled to be paid CCAA Plan Administration Reserve

Costs in accordance with the provisions of Section 15.1 of the CCAA Plan and the CCAA Plan Administrator Appointment Order.

23. **THIS COURT ORDERS** that the CCAA Plan Administrators shall hold the PCC Compensation Plan Reserve in trust for those entitled to be paid PCC Compensation Plan Reserve Costs, in accordance with the provisions of Section 15.2 of the CCAA Plan and the CCAA Plan Administrator Appointment Order.

24. **THIS COURT ORDERS** that the CCAA Plan Administrator is hereby authorized and directed to distribute funds from the CCAA Plan Administration Reserve and the PCC Compensation Plan Reserve in accordance with the provisions of the CCAA Plan and the CCAA Plan Administrator Appointment Order.

Claims Administrator and Administrative Coordinator

25. **THIS COURT ORDERS** that, in accordance with the terms of the CCAA Plan,

(a) Epiq Class Actions Services Canada, Inc. is hereby appointed as the Claims Administrator; and

(b) Daniel Shapiro, K.C. is hereby appointed as the Administrative Coordinator,

and such parties shall have the powers, rights and obligations as set out in the CCAA Plan.

26. **THIS COURT ORDERS** that all Persons shall co-operate fully with the Monitor, the Claims Administrator and Administrative Coordinator in the exercise of their powers and discharge of their obligations and provide such parties with the assistance that is necessary to enable them to adequately carry out their functions.

27. **THIS COURT ORDERS** that the Claims Administrator shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

28. **THIS COURT ORDERS** that the Administrative Coordinator shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order.

Plan Implementation Date Certificate

29. **THIS COURT ORDERS** that the certificate substantially in the form attached hereto as **Schedule "B"** (the "**Plan Implementation Date Certificate**") is hereby approved and, upon the Monitor receiving confirmation that all conditions precedent to implementation of the CCAA Plan as set out in Section 19.3 of the CCAA Plan have been fulfilled or waived, the Monitor shall deliver the Plan Implementation Date Certificate to the Applicant certifying that the Plan Implementation Date has occurred.

30. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed as soon as practicable to serve on the Common Service List and post on the Monitor's Website the Plan Implementation Date Certificate. The Monitor shall file the Plan Implementation Date Certificate with this Court as soon as reasonably practicable following service thereof to the Common Service List.

EFFECT ON AFFECTED CLAIMS AND MISCELLANEOUS CLAIMS

31. **THIS COURT ORDERS** that each Affected Creditor and each Person holding a Released Claim or Miscellaneous Claim and all other Persons named or referred to in or subject to the CCAA Plan is hereby deemed to have consented to all of the provisions of the CCAA Plan, in its entirety,

and each Affected Creditor is hereby deemed to have executed and delivered to the Applicant all consents, releases, directions, assignments and waivers, statutory or otherwise, required to implement and carry out the CCAA Plan in its entirety.

32. **THIS COURT ORDERS** that any Person that did not file a Miscellaneous Claimant Proof of Claim in respect of a Miscellaneous Claim by the Miscellaneous Claims Bar Date in accordance with the Claims Procedure Order shall be and is hereby fully, finally, irrevocably and forever barred, estopped, stayed and enjoined from making any such Miscellaneous Claim and shall not be entitled to any consideration under the CCAA Plan, and such Person's Miscellaneous Claim shall be and is hereby fully, finally, irrevocably and forever barred and extinguished.

33. **THIS COURT ORDERS** that, from and after the Effective Time, each Putative Miscellaneous Claimant that filed a Miscellaneous Claimant Proof of Claim in respect of a Miscellaneous Claim by the Miscellaneous Claims Bar Date in accordance with the Claims Procedure Order will be limited to recovering from the Miscellaneous Claims Fund in respect of such Miscellaneous Claim in accordance with the CCAA Plan, and such Putative Miscellaneous Claimant must comply with and shall be bound by the Miscellaneous Claims Procedure and will have no other right to seek any recovery, and shall not make any claim against or from any Released Party in respect of such Miscellaneous Claim.

34. **THIS COURT ORDERS** that, subject to Section 7.2 of the CCAA Plan, at the Effective Time, all parties to the Pending Litigation, including each plaintiff, class representative, class member and defendant therein, shall be deemed to have given all consents necessary to effect the termination and dismissal with prejudice and without costs of the Pending Litigation.

35. **THIS COURT ORDERS** that, as at the Effective Time, the *Blais* Judgment and the *Létourneau* Judgment and Quebec Class Actions are fully and finally satisfied, resolved, compromised and settled.

RELEASES

36. **THIS COURT ORDERS** that, as at the Effective Time, each of the Released Parties shall be, and shall be deemed to be, fully, finally, irrevocably and unconditionally released and forever discharged of and from any and all of the Released Claims that any of the Releasors has ever had, now has, or may hereafter have against the Released Parties or any of them (either individually or with any other Person), whether or not based on conduct continuing after the Effective Time and whether or not presently known to any of the Releasors. Nothing herein does release, or is intended to release, any Claim of a Released Party (including its Representatives) that has been, could have been or could be advanced, directly or indirectly, against any other Released Party (including its Representatives) other than the Tobacco Companies and their respective Subsidiaries and Representatives (such other Released Parties, not including the Tobacco Companies and their respective Subsidiaries and Representatives, collectively the "**Other Released Parties**"), in respect of:

(a) the development, design, manufacture, production, marketing, advertising, distribution, purchase, sale or disposition of Tobacco Products outside of Canada,

(b) the use of or exposure (whether directly or indirectly) to Tobacco Products or their emissions outside of Canada,

(c) the development of any disease related to the use of Tobacco Products outside of Canada,

(d) any representation or omission in respect of Tobacco Products outside of Canada, or

(e) conduct of the Other Released Parties not related to Canada,

provided that such Claim is not, in whole or in part, based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada (and it is agreed that to the extent such Claim is based on or related to the assets, obligations, business or affairs of the Tobacco Companies or conduct of the Other Released Parties related to Canada, then that same extent of the Claim will be hereby released).

Claimant Contractual Release

37. **THIS COURT ORDERS AND DIRECTS** each of the Applicant and each of the Claimants, or an authorized Person on their behalf, to execute and deliver the Claimant Contractual Release, in favour of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, and their respective Representatives, which Claimant Contractual Release shall take effect as at the Effective Time. From and after the Effective Time, the Claimant Contractual Release will be binding on and enure to the benefit of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives and the execution and delivery of the Claimant Contractual Release, by or on behalf of each Claimant, and the affirmative vote in respect of the CCAA Plan, shall be evidence of the consent of the Claimant to the treatment of its Claims for the purposes of Section 5.1(2) and Section 19(2) of the CCAA to the extent they apply.

Releases in Favour of the Monitors, the CCAA Plan Administrators and the Court-Appointed Mediator

38. **THIS COURT ORDERS** that, as at the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, are hereby deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Monitors, the CCAA Plan Administrators and the Court-Appointed Mediator, and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents from any and all Claims whatsoever, which they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known, arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) any Claim that has been barred or extinguished pursuant to the terms of the Claims Procedure Order and/or the terms of the CCAA Plan; (ii) the CCAA Proceedings; (iii) the Chapter 15 Proceedings; (iv) in respect of the Monitors or the CCAA Plan Administrators and their legal counsel and advisors, their actions in connection with the CCAA Proceedings or the Chapter 15 Proceedings; (v) in respect of the Court-Appointed Mediator, his actions as an officer of the CCAA Court carrying out his mandate as a neutral third party to mediate a global settlement in the Tobacco Companies' CCAA Proceedings; (vi) the business and affairs of the Tobacco Companies whenever or however conducted; (vii) the administration and management of the Tobacco Companies whenever or however conducted; (viii) the allocation of the Global Settlement Amount and any distributions, payments or disbursements of all or any portion of the Global Settlement Amount, and/or (ix) any matter or transaction involving any of the Tobacco Companies occurring

in or in connection with the CCAA Proceedings or the Chapter 15 Proceedings, if applicable, including the CCAA Plans, the development thereof, and any and all actions, steps or transactions taken by the Court-Appointed Mediator or the Monitors, as applicable, to implement the CCAA Plans, including in their capacity as CCAA Plan Administrators and in FTI's capacity as the Foreign Representative in the Chapter 15 Proceedings, and in each case, all Claims arising out of such aforesaid actions or omissions shall be forever waived and released (other than in the case of the Monitors, the right to enforce the Monitors' obligations under the CCAA Plans or any related document), all to the fullest extent permitted by Applicable Law.

39. **THIS COURT ORDERS** that nothing in paragraph 38 shall derogate from the protections afforded to the Court-Appointed Mediator, the Monitors or the CCAA Plan Administrators as officers of the CCAA Court, or in the case of FTI, as the Foreign Representative in the Chapter 15 Proceedings, and by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings, if applicable.

40. **THIS COURT ORDERS** that the Monitors, CCAA Plan Administrators and Court-Appointed Mediator and their respective Affiliates, shareholders, Affiliates' shareholders, employees, heirs, successors, assigns, advisors, legal counsel, Representatives, consultants or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document, the Mediation or the CCAA Proceedings.

41. **THIS COURT ORDERS AND DECLARES** that any payments or deliveries under the CCAA Plan or this Sanction Order made or assisted by the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not constitute a "distribution" and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not constitute a "legal representative" or "representative" of the Applicant or an "other person" for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), section 22 of the *Retail Sales Tax Act* (Ontario), section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the "**Statutes**"), and none of the Monitors, CCAA Plan Administrators and Court-Appointed Mediator in making any such payments or deliveries of funds or assets in relation to the CCAA Plan is "distributing", nor shall it be considered to have "distributed", such funds or assets for the purposes of the Statutes, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not incur any liability under the Statutes for making any payments or deliveries under the CCAA Plan or failing to withhold amounts, ordered or permitted hereunder, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not have any liability for any of the Applicant's tax liabilities regardless of how or when such liabilities may have arisen.

Releases in Favour of the Administrative Coordinator

42. **THIS COURT ORDERS** that, as at the Effective Time, all Persons including the Released Parties, the Releasors and Affected Creditors (whether or not CCAA proofs of claim have been filed on their behalf), and the Unaffected Creditors, individually and collectively, are hereby deemed to fully, finally, irrevocably and unconditionally release and forever discharge the Administrative Coordinator and his Representatives from any and all Claims whatsoever, which

they have ever had, now have, or may hereafter have, against them, whether foreseen or unforeseen, whether matured or unmatured, or whether or not presently known to the Released Parties, Releasors, Affected Creditors and Unaffected Creditors arising from or out of in whole or in part any omission, transaction, duty, responsibility, liability, obligation, dealing or other occurrence, or in any way in connection with the CCAA Proceedings, including: (i) the CCAA Proceedings; (ii) the Chapter 15 Proceedings, if applicable; (iii) the development of the PCC Compensation Plan and the development of the Quebec Administration Plan; and (iv) the actions of the Administrative Coordinator in connection with the administration of the PCC Compensation Plan and the administration of the Quebec Administration Plan, and in each case, all Claims arising out of such aforesaid actions or omissions above shall be forever waived and released to the fullest extent permitted by Applicable Law.

43. **THIS COURT ORDERS** that nothing in paragraph 42 hereof shall derogate from the protections afforded to the Administrative Coordinator by the CCAA Plans, the CCAA, any other applicable legislation and any Orders made in the CCAA Proceedings or the Chapter 15 Proceedings.

44. **THIS COURT ORDERS** that none of the Administrative Coordinator or his heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document, the Mediation or the CCAA Proceedings.

Indemnity in Favour of the Monitors, CCAA Plan Administrators, Foreign Representative, Court-Appointed Mediator and Administrative Coordinator

45. **THIS COURT ORDERS** that the Applicant shall indemnify and save harmless the Court-Appointed Mediator, the CCAA Plan Administrators, the Monitors (including in their capacity as Foreign Representative (as applicable)), and the Administrative Coordinator and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents (collectively, the "**Indemnified Parties**"), from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of each Indemnified Party's respective activities or duties in any way in connection with the CCAA Proceedings and the Chapter 15 Proceedings, including for the avoidance of doubt: (i) the actions of the Court-Appointed Mediator, the Monitors, the CCAA Plan Administrators and the Administrative Coordinator and their respective legal counsel and advisors in connection with the CCAA Proceedings and the Chapter 15 Proceedings, (ii) the business and affairs of the Applicant whenever or however conducted, and (iii) any matter or transaction involving the Tobacco Companies occurring in or in connection with the CCAA Proceedings and the Chapter 15 Proceedings, the CCAA Plans, or the development thereof (other than enforcement of Indemnified Parties' obligations under the CCAA Plan and the Definitive Documents). To the extent any Indemnified Party is not otherwise compensated by the applicable Applicant(s) such Indemnified Party may resort to their respective CCAA Plan Administration Reserve for compensation.

46. **THIS COURT ORDERS** that the indemnity in paragraph 45 hereof shall survive the resignation or removal of the Indemnified Parties from any role, capacity, engagement, office or position relevant to its activities or duties in connection with the CCAA Plan.

Injunctions

47. **THIS COURT ORDERS** that, as at the Effective Time, subject to the right of the Affected Creditors to receive distributions and exercise their rights pursuant to the CCAA Plan or subject to obtaining the written consent of the applicable parties or leave of the Court as contemplated in Section 18.1.11(b)(iii) of the CCAA Plan, all Persons (including Putative Miscellaneous Claimants) are hereby permanently and forever barred, estopped, stayed and enjoined from:

(a) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator and their respective Representatives with respect to any and all Affected Claims and Released Claims;

(b) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against any of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, or their respective property with respect to any and all Affected Claims and Released Claims;

(c) commencing, conducting, continuing or making against any other Person in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) that relates to an Affected Claim or a Released Claim if such other Person makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator or their respective Representatives, unless such Claim of such other Person is itself an Affected Claim or a Released Claim;

(d) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any Encumbrance of any kind against the Released Parties, the Monitors, the CCAA Plan Administrators, the Court-Appointed Mediator and the Administrative Coordinator, their respective Representatives or any of their respective property with respect to any and all Affected Claims and Released Claims, except for the exclusions in Article 18, Section 18.1.9 of the CCAA Plan in relation to obligations arising from the Definitive Documents; and

(e) taking any actions to interfere with the implementation or consummation of the CCAA Plan with respect to any and all Released Claims.

48. **THIS COURT ORDERS** that, notwithstanding anything in the foregoing paragraphs 36 to 47, the Released Parties are not released from the due performance of any of their respective obligations arising from the Definitive Documents and that nothing in the Release shall prevent or restrict any of the Releasors or the CCAA Plan Administrators from pursuing any legal remedies

against any of the Released Parties for non-performance of their obligations pursuant to the Definitive Documents, including the covenants of each Tobacco Company, its Parent and the relevant Affiliates within its Tobacco Company Group.

49. **THIS COURT ORDERS** that, as at the Effective Time, the releases and injunctions set out in paragraphs 36 to 47 herein, as applicable, shall be final and binding upon each of the Releasors, Released Parties, Affected Creditors and Unaffected Creditors (except to the extent of their Unaffected Claims) as applicable, including any Claims resulting, directly or indirectly, from the consequences and effects relating to the acceptance of the CCAA Plan, the sanction thereof by the CCAA Court, or its implementation.

COURT-APPOINTED MEDIATOR AND MEDIATION

50. **THIS COURT ORDERS** that, following the granting of the Sanction Order, the Court-Appointed Mediator is hereby authorized and empowered to continue to provide services with respect to the implementation of the CCAA Plan and perform such other functions as may be requested by the Monitors, the CCAA Plan Administrators or the Court or any other Party at the discretion of the Court-Appointed Mediator (the "**Court-Appointed Mediator's Ongoing Services**").

51. **THIS COURT ORDERS** that in the event that the Court-Appointed Mediator provides Court-Appointed Mediator's Ongoing Services, the Court-Appointed Mediator shall:

(a) have the benefit of all the protections given to him by the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice*

Act, R.S.O. 1990, c. C.43, any Orders in these CCAA Proceedings, including the Sanction Order, the CCAA Plan and as an officer of the Court; and

(b) incur no liability in connection with any Court-Appointed Mediator's Ongoing Services, and shall have the immunity of a Judge of a Superior Court in Canada.

52. **THIS COURT ORDERS** that the protections afforded to the Court-Appointed Mediator and his heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents pursuant to the terms of the Initial Order and the other Orders made in these CCAA Proceedings, as applicable, shall not expire or terminate and, subject to the terms hereof, shall remain effective and in full force and effect.

PLAN COMPLETION

53. **THIS COURT ORDERS** that the certificate substantially in the form attached hereto as **Schedule "C"** (the "**Certificate of Plan Completion**") is hereby approved and, upon completion by EYI of its duties as the Monitor and the CCAA Plan Administrator in respect of the Applicant pursuant to the CCAA and any Order of the CCAA Court in this CCAA Proceeding or the CCAA Plan, EYI may file with the CCAA Court the Certificate of Plan Completion stating that all of its duties in respect of the Applicant pursuant to the CCAA, the CCAA Plan and any Orders of the CCAA Court, have been completed and thereupon, (a) EYI shall be deemed to be discharged from its duties as the Monitor and as the CCAA Plan Administrator and released of all claims relating to its activities as the Monitor and as the CCAA Plan Administrator and (b) this CCAA Proceeding shall terminate.

EXTENSION OF STAY PERIOD

54. **THIS COURT ORDERS** that the Stay Period (as defined in the Initial Order) be and is hereby extended until the Effective Time.

CCAA ORDERS

55. **THIS COURT ORDERS** that, other than as expressly set out herein, the provisions of the Initial Order, including the Stay Period, paragraph 4 of the Order (Continuation of Rothmans SRAP and RCA) dated June 26, 2019, and the Order of Justice McEwen regarding professional fee disclosure dated May 14, 2019 shall terminate at the Effective Time except with respect to the protections granted in the Initial Order in favour of the Monitor or the Court-Appointed Mediator and their Representatives. All other Orders of the Court made in this CCAA Proceeding shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by or are inconsistent with this Sanction Order or any further Order of this Court in this CCAA Proceeding.

TERMINATION OF CCAA CHARGES

56. **THIS COURT ORDERS** that, subject to the occurrence of the Effective Time:

(a) the Administration Charge and the Court-Appointed Mediator Charge (each as provided for in the Initial Order) shall be terminated, discharged, expunged and released, effective upon the later of: (i) the payment of all amounts on account of outstanding fees and expenses owing to the beneficiaries of the Administration Charge and Court-Appointed Mediator Charge up to the Plan Implementation Date; (ii) Court approval of the fees and expenses of the Monitor and its counsel up to the

Plan Implementation Date; and (iii) funding of the CCAA Plan Administration Reserve; and

(b) each of the Sales and Excise Tax Charge and the Directors' Charge will be terminated, discharged, expunged and released upon receipt by RBH of an acknowledgement of payment in full and in the appropriate currency of the claims secured thereby up to the Plan Implementation Date.

NOTICE OF THE SANCTION ORDER

57. **THIS COURT ORDERS** that, as soon as practicable after the granting of this Sanction Order, the Monitor shall cause a copy of this Sanction Order to be posted on the Monitor's Website and shall serve a copy on the parties on the Common Service List. From and after the Effective Time, any notices, motions or documents which may be filed with the Court need only be served on the Applicant, EYI (in its capacity as the Monitor and the CCAA Plan Administrator), the parties on the Common Service List and such Persons who deliver a Notice of Appearance to the Applicant and EYI (in its capacity as the Monitor and the CCAA Plan Administrator), and file it with the Court, after the Effective Time.

58. **THIS COURT ORDERS** that the measures set out in the preceding paragraph 57 shall constitute good and sufficient service and notice of this Sanction Order on all Persons who may be entitled to receive notice thereof or who may have an interest in this CCAA Proceeding, and no other form of notice or service need be made on such Persons and no other document or material need be served on such Persons in respect of this CCAA Proceeding.

GENERAL PROVISIONS

59. **THIS COURT ORDERS AND DECLARES** that notwithstanding: (i) the pendency of this CCAA Proceeding; (ii) any applications for a bankruptcy, receivership or other order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"), the CCAA, or otherwise in respect of the Applicant and any bankruptcy, receivership or other order issued pursuant to any such applications; and (iii) any assignment in bankruptcy made or deemed to be made in respect of the Applicant, the transactions contemplated by the CCAA Plan will be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Applicant or its assets and shall not be void or voidable by creditors of the Applicant, nor shall the CCAA Plan, or the payments and distributions contemplated pursuant thereto constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA, CCAA or any other applicable federal or provincial legislation, nor will the CCAA Plan constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

60. **THIS COURT ORDERS** that in the event of a conflict between (i) this Sanction Order, (ii) the CCAA Plan Administrator Appointment Order, (iii) the CCAA Plan, and (iv) the terms of any agreement existing between any Person and the Applicant as at the Plan Implementation Date, the terms of the Sanction Order shall govern, subject to any subsequent Order of this Court.

61. **THIS COURT ORDERS** that, notwithstanding any other provision of this Sanction Order, the Applicant, the Court-Appointed Mediator or EYI, in its capacity as the Monitor or the CCAA Plan Administrator, may apply to the CCAA Court for advice and direction in respect of any matters arising from or in relation to the CCAA Plan or this CCAA Proceeding.

62. **THIS COURT ORDERS** that this Sanction Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

63. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, including but not limited to the Courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Sanction Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Sanction Order and the CCAA Plan. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Sanction Order and the CCAA Plan or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Sanction Order and the CCAA Plan.

64. **THIS COURT ORDERS** that the Applicant and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order, and for the assistance in carrying out the terms of this Order and/or to confirm the CCAA Plan and the Sanction Order as binding and effective in any appropriate foreign jurisdiction.

65. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

Morawetz C.J.

Chief Justice Morawetz

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	THURSDAY, THE 6TH
	)	
JUSTICE MORAWETZ	)	DAY OF MARCH, 2025

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.

Applicant

CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

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

ONTARIO
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Applicant

CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

THIS MOTION made by Deloitte Restructuring Inc. ("**Deloitte**") in its capacity as court-appointed monitor (the "**Monitor**") of JTI-Macdonald Corp. ("**JTIM**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Monitor dated January 15, 2025, the Twenty-Second Report to the Court of the Monitor dated January 15, 2025, the Twenty-Fifth Report of the Monitor dated February 27, 2025, the materials filed by the parties listed on the Participant Information Form, and upon hearing the submissions of counsel to the Court-Appointed Mediator, counsel to the Monitor, counsel to the Applicant and those other parties listed on the Participant Information Form, no one appearing for any other person on the Common Service List, although properly served with the Monitor's Motion Record dated January 15, 2025, as appears from the Lawyer's Certificate of Service of Jake Harris, certified January 16, 2025;

A. DEFINITIONS

1. **THIS COURT ORDERS** that for the purposes of this Order, capitalized terms not otherwise defined in this Order shall have the meanings given to them in the third amended and restated Court-Appointed Mediator's and Monitor's plan of compromise and arrangement concerning, affecting and involving JTIM, dated February 27, 2025, including all Schedules thereto (the "**CCAA Plan**").

B. APPOINTMENT OF CCAA PLAN ADMINISTRATOR

2. **THIS COURT ORDERS** that Deloitte is hereby appointed as of the date hereof, pursuant to the CCAA Plan, as the CCAA Plan Administrator, a neutral and independent officer of this Court, to administer the CCAA Plan with the powers and obligations set out in the CCAA Plan, the Sanction Order or herein and JTIM, its employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons currently retained or employed by JTIM (collectively, "**Assistants**") and its shareholders, officers, and directors shall advise the CCAA Plan Administrator of all material steps taken by JTIM pursuant to this Order, the Sanction Order and the CCAA Plan, and shall co-operate fully with the CCAA Plan Administrator in the exercise of its powers and discharge of its obligations and provide the CCAA Plan Administrator with the assistance that is necessary to enable the CCAA Plan Administrator to carry out the CCAA Plan Administrator's functions.

3. **THIS COURT ORDERS** that Deloitte, in its capacity as CCAA Plan Administrator or the Monitor, as the case may be, is hereby authorized and empowered to take all steps and actions and to do all things required to facilitate the implementation of the CCAA Plan in accordance with its terms and, where necessary or appropriate to do so, to enter into, execute, deliver, implement and

consummate all of the steps, transactions, certificates and agreements contemplated by the CCAA Plan or otherwise set out herein.

4. **THIS COURT ORDERS** that following the granting of the Sanction Order, the Court-Appointed Mediator is hereby authorized and empowered to continue to provide services with respect to the implementation of the CCAA Plan as may be requested by the Monitors, the CCAA Plan Administrators or the Court or any other Party at the discretion of the Court-Appointed Mediator (the "**Court-Appointed Mediator's Ongoing Services**").

5. **THIS COURT ORDERS** that in the event that the Court-Appointed Mediator provides Court-Appointed Mediator's Ongoing Services, the Court-Appointed Mediator shall:

(a) have the benefit of all the protections given to him by the CCAA, any other applicable legislation including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, any orders in these CCAA Proceedings, including the Sanction Order, the CCAA Plan and as an officer of the Court; and

(b) incur no liability in connection with any Court-Appointed Mediator's Ongoing Services, and shall have the immunity of a Judge of a Superior Court in Canada.

6. **THIS COURT ORDERS AND DECLARES** that the protections afforded to the Court-Appointed Mediator and his heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents pursuant to the terms of the Initial Order and the other Orders made in these CCAA Proceedings, as applicable, shall not expire or terminate and, subject to the terms hereof, shall remain in full force and effect.

7. **THIS COURT ORDERS** that the CCAA Plan Administrator may, in its discretion, retain any trustees or custodians, or advisors, including legal, financial, investment or other advisors, to advise and assist it to carry out its duties in relation to the administration of the CCAA Plan.

8. **THIS COURT ORDERS** that nothing herein contained shall derogate from the Monitor's role as the monitor of JTIM pursuant to (i) the Second Amended and Restated Initial Order of this Court dated March 8, 2019, (ii) all applicable orders of this Court including the Sanction Order, and (iii) the CCAA.

9. **THIS COURT ORDERS** that in no circumstances shall the CCAA Plan Administrator:

(a) be or be deemed to be a representative of the Claimants, Tobacco Companies and/or Tobacco Company Groups;

(b) have the authority to bind any of the Claimants; or

(c) have the authority to bind any of the Tobacco Companies or members of the Tobacco Company Groups.

10. **THIS COURT ORDERS** that the CCAA Plan Administrator shall not take possession or control of JTIM's current or future assets, undertakings or properties of any nature or kind whatsoever and wherever situate including all proceeds thereof (the "**Property**") and shall take no part whatsoever in the management, oversight, supervision or control of JTIM's business (the "**Business**") and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

C. DISTRIBUTIONS AND ADMINISTRATION

11. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to establish the following segregated, interest bearing trust accounts (collectively, the

"**Trust Accounts**"), each to be held in Schedule I Chartered Banks or an affiliate thereof (each a "**Bank**"):

(a) the Global Settlement Trust Account;

(b) the Supplemental Trust Account;

(c) the Miscellaneous Claims Fund Account;

(d) the PCC Trust Account;

(e) the QCAP Trust Account;

(f) the CCAA Plan Administration Reserve Account;

(g) the PCC Compensation Plan Reserve Account; and

(h) the Cy-près Trust Account.

12. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to engage any Person or Persons to act as trustee (collectively, the "**Trustee**") of the Trust Accounts and enter into one or more deeds of trust or other agreement with such Trustee in form and substance satisfactory to the CCAA Plan Administrator, subject to approval of the Court.

13. **THIS COURT ORDERS** that the Claims Administrator shall report to the CCAA Plan Administrators at any time as requested by any CCAA Plan Administrator on the progress of the administration of the claims processes for the Quebec Administration Plan and the PCC Compensation Plan, including, without limitation (i) the budget for the administration of claims made to the PCC Compensation Plan and to the Quebec Administration Plan, (ii) the publication of notices, the PCC Claims Application Deadline to file claims, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the

claims process, any fees, charges and disbursements made, and (iii) any Compensation Payments to Eligible *Blais* Class Members and Individual Payments to Eligible Pan-Canadian Claimants.

14. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to oversee and direct the deposits into the Trust Accounts, including:

(a) the Upfront Contributions (including the Cash Security Deposits) and the Annual Contributions (excluding any Reserved Amounts), which shall be deposited into the Global Settlement Trust Account;

(b) the Reserved Amounts which shall be deposited into the Supplemental Trust Account; and

(c) amounts to be deposited into the CCAA Plan Administration Reserve Account, the PCC Compensation Plan Reserve Account, the Miscellaneous Claims Fund Account, the PCC Trust Account, the QCAP Trust Account, and the Cy-près Trust Account.

15. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to direct the Trustee to disburse funds from the Trust Accounts in accordance with the CCAA Plan, the Sanction Order and this Order, including:

(a) disbursements from the Global Settlement Trust Account to the Claimants, the other applicable Trust Accounts or otherwise in accordance with the CCAA Plan;

(b) disbursements of Reserved Amounts, including Tax Refund Cash Payments, from the Supplemental Trust Account to the Global Settlement Trust Account or a relevant Tax Authority on account of a notice of assessment or reassessment of Taxes, or to JTIM in accordance with the CCAA Plan;

(c) disbursements from the Supplemental Trust Account to JTIM following the termination of the Contribution Period;

(d) disbursements from the CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account to pay for costs which remain unpaid by JTIM, or to the Provinces and Territories in accordance with Section 15.1 or 15.2 of the CCAA Plan (as applicable);

(e) disbursements from the PCC Trust Account and QCAP Trust Account to the Claims Administrator's trust accounts, to Quebec Class Counsel (from the QCAP Trust Account) to pay the Quebec Class Counsel Fee, or to the Provinces and Territories in accordance with Section 16.3 of the CCAA Plan, paragraph 55.1 of the Quebec Administration Plan and paragraph 54.1 of the PCC Compensation Plan;

(f) disbursements from the Miscellaneous Claims Fund to Miscellaneous Claimants or to the Provinces and Territories in accordance with Section 18.2.5 of the CCAA Plan;

(g) disbursements to the Tobacco Companies, as applicable, to return otherwise undistributed amounts provided by the Tobacco Companies to increase the Miscellaneous Claims Amount pursuant to Section 18.2.1 of the CCAA Plan; and

(h) disbursements from the Cy-près Trust Account to the Cy-près Foundation.

16. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to make distributions in accordance with Article 17 of the CCAA Plan, subject to paragraph 23 below.

17. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to, and may instruct the Trustee to, deduct and withhold from any payment any

amounts as required by law and may remit amounts to the appropriate Governmental Authority in accordance with Section 17.8 of the CCAA Plan.

18. **THIS COURT ORDERS** that in the event of a dispute regarding a notice of assessment or reassessment of income taxes, interest or penalties in respect of a Tax Matter, the CCAA Plan Administrator is authorized and empowered, at the request of JTIM, to direct the Trustee of the Supplemental Trust Account to transfer the amount requested by JTIM (not to exceed the lesser of (i) 100% of the income taxes, interest and penalties assessed, and (ii) 100% of the Reserved Amount held in the Supplemental Trust Account at the relevant time) to the relevant Tax Authority pending final resolution of the dispute.

19. **THIS COURT ORDERS AND DECLARES** that any release of funds under the CCAA Plan, the Sanction Order or this Order made or assisted by the Monitors, CCAA Plan Administrators or the Court-Appointed Mediator shall not constitute a "distribution" and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not constitute a "legal representative" or "representative" of JTIM or an "other person" for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), section 22 of the *Retail Sales Tax Act* (Ontario), section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the "**Statutes**"), and none of the Monitors, CCAA Plan Administrators and Court-Appointed Mediator in making any such payments or deliveries of funds or assets in relation to the CCAA Plan is "distributing", nor shall it be considered to have "distributed", such funds or assets for the purposes of the Statutes, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not incur any liability under the Statutes for making any payments or deliveries under the CCAA Plan or failing to withhold amounts, ordered or permitted hereunder,

and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not have any liability for any of JTIM's tax liabilities regardless of how or when such liabilities may have arisen.

D. CCAA PLAN ADMINISTRATORS' COMMUNICATION AND COORDINATION

20. **THIS COURT ORDERS** that:

(a) the CCAA Plan Administrators shall consult with each other and act jointly and in concert to fulfill their duties and responsibilities pursuant to the Tobacco Companies' CCAA Plans (the "**Tobacco Plans**" and each a "**Tobacco Plan**");

(b) each of the CCAA Plan Administrators shall have access to all documents and information provided by the Trustee of the Trust Accounts to each CCAA Plan Administrator until the completion of the administration of each Tobacco Plan; and

(c) each CCAA Plan Administrator shall have (i) continuous access to each Tobacco Company's Virtual Data Room, and (ii) continuous administrator access to its respective Tobacco Company's Virtual Data Room, until the completion of the administration of each Tobacco Plan, provided that a CCAA Plan Administrator is not permitted to disclose any confidential information with respect to one Tobacco Company to any Representative of another Tobacco Company.

21. **THIS COURT ORDERS** that the CCAA Plan Administrators shall coordinate amongst each other in connection with their administration of each applicable Tobacco Plan in accordance with such Tobacco Plan and as set out in paragraphs 22 to 24 below.

22. **THIS COURT ORDERS** that to the extent the Tobacco Plans require a CCAA Plan Administrator to provide notice to, report to, or to otherwise communicate with any Person, notice

to, reports to or communications with the representatives of each following Person shall be sufficient for all purposes:

(a) the Chair of the Provincial and Territorial Liaison Committee with respect to the Provinces and Territories;

(b) the Administrative Coordinator with respect to the Quebec Administration Plan and Quebec Class Counsel with respect to the Quebec Class Action Plaintiffs;

(c) the Administrative Coordinator with respect to the PCC Compensation Plan and PCC Representative Counsel with respect to the Pan-Canadian Claimants;

(d) the Chair of the Cy-près Foundation (once appointed) with respect to the Cy-près Foundation;

(e) *Knight* Class Counsel with respect to the *Knight* Class Action Plaintiffs;

(f) counsel for the Tobacco Producers with respect to the Tobacco Producers; and

(g) the respective Tobacco Company's counsel with respect to such Tobacco Company;

provided that, the CCAA Plan Administrators may, in their discretion, communicate with any other Person they view necessary or desirable in the performance of their duties and responsibilities under the Tobacco Plans or pursuant to this Order.

23. **THIS COURT ORDERS** that prior to taking one of the following actions the CCAA Plan Administrators must unanimously approve such action in writing:

(a) the disbursement of any amounts from any Trust Account after the Effective Date and the timing of any disbursement of funds, including from (A) the QCAP Trust

Account or the PCC Trust Account to the Claims Administrator's trust accounts, or (B) the Cy-près Trust Account to the Cy-près Foundation;

(b) the movement of any Trust Account or any amounts held therein to an alternative Bank;

(c) any decision by a CCAA Plan Administrator to waive an Event of Default or Breach by a Tobacco Company, prior to seeking the consent of the Provinces and Territories and any Impacted Claimants or approval of the Court; and

(d) any extension of the period in which funds must be held in the Miscellaneous Claims Fund.

24. **THIS COURT ORDERS** that each CCAA Plan Administrator shall deliver a copy of any instructions to the Trustee to disburse funds from a Trust Account to each other CCAA Plan Administrator.

E. FEES AND EXPENSES

25. **THIS COURT ORDERS** that the CCAA Plan Administrator and the Court-Appointed Mediator, and their respective counsel and any financial, investment or other advisors engaged by the CCAA Plan Administrator in its discretion shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by JTIM. JTIM is hereby directed to pay the accounts of the CCAA Plan Administrator, counsel to the CCAA Plan Administrator and financial, investment or other advisors engaged by the CCAA Plan Administrator on a bi-weekly basis and, in respect of the Court-Appointed Mediator and its counsel, their fees and disbursements shall be paid equally by the Tobacco Companies.

26. **THIS COURT ORDERS** that the CCAA Plan Administrator and its legal counsel shall pass their accounts from time to time at intervals as the Court directs, and for this purpose the

accounts of the CCAA Plan Administrator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

F. LIMITATION OF LIABILITY AND INDEMNITY

27. **THIS COURT ORDERS** that the Monitors, CCAA Plan Administrators, CRO and Court-Appointed Mediator and their respective Affiliates, shareholders, Affiliates' shareholders, employees, heirs, successors, assigns, advisors, legal counsel, Representatives, consultants or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document, the Mediation or the CCAA Proceedings.

28. **THIS COURT ORDERS** that nothing in paragraph 27 shall derogate from the protections afforded to the Court-Appointed Mediator, the Monitors or the CCAA Plan Administrators as officers of the CCAA Court, or in the case of the CRO, as the Foreign Representative in the Chapter 15 Proceedings, by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any orders made in the CCAA Proceedings or the Chapter 15 Proceedings, if applicable.

29. **THIS COURT ORDERS** that the CCAA Plan Administrator, in fulfilling its mandate pursuant to the CCAA Plan, this Order or any other applicable order of this Court, may rely upon the books, records or information provided to it by JTIM as well as discussions and correspondence with senior management and advisors to JTIM. The CCAA Plan Administrator shall not audit, review or otherwise attempt to verify the accuracy or completeness of this information, nor shall the CCAA Plan Administrator express any opinion or other form of assurance with respect to any such information or discussions.

30. **THIS COURT ORDERS** that no Person shall be entitled to rely on any information or representation in any form or context provided by the CCAA Plan Administrator in fulfilling its mandate pursuant to the CCAA Plan, this Order or any other applicable order of this Court. The CCAA Plan Administrator shall not owe any duty of care to any Person in fulfilling such mandate, other than the Court as an officer thereof.

31. **THIS COURT ORDERS** that JTIM shall indemnify and save harmless the Court-Appointed Mediator, CRO, the CCAA Plan Administrators, the Monitors (including in their capacity as Foreign Representative (as applicable)), and the Administrative Coordinator and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents (collectively, the "**Indemnified Parties**"), from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of each Indemnified Party's respective activities or duties in any way in connection with the CCAA Proceeding and the Chapter 15 Proceedings, including for the avoidance of doubt: (i) the actions of the Court-Appointed Mediator, the CRO, the Monitors, the CCAA Plan Administrators and the Administrative Coordinator and their respective legal counsel and advisors in connection with the CCAA Proceeding and the Chapter 15 Proceedings, (ii) the business and affairs of JTIM whenever or however conducted, and (iii) any matter or transaction involving JTIM occurring in or in connection with the CCAA Proceeding and the Chapter 15 Proceedings, the CCAA Plan, or the development thereof (other than the enforcement of the Indemnified Parties' obligations under the CCAA Plan and the Definitive Documents). To the extent any Indemnified Party is not otherwise

compensated by the applicable Tobacco Company, such Indemnified Party may resort to their respective CCAA Plan Administration Reserve for compensation.

32. **THIS COURT ORDERS** that the indemnity in paragraph 31 hereof shall survive the resignation or removal of any Indemnified Party from any role, capacity, engagement, office or position relevant to its activities or duties in connection with the CCAA Plan.

G. SERVICE AND NOTICE

33. **THIS COURT ORDERS** that the service of documents made in accordance with the E-Service Guide of the Commercial List (the "**Guide**") (which can be found on the Commercial List website at: www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/) shall continue to be valid and effective service. Subject to rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that the Case Website established by the Monitor in accordance with the Guide with the following URL: www.insolvencies.deloitte.ca/en-ca/JTIM (the "**Case Website**") shall be maintained by the Monitor or the CCAA Plan Administrator.

34. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the CCAA Plan Administrator is at liberty to serve or distribute this Order, any other materials and orders in connection with the administration of the CCAA Plan, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the relevant interested parties at their respective addresses as last shown on the records of JTIM, or as otherwise made known to the CCAA Plan Administrator, and that any such service or distribution by courier,

personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

35. **THIS COURT ORDERS** that each reference to the "Monitors" shall be replaced with the "Monitors or CCAA Plan Administrators" in the Common Service Protocol approved by the Court by endorsement dated June 26, 2019, which shall continue in force *mutatis mutandis* during the administration of the CCAA Plan. The CCAA Plan Administrator or the Monitor shall manage the scheduling of all motions that are brought in these proceedings or in the administration of the CCAA Plan.

36. **THIS COURT ORDERS** that the CCAA Plan Administrator, the Monitor or their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

37. **THIS COURT ORDERS** that all motions in this proceeding or in connection with the administration of the CCAA Plan are to be brought on not less than seven (7) calendar days' notice to all persons on the Common Service List. Each notice of motion shall specify a date (the "**Return Date**") and time for the hearing.

38. **THIS COURT ORDERS** that any interested person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, JTIM and the CCAA Plan Administrator, with a

copy to all persons on the Common Service List, no later than 5 p.m. (Eastern time) on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

39. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

(a) whether a hearing is necessary;

(b) whether such hearing will be in person, virtual or by written submissions only; and

(c) the parties from whom submissions are required,

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

40. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the CCAA Plan Administrator shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The CCAA Plan Administrator shall thereafter advise the Common Service List of the Hearing Details and the CCAA Plan Administrator shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the CCAA Plan Administrator's next report.

41. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the notice of motion and in any event prior to the Objection Deadline, contact the moving party and the CCAA Plan Administrator (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties

are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court sees fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

H. GENERAL

42. **THIS COURT ORDERS** that the CCAA Plan Administrator may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of its powers and duties under this Order, the interpretation or application of this Order, or any matters relevant to the implementation or administration of the CCAA Plan.

43. **THIS COURT ORDERS** that in the event of a conflict between (i) this Order, (ii) the Sanction Order, (iii) the CCAA Plan, and (iv) the terms of any agreement existing between any Person and JTIM as at the Plan Implementation Date, the terms of the Sanction Order shall govern, subject to any subsequent order of this Court dated after the Sanction Order.

44. **THIS COURT ORDERS** that the Applicant, the CRO and the CCAA Plan Administrator are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the CCAA Plan Administrator is authorized and

empowered to act as a representative in respect of the within proceedings for the purpose of having this Order recognized in a jurisdiction outside Canada.

45. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, including but not limited to the Courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Order and to assist JTIM, the Monitor, the CCAA Plan Administrator and their respective agents in carrying out the terms of this Order and the CCAA Plan. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to JTIM, the CCAA Plan Administrator and the Monitor as an officer of this Court, as may be necessary or desirable to give effect to this Order and the CCAA Plan or to assist JTIM, the CCAA Plan Administrator and the Monitor and their respective agents in carrying out the terms of this Order and the CCAA Plan.

Chief Justice G.B. Morawetz

Court File No: CV-19-615862-00CL

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.

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

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Lawyers for Deloitte Restructuring Inc., in its capacity as the Court-appointed Monitor of JTI-Macdonald Corp.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	THURSDAY, THE 6TH
	)	
JUSTICE MORAWETZ	)	DAY OF MARCH, 2025

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 IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

Applicant

CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	THURSDAY, THE 6TH
	)	
JUSTICE MORAWETZ	)	DAY OF MARCH, 2025

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 IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

Applicant

CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

THIS MOTION made by FTI Consulting Canada Inc. ("**FTI**") in its capacity as court-appointed monitor (the "**Monitor**") of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "**Imperial**") was heard from January 29 to 31, 2025 at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Monitor dated January 15, 2025 (the "**Motion Record**"), the Twenty-Fifth Report to the Court of the Monitor dated January 15, 2025, the Twenty-Eighth Report to the Court of the Monitor dated February 27, 2025, the materials filed by the parties listed on the Participant Information Form, and upon hearing the submissions of counsel to the Court-Appointed Mediator, counsel to the Monitor, counsel to the Applicant and those other parties listed on the Participant Information Form, no one appearing for any other person on the Common Service List, although properly served with the Monitor's Motion Record,

as appears from the Lawyer's Certificate of Service of Anisha Visvanatha, certified January 15, 2025;

A. DEFINITIONS

1. **THIS COURT ORDERS** that for the purposes of this Order, capitalized terms not otherwise defined in this Order shall have the meanings given to them in the third amended and restated Court-Appointed Mediator's and Monitor's plan of compromise and arrangement concerning, affecting and involving Imperial, dated February 27, 2025, including all Schedules thereto (the "**CCAA Plan**").

B. APPOINTMENT OF CCAA PLAN ADMINISTRATOR

2. **THIS COURT ORDERS** that FTI is hereby appointed as of the date hereof, pursuant to the CCAA Plan, as the CCAA Plan Administrator, a neutral and independent officer of this Court, to administer the CCAA Plan with the powers and obligations set out in the CCAA Plan, the Sanction Order or herein and Imperial, its employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons currently retained or employed by Imperial (collectively, "**Assistants**") and its shareholders, officers, and directors shall advise the CCAA Plan Administrator of all material steps taken by Imperial pursuant to this Order, the Sanction Order and the CCAA Plan, and shall co-operate fully with the CCAA Plan Administrator in the exercise of its powers and discharge of its obligations and provide the CCAA Plan Administrator with the assistance that is necessary to enable the CCAA Plan Administrator to carry out the CCAA Plan Administrator's functions.

3. **THIS COURT ORDERS** that FTI, in its capacity as CCAA Plan Administrator, Monitor or Foreign Representative, as the case may be, is hereby authorized and empowered to take all steps and actions and to do all things required to facilitate the implementation of the CCAA Plan

in accordance with its terms and, where necessary or appropriate to do so, to enter into, execute, deliver, implement and consummate all of the steps, transactions, certificates and agreements contemplated by the CCAA Plan or otherwise set out herein.

4. **THIS COURT ORDERS** that following the granting of the Sanction Order, the Court-Appointed Mediator is hereby authorized and empowered to continue to provide services with respect to the implementation of the CCAA Plan as may be requested by the Monitors, the CCAA Plan Administrators or the Court or any other Party at the discretion of the Court-Appointed Mediator (the "**Court-Appointed Mediator's Ongoing Services**").

5. **THIS COURT ORDERS** that in the event that the Court-Appointed Mediator provides Court-Appointed Mediator's Ongoing Services, the Court-Appointed Mediator shall:

(a) have the benefit of all the protections given to him by the CCAA, any other applicable legislation including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, any orders in these CCAA Proceedings, including the Sanction Order, the CCAA Plan and as an officer of the Court; and

(b) incur no liability in connection with any Court-Appointed Mediator's Ongoing Services, and shall have the immunity of a Judge of a Superior Court in Canada.

6. **THIS COURT ORDERS AND DECLARES** that the protections afforded to the Court-Appointed Mediator and his heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents pursuant to the terms of the Initial Order and the other Orders made in these CCAA Proceedings, as applicable, shall not expire or terminate and, subject to the terms hereof, shall remain in full force and effect.

7. **THIS COURT ORDERS** that the CCAA Plan Administrator may, in its discretion, retain any trustees or custodians, or advisors, including legal, financial, investment or other advisors, to advise and assist it to carry out its duties in relation to the administration of the CCAA Plan.

8. **THIS COURT ORDERS** that nothing herein contained shall derogate from the Monitor's role as the monitor of Imperial pursuant to (i) the second amended and restated initial order of this Court dated March 12, 2019, (ii) all applicable orders of this Court including the Sanction Order, and (iii) the CCAA.

9. **THIS COURT ORDERS** that in no circumstances shall the CCAA Plan Administrator:

(a) be or be deemed to be a representative of the Claimants, Tobacco Companies and/or Tobacco Company Groups;

(b) have the authority to bind any of the Claimants; or

(c) have the authority to bind any of the Tobacco Companies or members of the Tobacco Company Groups.

10. **THIS COURT ORDERS** that the CCAA Plan Administrator shall not take possession or control of Imperial's current or future assets, undertakings or properties of any nature or kind whatsoever and wherever situate including all proceeds thereof (the "**Property**") and shall take no part whatsoever in the management, oversight, supervision or control of Imperial's business (the "**Business**") and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

11. **THIS COURT ORDERS** that in addition to its prescribed powers and obligations under all applicable orders of this Court, the CCAA, and the CCAA Plan, including pursuant to Sections 10.1, 14.4 and 14.8 thereunder, the CCAA Plan Administrator is hereby authorized and

empowered to be and is hereby appointed to serve as the "foreign representative" of Imperial in respect of the Chapter 15 Proceedings, in its capacity as either CCAA Plan Administrator or Monitor of Imperial.

C. DISTRIBUTIONS AND ADMINISTRATION

12. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to establish the following segregated, interest bearing trust accounts (collectively, the "**Trust Accounts**"), each to be held in Schedule I Chartered Banks or a syndicate of Schedule I Charted Banks which may include such financial institutions as may be approved and designated by the CCAA Plan Administrators (each a "**Bank**"):

(a) the Global Settlement Trust Account;

(b) the Supplemental Trust Account;

(c) the Miscellaneous Claims Fund Account;

(d) the PCC Trust Account;

(e) the QCAP Trust Account;

(f) the CCAA Plan Administration Reserve Account;

(g) the PCC Compensation Plan Reserve Account; and

(h) the Cy-près Trust Account.

13. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to engage any Person or Persons to act as trustee (collectively, the "**Trustee**") of the Trust Accounts and enter into one or more deeds of trust or other agreement with such Trustee in form and substance satisfactory to the CCAA Plan Administrator, subject to approval of the Court.

14. **THIS COURT ORDERS** that the Claims Administrator shall report to the CCAA Plan Administrators at any time as requested by any CCAA Plan Administrator on the progress of the administration of the claims processes for the Quebec Administration Plan and the PCC Compensation Plan, including, without limitation (i) the budget for the administration of claims made to the PCC Compensation Plan and to the Quebec Administration Plan, (ii) the publication of notices, the PCC Claims Application Deadline to file claims, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the claims process, any fees, charges and disbursements made, and (iii) any Compensation Payments to Eligible *Blais* Class Members and Individual Payments to Eligible Pan-Canadian Claimants.

15. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to oversee and direct the deposits into the Trust Accounts, including:

(a) the Upfront Contributions (including the Cash Security Deposits) and the Annual Contributions (excluding any Reserved Amounts), which shall be deposited into the Global Settlement Trust Account;

(b) the Reserved Amounts which shall be deposited into the Supplemental Trust Account; and

(c) amounts to be deposited into the CCAA Plan Administration Reserve Account, the PCC Compensation Plan Reserve Account, the Miscellaneous Claims Fund Account, the PCC Trust Account, the QCAP Trust Account, and the Cy-près Trust Account.

16. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to direct the Trustee to disburse funds from the Trust Accounts in accordance with the CCAA Plan, the Sanction Order and this Order, including:

(a) disbursements from the Global Settlement Trust Account to the Claimants, the other applicable Trust Accounts or otherwise in accordance with the CCAA Plan;

(b) disbursements of Reserved Amounts, including Tax Refund Cash Payments, from the Supplemental Trust Account to the Global Settlement Trust Account or a relevant Tax Authority on account of a notice of assessment or reassessment of Taxes, or to Imperial in accordance with the CCAA Plan;

(c) disbursements from the Supplemental Trust Account to Imperial following the termination of the Contribution Period;

(d) disbursements from the CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account to pay for costs which remain unpaid by Imperial, or to the Provinces and Territories in accordance with Section 15.1 or 15.2 of the CCAA Plan (as applicable);

(e) disbursements from the PCC Trust Account and QCAP Trust Account to the Claims Administrator's trust accounts, to Quebec Class Counsel (from the QCAP Trust Account) to pay the Quebec Class Counsel Fee, or to the Provinces and Territories in accordance with Section 16.3 of the CCAA Plan, paragraph 55.1 of the Quebec Administration Plan and paragraph 54.1 of the PCC Compensation Plan;

(f) disbursements from the Miscellaneous Claims Fund to Miscellaneous Claimants or to the Provinces and Territories in accordance with Section 18.2.5 of the CCAA Plan;

(g) disbursements to the Tobacco Companies, as applicable, to return otherwise undistributed amounts provided by the Tobacco Companies to increase the Miscellaneous Claims Amount pursuant to Section 18.2.1 of the CCAA Plan; and

(h) disbursements from the Cy-près Trust Account to the Cy-près Foundation.

17. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to make distributions in accordance with Article 17 of the CCAA Plan, subject to paragraph 24 below.

18. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to, and may instruct the Trustee to, deduct and withhold from any payment any amounts as required by law and may remit amounts to the appropriate Governmental Authority in accordance with Section 17.8 of the CCAA Plan.

19. **THIS COURT ORDERS** that in the event of a dispute regarding a notice of assessment or reassessment of income taxes, interest or penalties in respect of a Tax Matter, the CCAA Plan Administrator is authorized and empowered, at the request of Imperial, to direct the Trustee of the Supplemental Trust Account to transfer the amount requested by Imperial (not to exceed the lesser of (i) 100% of the income taxes, interest and penalties assessed, and (ii) 100% of the Reserved Amount held in the Supplemental Trust Account at the relevant time) to the relevant Tax Authority pending final resolution of the dispute.

20. **THIS COURT ORDERS AND DECLARES** that any release of funds under the CCAA Plan, the Sanction Order or this Order made or assisted by the Monitors, CCAA Plan Administrators or the Court-Appointed Mediator shall not constitute a "distribution" and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not constitute a "legal representative" or "representative" of Imperial or an "other person" for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), section 22 of the *Retail Sales Tax Act* (Ontario), section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax

legislation (collectively, the "**Statutes**"), and none of the Monitors, CCAA Plan Administrators and Court-Appointed Mediator in making any such payments or deliveries of funds or assets in relation to the CCAA Plan is "distributing", nor shall it be considered to have "distributed", such funds or assets for the purposes of the Statutes, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not incur any liability under the Statutes for making any payments or deliveries under the CCAA Plan or failing to withhold amounts, ordered or permitted hereunder, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not have any liability for any of Imperial's tax liabilities regardless of how or when such liabilities may have arisen.

D. CCAA PLAN ADMINISTRATORS' COMMUNICATION AND COORDINATION

21. **THIS COURT ORDERS** that:

(a) the CCAA Plan Administrators shall consult with each other and act jointly and in concert to fulfill their duties and responsibilities pursuant to the Tobacco Companies' CCAA Plans (the "**Tobacco Plans**" and each a "**Tobacco Plan**");

(b) each of the CCAA Plan Administrators shall have access to all documents and information provided by the Trustee of the Trust Accounts to each CCAA Plan Administrator until the completion of the administration of each Tobacco Plan; and

(c) each CCAA Plan Administrator shall have (i) continuous access to each Tobacco Company's Virtual Data Room, and (ii) continuous administrator access to its respective Tobacco Company's Virtual Data Room, until the completion of the administration of each Tobacco Plan, provided that a CCAA Plan Administrator is not permitted to disclose any confidential information with respect to one Tobacco Company to any Representative of another Tobacco Company.

22. **THIS COURT ORDERS** that the CCAA Plan Administrators shall coordinate amongst each other in connection with their administration of each applicable Tobacco Plan in accordance with such Tobacco Plan and as set out in paragraphs 23 to 25 below.

23. **THIS COURT ORDERS** that to the extent the Tobacco Plans require a CCAA Plan Administrator to provide notice to, report to, or to otherwise communicate with any Person, notice to, reports to or communications with the representatives of each following Person shall be sufficient for all purposes:

(a) the Chair of the Provincial and Territorial Liaison Committee with respect to the Provinces and Territories;

(b) the Administrative Coordinator with respect to the Quebec Administration Plan and Quebec Class Counsel with respect to the Quebec Class Action Plaintiffs;

(c) the Administrative Coordinator with respect to the PCC Compensation Plan and PCC Representative Counsel with respect to the Pan-Canadian Claimants;

(d) the Chair of the Cy-près Foundation (once appointed) with respect to the Cy-près Foundation;

(e) *Knight* Class Counsel with respect to the *Knight* Class Action Plaintiffs;

(f) counsel for the Tobacco Producers with respect to the Tobacco Producers; and

(g) the respective Tobacco Company's counsel with respect to such Tobacco Company;

provided that, the CCAA Plan Administrators may, in their discretion, communicate with any other Person they view necessary or desirable in the performance of their duties and responsibilities under the Tobacco Plans or pursuant to this Order.

24. **THIS COURT ORDERS** that prior to taking one of the following actions the CCAA Plan Administrators must unanimously approve such action in writing:

(a) the disbursement of any amounts from any Trust Account after the Effective Date and the timing of any disbursement of funds, including from (A) the QCAP Trust Account or the PCC Trust Account to the Claims Administrator's trust accounts, or (B) the Cy-près Trust Account to the Cy-près Foundation;

(b) the movement of any Trust Account or any amounts held therein to an alternative Bank;

(c) any decision by a CCAA Plan Administrator to waive an Event of Default or Breach by a Tobacco Company, prior to seeking the consent of the Provinces and Territories and any Impacted Claimants or approval of the Court; and

(d) any extension of the period in which funds must be held in the Miscellaneous Claims Fund.

25. **THIS COURT ORDERS** that each CCAA Plan Administrator shall deliver a copy of any instructions to the Trustee to disburse funds from a Trust Account to each other CCAA Plan Administrator.

E. FEES AND EXPENSES

26. **THIS COURT ORDERS** that the CCAA Plan Administrator and the Court-Appointed Mediator, and their respective counsel and any financial, investment or other advisors engaged by the CCAA Plan Administrator in its discretion shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by Imperial. Imperial is hereby directed to pay the accounts of the CCAA Plan Administrator, counsel to the CCAA Plan Administrator and financial, investment or other advisors engaged by the CCAA Plan

Administrator on a bi-weekly basis and, in respect of the Court-Appointed Mediator and his counsel, their fees and disbursements shall be paid equally by the Tobacco Companies.

27. **THIS COURT ORDERS** that the CCAA Plan Administrator and its legal counsel shall pass their accounts from time to time at intervals as the Court directs, and for this purpose the accounts of the CCAA Plan Administrator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

F. LIMITATION OF LIABILITY AND INDEMNITY

28. **THIS COURT ORDERS** that the Monitors, CCAA Plan Administrators and Court-Appointed Mediator and their respective Affiliates, shareholders, Affiliates' shareholders, employees, heirs, successors, assigns, advisors, legal counsel, Representatives, consultants or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document, the Mediation or the CCAA Proceedings.

29. **THIS COURT ORDERS** that nothing in paragraph 28 shall derogate from the protections afforded to the Court-Appointed Mediator, the Monitors or the CCAA Plan Administrators as officers of the CCAA Court, or in the case of FTI, as the Foreign Representative in the Chapter 15 Proceedings, by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any orders made in the CCAA Proceedings or the Chapter 15 Proceedings, if applicable.

30. **THIS COURT ORDERS** that the CCAA Plan Administrator, in fulfilling its mandate pursuant to the CCAA Plan, this Order or any other applicable order of this Court, may rely upon the books, records or information provided to it by Imperial as well as discussions and

correspondence with senior management and advisors to Imperial. The CCAA Plan Administrator shall not audit, review or otherwise attempt to verify the accuracy or completeness of this information, nor shall the CCAA Plan Administrator express any opinion or other form of assurance with respect to any such information or discussions.

31. **THIS COURT ORDERS** that no Person shall be entitled to rely on any information or representation in any form or context provided by the CCAA Plan Administrator in fulfilling its mandate pursuant to the CCAA Plan, this Order or any other applicable order of this Court. The CCAA Plan Administrator shall not owe any duty of care to any Person in fulfilling such mandate, other than the Court as an officer thereof.

32. **THIS COURT ORDERS** that Imperial shall indemnify and save harmless the Court-Appointed Mediator, the CCAA Plan Administrators, the Monitors (including in their capacity as Foreign Representative (as applicable)), and the Administrative Coordinator and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents (collectively, the "**Indemnified Parties**"), from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of each Indemnified Party's respective activities or duties in any way in connection with the CCAA Proceeding and the Chapter 15 Proceedings, including for the avoidance of doubt: (i) the actions of the Court-Appointed Mediator, the Monitors, the CCAA Plan Administrators and the Administrative Coordinator and their respective legal counsel and advisors in connection with the CCAA Proceeding and the Chapter 15 Proceedings, (ii) the business and affairs of Imperial whenever or however conducted,

and (iii) any matter or transaction involving Imperial occurring in or in connection with the CCAA Proceeding and the Chapter 15 Proceedings, the CCAA Plan, or the development thereof (other than the enforcement of the Indemnified Parties' obligations under the CCAA Plan and the Definitive Documents). To the extent any Indemnified Party is not otherwise compensated by the applicable Tobacco Company, such Indemnified Party may resort to their respective CCAA Plan Administration Reserve for compensation.

33. **THIS COURT ORDERS** that the indemnity in paragraph 32 hereof shall survive the resignation or removal of any Indemnified Party from any role, capacity, engagement, office or position relevant to its activities or duties in connection with the CCAA Plan.

G. SERVICE AND NOTICE

34. **THIS COURT ORDERS** that the service of documents made in accordance with the E-Service Guide of the Commercial List (the "**Guide**") (which can be found on the Commercial List website at: www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/) shall continue to be valid and effective service. Subject to rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that the Case Website established by the Monitor in accordance with the Guide with the following URL: http://cfcanada.fticonsulting.com/imperialtobacco (the "**Case Website**") shall be maintained by the Monitor or the CCAA Plan Administrator.

35. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the CCAA Plan Administrator is at liberty to serve or distribute this Order, any other materials and orders in connection with the administration of the CCAA Plan,

and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the relevant interested parties at their respective addresses as last shown on the records of Imperial, or as otherwise made known to the CCAA Plan Administrator, and that any such service or distribution by courier, personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

36. **THIS COURT ORDERS** that each reference to the "Monitors" shall be replaced with the "Monitors or CCAA Plan Administrators" in the Common Service Protocol approved by the Court by endorsement dated June 26, 2019, which shall continue in force *mutatis mutandis* during the administration of the CCAA Plan. The CCAA Plan Administrator or the Monitor shall manage the scheduling of all motions that are brought in these proceedings or in the administration of the CCAA Plan.

37. **THIS COURT ORDERS** that the CCAA Plan Administrator, the Monitor or their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

38. **THIS COURT ORDERS** that all motions in this proceeding or in connection with the administration of the CCAA Plan are to be brought on not less than seven (7) calendar days' notice to all persons on the Common Service List. Each notice of motion shall specify a date (the "**Return Date**") and time for the hearing.

39. **THIS COURT ORDERS** that any interested person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, Imperial and the CCAA Plan Administrator, with a copy to all persons on the Common Service List, no later than 5 p.m. (Eastern time) on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

40. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

(a) whether a hearing is necessary;

(b) whether such hearing will be in person, virtual or by written submissions only; and

(c) the parties from whom submissions are required,

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

41. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the CCAA Plan Administrator shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The CCAA Plan Administrator shall thereafter advise the Common Service List of the Hearing Details and the CCAA Plan Administrator shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the CCAA Plan Administrator's next report.

42. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the

motion, such objecting party shall, promptly upon receipt of the notice of motion and in any event prior to the Objection Deadline, contact the moving party and the CCAA Plan Administrator (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court sees fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

H. GENERAL

43. **THIS COURT ORDERS** that the CCAA Plan Administrator may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of its powers and duties under this Order, the interpretation or application of this Order, or any matters relevant to the implementation or administration of the CCAA Plan.

44. **THIS COURT ORDERS** that in the event of a conflict between (i) this Order, (ii) the Sanction Order, (iii) the CCAA Plan, and (iv) the terms of any agreement existing between any Person and Imperial as at the Plan Implementation Date, the terms of the Sanction Order shall govern, subject to any subsequent order of this Court dated after the Sanction Order.

45. **THIS COURT ORDERS** that the Applicant and the CCAA Plan Administrator are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the CCAA Plan Administrator is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having this Order recognized in a jurisdiction outside Canada.

46. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, including but not limited to the Courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Order and to assist Imperial, the Monitor, the CCAA Plan Administrator and their respective agents in carrying out the terms of this Order and the CCAA Plan. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Imperial, the CCAA Plan Administrator and the Monitor as an officer of this Court, as may be necessary or desirable to give effect to this Order and the CCAA Plan or to assist Imperial, the CCAA Plan Administrator and the Monitor and their respective agents in carrying out the terms of this Order and the CCAA Plan.

C.J.

Chief Justice G.B. Morawetz

Court File No: CV-19-616077-00CL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

ORDER
(CCAA Plan Administrator Appointment Order)

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Applicant

CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

THIS MOTION made by Ernst & Young Inc. ("**EYI**") in its capacity as court-appointed monitor (the "**Monitor**") of Rothmans, Benson & Hedges Inc. ("**RBH**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Monitor dated January 15, 2025 (the "**Motion Record**"), including the Twenty-Third Report of the Monitor dated January 15, 2025 (the "**Twenty-Third Report**"), the Twenty-Sixth Report of the Monitor dated February 27, 2025 and the materials filed by the parties listed on the Participant Information Form, and upon hearing the submissions of counsel to the Court-Appointed Mediator, counsel to the Monitor, counsel to the Applicant and those other parties listed on the Participant Information Form, no one appearing for any other person on the Common Service List, although properly served with the Monitor's Motion Record, as appears from the Affidavit of Service of Alec Hoy, sworn January 15, 2025;

A. DEFINITIONS

1. **THIS COURT ORDERS** that for the purposes of this Order, capitalized terms not otherwise defined in this Order shall have the meanings given to them in the third amended and restated Court-Appointed Mediator's and Monitor's plan of compromise and arrangement concerning, affecting and involving RBH, dated February 27, 2025, including all Schedules thereto (the "**CCAA Plan**").

B. APPOINTMENT OF CCAA PLAN ADMINISTRATOR

2. **THIS COURT ORDERS** that EYI is hereby appointed as of the date hereof, pursuant to the CCAA Plan, as the CCAA Plan Administrator, a neutral and independent officer of this Court, to administer the CCAA Plan with the powers and obligations set out in the CCAA Plan, the Sanction Order or herein and RBH, its employees, independent contractors, consultants, agents, experts, accountants, counsel and such other persons currently retained or employed by RBH (collectively, "**Assistants**") and its shareholders, officers, and directors shall advise the CCAA Plan Administrator of all material steps taken by RBH pursuant to this Order, the Sanction Order and the CCAA Plan, and shall co-operate fully with the CCAA Plan Administrator in the exercise of its powers and discharge of its obligations and provide the CCAA Plan Administrator with the assistance that is necessary to enable the CCAA Plan Administrator to carry out the CCAA Plan Administrator's functions.

3. **THIS COURT ORDERS** that EYI, in its capacity as CCAA Plan Administrator or Monitor, as the case may be, is hereby authorized and empowered to take all steps and actions and to do all things required to facilitate the implementation of the CCAA Plan in accordance with its terms and, where necessary or appropriate to do so, to enter into, execute, deliver, implement and

consummate all of the steps, transactions, certificates and agreements contemplated by the CCAA Plan or otherwise set out herein.

4. **THIS COURT ORDERS** that following the granting of the Sanction Order, the Court-Appointed Mediator is hereby authorized and empowered to continue to provide services with respect to the implementation of the CCAA Plan as may be requested by the Monitors, the CCAA Plan Administrators or the Court or any other Party at the discretion of the Court-Appointed Mediator (the "**Court-Appointed Mediator's Ongoing Services**").

5. **THIS COURT ORDERS** that in the event that the Court-Appointed Mediator provides Court-Appointed Mediator's Ongoing Services, the Court-Appointed Mediator shall:

(a) have the benefit of all the protections given to it by the CCAA, any other applicable legislation including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, any orders in these CCAA Proceedings, including the Sanction Order, the CCAA Plan and as an officer of the Court; and

(b) incur no liability in connection with any Court-Appointed Mediator's Ongoing Services, and shall have the immunity of a Judge of a Superior Court in Canada.

6. **THIS COURT ORDERS AND DECLARES** that the protections afforded to the Court-Appointed Mediator and his heirs, successors, assigns, Representatives, advisors, legal counsel, consultants or agents pursuant to the terms of the Initial Order and the other Orders made in these CCAA Proceedings, as applicable, shall not expire or terminate and, subject to the terms hereof, shall remain in full force and effect.

7. **THIS COURT ORDERS** that the CCAA Plan Administrator may, in its discretion, retain any trustees or custodians, or advisors, including legal, financial, investment or other advisors, to advise and assist it to carry out its duties in relation to the administration of the CCAA Plan.

8. **THIS COURT ORDERS** that nothing herein contained shall derogate from the Monitor's role as the monitor of RBH pursuant to (i) the second amended and restated initial order of this Court dated April 25, 2019, (ii) all applicable orders of this Court including the Sanction Order, and (iii) the CCAA.

9. **THIS COURT ORDERS** that in no circumstances shall the CCAA Plan Administrator:

(a) be or be deemed to be a representative of the Claimants, Tobacco Companies and/or Tobacco Company Groups;

(b) have the authority to bind any of the Claimants; or

(c) have the authority to bind any of the Tobacco Companies or members of the Tobacco Company Groups.

10. **THIS COURT ORDERS** that the CCAA Plan Administrator shall not take possession or control of RBH's current or future assets, undertakings or properties of any nature or kind whatsoever and wherever situate including all proceeds thereof (the "**Property**") and shall take no part whatsoever in the management, oversight, supervision or control of RBH's business (the "**Business**") and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

C. DISTRIBUTIONS AND ADMINISTRATION

11. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to establish the following segregated, interest bearing trust accounts (collectively, the

"**Trust Accounts**"), each to be held in Schedule I Chartered Banks or an affiliate thereof (each a "**Bank**"):

(a) the Global Settlement Trust Account;

(b) the Supplemental Trust Account;

(c) the Miscellaneous Claims Fund Account;

(d) the PCC Trust Account;

(e) the QCAP Trust Account;

(f) the CCAA Plan Administration Reserve Account;

(g) the PCC Compensation Plan Reserve Account; and

(h) the Cy-près Trust Account.

12. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to engage any Person or Persons to act as trustee (collectively, the "**Trustee**") of the Trust Accounts and enter into one or more deeds of trust or other agreement with such Trustee in form and substance satisfactory to the CCAA Plan Administrator, subject to approval of the Court.

13. **THIS COURT ORDERS** that the Claims Administrator shall report to the CCAA Plan Administrators at any time as requested by any CCAA Plan Administrator on the progress of the administration of the claims processes for the Quebec Administration Plan and the PCC Compensation Plan, including, without limitation (i) the budget for the administration of claims made to the PCC Compensation Plan and to the Quebec Administration Plan, (ii) the publication of notices, the PCC Claims Application Deadline to file claims, the *Blais* Claims Application Deadline to file claims, claims approved, claims rejected, claims under review, any delays in the

claims process, any fees, charges and disbursements made, and (iii) any Compensation Payments to Eligible *Blais* Class Members and Individual Payments to Eligible Pan-Canadian Claimants.

14. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to oversee and direct the deposits into the Trust Accounts, including:

(a) the Upfront Contributions (including the Cash Security Deposits) and the Annual Contributions (excluding any Reserved Amounts), which shall be deposited into the Global Settlement Trust Account;

(b) the Reserved Amounts which shall be deposited into the Supplemental Trust Account; and

(c) amounts to be deposited into the CCAA Plan Administration Reserve Account, the PCC Compensation Plan Reserve Account, the Miscellaneous Claims Fund Account, the PCC Trust Account, the QCAP Trust Account, and the Cy-près Trust Account.

15. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to direct the Trustee to disburse funds from the Trust Accounts in accordance with the CCAA Plan, the Sanction Order and this Order, including:

(a) disbursements from the Global Settlement Trust Account to the Claimants, the other applicable Trust Accounts or otherwise in accordance with the CCAA Plan;

(b) disbursements of Reserved Amounts, including Tax Refund Cash Payments, from the Supplemental Trust Account to the Global Settlement Trust Account or a relevant Tax Authority on account of a notice of assessment or reassessment of Taxes, or to RBH in accordance with the CCAA Plan;

(c) disbursements from the Supplemental Trust Account to RBH following the termination of the Contribution Period;

(d) disbursements from the CCAA Plan Administration Reserve Account and PCC Compensation Plan Reserve Account to pay for costs which remain unpaid by RBH, or to the Provinces and Territories in accordance with Section 15.1 or 15.2 of the CCAA Plan (as applicable);

(e) disbursements from the PCC Trust Account and QCAP Trust Account to the Claims Administrator's trust accounts, to Quebec Class Counsel (from the QCAP Trust Account) to pay the Quebec Class Counsel Fee, or to the Provinces and Territories in accordance with Section 16.3 of the CCAA Plan, paragraph 55.1 of the Quebec Administration Plan and paragraph 54.1 of the PCC Compensation Plan;

(f) disbursements from the Miscellaneous Claims Fund to Miscellaneous Claimants or to the Provinces and Territories in accordance with Section 18.2.5 of the CCAA Plan;

(g) disbursements to the Tobacco Companies, as applicable, to return otherwise undistributed amounts provided by the Tobacco Companies to increase the Miscellaneous Claims Amount pursuant to Section 18.2.1 of the CCAA Plan; and

(h) disbursements from the Cy-près Trust Account to the Cy-près Foundation.

16. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to make distributions in accordance with Article 17 of the CCAA Plan, subject to paragraph 23 below.

17. **THIS COURT ORDERS** that the CCAA Plan Administrator is authorized and empowered to, and may instruct the Trustee to, deduct and withhold from any payment any

amounts as required by law and may remit amounts to the appropriate Governmental Authority in accordance with Section 17.8 of the CCAA Plan.

18. **THIS COURT ORDERS** that in the event of a dispute regarding a notice of assessment or reassessment of income taxes, interest or penalties in respect of a Tax Matter, the CCAA Plan Administrator is authorized and empowered, at the request of RBH, to direct the Trustee of the Supplemental Trust Account to transfer the amount requested by RBH (not to exceed the lesser of (i) 100% of the income taxes, interest and penalties assessed, and (ii) 100% of the Reserved Amount held in the Supplemental Trust Account at the relevant time) to the relevant Tax Authority pending final resolution of the dispute.

19. **THIS COURT ORDERS AND DECLARES** that any release of funds under the CCAA Plan, the Sanction Order or this Order made or assisted by the Monitors, CCAA Plan Administrators or the Court-Appointed Mediator shall not constitute a "distribution" and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not constitute a "legal representative" or "representative" of RBH or an "other person" for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 46 of the *Employment Insurance Act* (Canada), section 22 of the *Retail Sales Tax Act* (Ontario), section 107 of the *Corporations Tax Act* (Ontario), or any other similar federal, provincial or territorial tax legislation (collectively, the "**Statutes**"), and none of the Monitors, CCAA Plan Administrators and Court-Appointed Mediator in making any such payments or deliveries of funds or assets in relation to the CCAA Plan is "distributing", nor shall it be considered to have "distributed", such funds or assets for the purposes of the Statutes, and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not incur any liability under the Statutes for making any payments or deliveries under the CCAA Plan or failing to withhold amounts, ordered or permitted hereunder,

and the Monitors, CCAA Plan Administrators and Court-Appointed Mediator shall not have any liability for any of RBH's tax liabilities regardless of how or when such liabilities may have arisen.

D. CCAA PLAN ADMINISTRATORS' COMMUNICATION AND COORDINATION

20. **THIS COURT ORDERS** that:

(a) the CCAA Plan Administrators shall consult with each other and act jointly and in concert to fulfill their duties and responsibilities pursuant to the Tobacco Companies' CCAA Plans (the "**Tobacco Plans**" and each, a "**Tobacco Plan**");

(b) each of the CCAA Plan Administrators shall have access to all documents and information provided by the Trustee of the Trust Accounts to each CCAA Plan Administrator until the completion of the administration of each Tobacco Plan; and

(c) each CCAA Plan Administrator shall have (i) continuous access to each Tobacco Company's Virtual Data Room, and (ii) continuous administrator access to its respective Tobacco Company's Virtual Data Room, until the completion of the administration of each Tobacco Plan, provided that a CCAA Plan Administrator is not permitted to disclose any confidential information with respect to one Tobacco Company to any Representative of another Tobacco Company.

21. **THIS COURT ORDERS** that the CCAA Plan Administrators shall coordinate amongst each other in connection with their administration of each applicable Tobacco Plan in accordance with such Tobacco Plan and as set out in paragraphs 22 to 24 below.

22. **THIS COURT ORDERS** that to the extent the Tobacco Plans require a CCAA Plan Administrator to provide notice to, report to, or to otherwise communicate with any Person, notice

to, reports to or communications with the representatives of each following Person shall be sufficient for all purposes:

(a) the Chair of the Provincial and Territorial Liaison Committee with respect to the Provinces and Territories;

(b) the Administrative Coordinator with respect to the Quebec Administration Plan and Quebec Class Counsel with respect to the Quebec Class Action Plaintiffs;

(c) the Administrative Coordinator with respect to the PCC Compensation Plan and PCC Representative Counsel with respect to the Pan-Canadian Claimants;

(d) the Chair of the Cy-près Foundation (once appointed) with respect to the Cy-près Foundation;

(e) *Knight* Class Counsel with respect to the *Knight* Class Action Plaintiffs;

(f) counsel for the Tobacco Producers with respect to the Tobacco Producers; and

(g) the respective Tobacco Company's counsel with respect to such Tobacco Company;

provided that, the CCAA Plan Administrators may, in their discretion, communicate with any other Person they view necessary or desirable in the performance of their duties and responsibilities under the Tobacco Plans or pursuant to this Order.

23. **THIS COURT ORDERS** that prior to taking one of the following actions the CCAA Plan Administrators must unanimously approve such action in writing:

(a) the disbursement of any amounts from any Trust Account after the Effective Date and the timing of any disbursement of funds, including from (A) the QCAP Trust

Account or the PCC Trust Account to the Claims Administrator's trust accounts, or (B) the Cy-près Trust Account to the Cy-près Foundation;

(b) the movement of any Trust Account or any amounts held therein to an alternative Bank;

(c) any decision by a CCAA Plan Administrator to waive an Event of Default or Breach by a Tobacco Company, prior to seeking the consent of the Provinces and Territories and any Impacted Claimants or approval of the Court; and

(d) any extension of the period in which funds must be held in the Miscellaneous Claims Fund.

24. **THIS COURT ORDERS** that each CCAA Plan Administrator shall deliver a copy of any instructions to the Trustee to disburse funds from a Trust Account to each other CCAA Plan Administrator.

E. FEES AND EXPENSES

25. **THIS COURT ORDERS** that the CCAA Plan Administrator and the Court-Appointed Mediator, and their respective counsel and any financial, investment or other advisors engaged by the CCAA Plan Administrator in its discretion shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by RBH. RBH is hereby directed to pay the accounts of the CCAA Plan Administrator, counsel to the CCAA Plan Administrator and financial, investment or other advisors engaged by the CCAA Plan Administrator on a bi-weekly basis and, in respect of the Court-Appointed Mediator and its counsel, their fees and disbursements shall be paid equally by the Tobacco Companies.

26. **THIS COURT ORDERS** that the CCAA Plan Administrator and its legal counsel shall pass their accounts from time to time at intervals as the Court directs, and for this purpose the

accounts of the CCAA Plan Administrator and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

F. LIMITATION OF LIABILITY AND INDEMNITY

27. **THIS COURT ORDERS** that the Monitors, CCAA Plan Administrators and Court-Appointed Mediator and their respective Affiliates, shareholders, Affiliates' shareholders, employees, heirs, successors, assigns, advisors, legal counsel, Representatives, consultants or agents shall not incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Tobacco Company to observe, perform or comply with any of its obligations under its CCAA Plan or any other Definitive Document, the Mediation or the CCAA Proceedings.

28. **THIS COURT ORDERS** that nothing in paragraph 27 shall derogate from the protections afforded to the Court-Appointed Mediator, the Monitors or the CCAA Plan Administrators as officers of the CCAA Court, or in the case of FTI, as the Foreign Representative in the Chapter 15 Proceedings, by the CCAA Plans, the CCAA, any other applicable legislation, including pursuant to Section 142 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and any orders made in the CCAA Proceedings or the Chapter 15 Proceedings, if applicable.

29. **THIS COURT ORDERS** that the CCAA Plan Administrator, in fulfilling its mandate pursuant to the CCAA Plan, this Order or any other applicable order of this Court, may rely upon the books, records or information provided to it by RBH as well as discussions and correspondence with senior management and advisors to RBH. The CCAA Plan Administrator shall not audit, review or otherwise attempt to verify the accuracy or completeness of this information, nor shall the CCAA Plan Administrator express any opinion or other form of assurance with respect to any such information or discussions.

30. **THIS COURT ORDERS** that no Person shall be entitled to rely on any information or representation in any form or context provided by the CCAA Plan Administrator in fulfilling its mandate pursuant to the CCAA Plan, this Order or any other applicable order of this Court. The CCAA Plan Administrator shall not owe any duty of care to any Person in fulfilling such mandate, other than the Court as an officer thereof.

31. **THIS COURT ORDERS** that RBH shall indemnify and save harmless the Court-Appointed Mediator, the CCAA Plan Administrators, the Monitors (including in their capacity as Foreign Representative (as applicable)), and the Administrative Coordinator and, as applicable, their respective Affiliates, shareholders, Affiliates' shareholders, directors, officers, employees, legal counsel, advisors, consultants, Representatives and agents (collectively, the "**Indemnified Parties**"), from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of each Indemnified Party's respective activities or duties in any way in connection with the CCAA Proceeding and the Chapter 15 Proceedings, including for the avoidance of doubt: (i) the actions of the Court-Appointed Mediator, the Monitors, the CCAA Plan Administrators and the Administrative Coordinator and their respective legal counsel and advisors in connection with the CCAA Proceeding and the Chapter 15 Proceedings, (ii) the business and affairs of RBH whenever or however conducted, and (iii) any matter or transaction involving RBH occurring in or in connection with the CCAA Proceeding and the Chapter 15 Proceedings, the CCAA Plan, or the development thereof (other than the enforcement of the Indemnified Parties' obligations under the CCAA Plan and the Definitive Documents). To the extent any Indemnified Party is not otherwise compensated by the

applicable Tobacco Company, such Indemnified Party may resort to their respective CCAA Plan Administration Reserve for compensation.

32. **THIS COURT ORDERS** that the indemnity in paragraph 31 hereof shall survive the resignation or removal of any Indemnified Party from any role, capacity, engagement, office or position relevant to its activities or duties in connection with the CCAA Plan.

G. SERVICE AND NOTICE

33. **THIS COURT ORDERS** that the service of documents made in accordance with the E-Service Guide of the Commercial List (the "**Guide**") (which can be found on the Commercial List website at: www.ontariocourts.ca//scj/practice/practice-directions/toronto/eservice-commercial/) shall continue to be valid and effective service. Subject to rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that the Case Website established by the Monitor in accordance with the Guide with the following URL: www.ey.com/ca/rbh (the "**Case Website**") shall be maintained by the Monitor or the CCAA Plan Administrator.

34. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the CCAA Plan Administrator is at liberty to serve or distribute this Order, any other materials and orders in connection with the administration of the CCAA Plan, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the relevant interested parties at their respective addresses as last shown on the records of RBH, or as otherwise made known to the CCAA Plan Administrator, and that any such service or distribution by courier,

personal delivery, facsimile or other electronic transmission shall be deemed to be received on the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

35. **THIS COURT ORDERS** that each reference to the "Monitors" shall be replaced with the "Monitors or CCAA Plan Administrators" in the Common Service Protocol approved by the Court by endorsement dated June 26, 2019, which shall continue in force *mutatis mutandis* during the administration of the CCAA Plan. The CCAA Plan Administrator or the Monitor shall manage the scheduling of all motions that are brought in these proceedings or in the administration of the CCAA Plan.

36. **THIS COURT ORDERS** that the CCAA Plan Administrator, the Monitor or their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices or other correspondence, by forwarding true copies thereof by electronic message to the interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 8100 2-175 (SOR/DORS).

37. **THIS COURT ORDERS** that all motions in this proceeding or in connection with the administration of the CCAA Plan are to be brought on not less than seven (7) calendar days' notice to all persons on the Common Service List. Each notice of motion shall specify a date (the "**Return Date**") and time for the hearing.

38. **THIS COURT ORDERS** that any interested person wishing to object to the relief sought in a motion must serve responding motion material or, if they do not intend to file material, a notice in all cases stating the objection to the motion and the grounds for such objection in writing (the "**Responding Material**") to the moving party, RBH and the CCAA Plan Administrator, with a

copy to all persons on the Common Service List, no later than 5 p.m. (Eastern time) on the date that is four (4) calendar days prior to the Return Date (the "**Objection Deadline**").

39. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the judge having carriage of the motion (the "**Presiding Judge**") may determine:

(a) whether a hearing is necessary;

(b) whether such hearing will be in person, virtual or by written submissions only; and

(c) the parties from whom submissions are required,

(collectively, the "**Hearing Details**"). In the absence of any such determination, a hearing will be held in the ordinary course.

40. **THIS COURT ORDERS** that, if no Responding Materials are served by the Objection Deadline, the CCAA Plan Administrator shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The CCAA Plan Administrator shall thereafter advise the Common Service List of the Hearing Details and the CCAA Plan Administrator shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the CCAA Plan Administrator's next report.

41. **THIS COURT ORDERS** that if any party objects to the motion proceeding on the Return Date or believes that the Objection Deadline does not provide sufficient time to respond to the motion, such objecting party shall, promptly upon receipt of the notice of motion and in any event prior to the Objection Deadline, contact the moving party and the CCAA Plan Administrator (together with the objecting party and any other party who has served Responding Materials, the "**Interested Parties**") to advise of such objection and the reasons therefor. If the Interested Parties

are unable to resolve the objection to the timing and schedule for the motion following good faith consultations, the Interested Parties may seek a scheduling appointment before the Presiding Judge to be held prior to the Return Date or on such other date as may be mutually agreed by the Interested Parties or as directed by the Presiding Judge to establish a schedule for the motion. At the scheduling appointment, the Presiding Judge may provide directions including a schedule for the delivery of any further materials and the hearing of the contested motion, and may address such other matters, including interim relief, as the Court sees fit. Notwithstanding the foregoing, the Presiding Judge may require the Interested Parties to proceed with the contested motion on the Return Date or on any other date as may be directed by the Presiding Judge or as may be mutually agreed by the Interested Parties, if otherwise satisfactory to the Presiding Judge.

H. GENERAL

42. **THIS COURT ORDERS** that the CCAA Plan Administrator may from time to time apply to this Court to amend, vary, supplement or replace this Order or for advice and directions concerning the discharge of its powers and duties under this Order, the interpretation or application of this Order, or any matters relevant to the implementation or administration of the CCAA Plan.

43. **THIS COURT ORDERS** that in the event of a conflict between (i) this Order, (ii) the Sanction Order, (iii) the CCAA Plan, and (iv) the terms of any agreement existing between any Person and RBH as at the Plan Implementation Date, the terms of the Sanction Order shall govern, subject to any subsequent order of this Court dated after the Sanction Order.

44. **THIS COURT ORDERS** that the Applicant and the CCAA Plan Administrator are at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the CCAA Plan Administrator is authorized and

empowered to act as a representative in respect of the within proceedings for the purpose of having this Order recognized in a jurisdiction outside Canada.

45. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, including but not limited to the Courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Order and to assist RBH, the Monitor, the CCAA Plan Administrator and their respective agents in carrying out the terms of this Order and the CCAA Plan. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to RBH, the CCAA Plan Administrator and the Monitor as an officer of this Court, as may be necessary or desirable to give effect to this Order and the CCAA Plan or to assist RBH, the CCAA Plan Administrator and the Monitor and their respective agents in carrying out the terms of this Order and the CCAA Plan.

C.J.

Chief Justice G.B. Morawetz

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

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 ROTHMANS, BENSON & HEDGES INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

CCAA PLAN ADMINISTRATOR APPOINTMENT ORDER

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Court File No./N° du dossier du greffe : CV-19-00616779-00CL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	WEDNESDAY, THE 18th
	)	
JUSTICE MORAWETZ	)	DAY OF JUNE, 2025

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 **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**

QUEBEC CASH SECURITY DEPOSIT ORDER

THIS JOINT MOTION made by the "**Imperial and RBH Monitors**", being FTI Consulting Canada Inc. in its capacity as court-appointed monitor (the "**Monitor**") of Imperial Tobacco Canada Limited ("**ITCAN**") and Imperial Tobacco Company Limited (together with ITCAN, "**Imperial**" or the "**Applicant**") and Ernst & Young Inc. in its capacity as court-appointed monitor of Rothmans, Benson & Hedges Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an Order, among other things, partially lifting the stay of proceedings to allow the Monitor, with the support of ITCAN and the Quebec Class Action Plaintiffs, to commence an application in the Quebec Court of Appeal to release the funds paid by ITCAN into the Quebec Court of Appeal as a Cash Security Deposit pursuant to the Order dated October 27, 2015 in Court File No. 550-09-025384-154 (2015 QCCA 1737) to be deposited into the Global Settlement Trust Account (as defined in the Imperial CCAA Plan, defined below) (the "**Quebec Application**")

was heard on June 18, 2025.

ON READING the Joint Motion Record of the Imperial and RBH Monitors dated June 11, 2025, the Twenty-Ninth Report of the Monitor dated June 11, 2025 (the "**Twenty-Ninth Report**") and the Joint Factum of the Imperial and RBH Monitors dated June 11, 2025:

SERVICE

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that this motion is properly determined in writing and that further service of this motion is hereby dispensed with.

INTERPRETATION

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Third Amended and Restated Plan of Compromise and Arrangement in respect of the Applicant dated February 27, 2025 (the "**Imperial CCAA Plan**").

PARTIAL LIFT OF THE STAY OF PROCEEDINGS

3. **THIS COURT ORDERS** that the stay of proceedings granted in paragraph 18 of Second Amended and Restated Initial Order dated April 25, 2019 and extended to the Effective Time (as defined in the Imperial CCAA Plan) by paragraph 54 of the Sanction Order dated March 6, 2025 (the "**Stay of Proceedings**"), is hereby partially lifted, solely to the extent required to allow the Monitor, with the support of ITCAN and the Quebec Class Action Plaintiffs, to commence the Quebec Application for the purpose of depositing the funds of

the Cash Security Deposit into the Global Settlement Trust Account in accordance with the provisions of the Imperial CCAA Plan.

4. **THIS COURT ORDERS** that, apart from the partial lift of the Stay of Proceedings as set forth in paragraph 3, the Stay of Proceedings remains in full force and effect, subject to further Order of this Court.

GENERAL PROVISIONS

5. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

6. **THIS COURT ORDERS** that the Applicant and the Monitor are authorized to seek an order of any court of competent jurisdiction to recognize this Order and to confirm this Order as binding and effective in any appropriate foreign jurisdiction.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, including but not limited to the courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that the Applicant and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

C.J.

Chief Justice Geoffrey B. Morawetz

Electronically issued / Délivré par voie électronique : 18-Jun-2025
Toronto Superior Court of Justice / Cour supérieure de justice

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 IMPERIAL TOBACCO CANADA LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

QUEBEC CASH SECURITY DEPOSIT ORDER

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE CHIEF	)	WEDNESDAY, THE 18TH
	)	
JUSTICE MORAWETZ	)	DAY OF JUNE, 2025

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 **ROTHMANS, BENSON & HEDGES INC.**

QUEBEC CASH SECURITY DEPOSIT ORDER

THIS JOINT MOTION made by the "**RBH and Imperial Monitors**", being Ernst & Young Inc. in its capacity as court-appointed monitor (the "**Monitor**") of Rothmans, Benson & Hedges Inc. ("**RBH**" or the "**Applicant**") and FTI Consulting Canada Inc. in its capacity as court-appointed monitor of Imperial Tobacco Company Limited and Imperial Tobacco Canada Limited, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an Order, among other things, partially lifting the stay of proceedings to allow the Monitor, with the support of RBH and the Quebec Class Action Plaintiffs, to commence an application in the Quebec Court of Appeal to release the funds paid by RBH into the Quebec Court of Appeal as a Cash Security Deposit pursuant to the Order dated October 27, 2015 in Court File No. 550-09-025384-154 (2015 QCCA 1737) to be deposited into the Global Settlement Trust Account (as defined in the RBH CCAA Plan, defined below) (the "**Quebec Application**") was heard on June 18, 2025.

ON READING the Joint Motion Record of the RBH and Imperial Monitors dated June 11,

2025, the Twenty-Seventh Report of the Monitor dated June 11, 2025 (the "**Twenty-Seventh Report**") and the Joint Factum of the RBH and Imperial Monitor dated June 11, 2025:

SERVICE

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that this motion is properly determined in writing and that further service of this motion is hereby dispensed with.

INTERPRETATION

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Third Amended and Restated Plan of Compromise and Arrangement in respect of the Applicant dated February 27, 2025 (the "**RBH CCAA Plan**").

PARTIAL LIFT OF THE STAY OF PROCEEDINGS

3. **THIS COURT ORDERS** that the stay of proceedings granted in paragraph 18 of Second Amended and Restated Initial Order dated April 25, 2019 and extended to the Effective Time (as defined in the RBH CCAA Plan) by paragraph 54 of the Sanction Order dated March 6, 2025 (the "**Stay of Proceedings**"), is hereby partially lifted, solely to the extent required to allow the Monitor, with the support of RBH and the Quebec Class Action Plaintiffs, to commence the Quebec Application for the purpose of depositing the funds of the Cash Security Deposit into the Global Settlement Trust Account in accordance with the provisions of the RBH CCAA Plan.

4. **THIS COURT ORDERS** that, apart from the partial lift of the Stay of Proceedings as set forth in paragraph 3, the Stay of Proceedings remains in full force and effect, subject to further Order of this Court.

GENERAL PROVISIONS

5. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

6. **THIS COURT ORDERS** that the Applicant and the Monitor are authorized to seek an order of any court of competent jurisdiction to recognize this Order and to confirm this Order as binding and effective in any appropriate foreign jurisdiction.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, or abroad, including but not limited to the courts in respect of the Pending Litigation and the Quebec Class Actions, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that the Applicant and the Monitor shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

C.J.

Chief Justice Geoffrey B. Morawetz

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 ROTHMANS, BENSON & HEDGES INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

QUEBEC CASH SECURITY DEPOSIT ORDER

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Electronically issued / Délivré par voie électronique : 19-Jun-2025
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-19-00616779-00CL

DEMANDE DE RETRAIT DE DÉPÔT JUDICIAIRE

CANADA
PROVINCE DE QUÉBEC
District :
No de dossier :

1- IDENTIFICATION DU DEMANDEUR DU RETRAIT DE DÉPÔT JUDICIAIRE

Partie demanderesse	Partie défenderesse	Caution	Accusé	Autre (spécifier) :

Nom	Courriel
Adresse	Nº de téléphone

2- RENSEIGNEMENTS SUR LE DÉPÔT JUDICIAIRE (joindre une copie du certificat du dépôt ou reçu d'engagement, si disponible)

Montant du dépôt	No certificat ou reçu	Date du dépôt	☐ Nature ☐ Cautionnement ☐ Expropriation ☐ Offre et consignation ☐ Saisie ☐ Loyer
☐ Somme d'argent ☐ Bien immobilier (spécifier) :			Autre (spécifier) :

3- RENSEIGNEMENT SUR LE BÉNÉFICIAIRE POUR LE REMBOURSEMENT DE LA SOMME D'ARGENT OU LA REMISE DU BIEN IMMOBILIER

Nom du bénéficiaire (chèque)	Adresse à laquelle le chèque doit être transmis **INSTRUCTIONS POUR VIREMENT BANCAIRE EN ANNEXE**	Montant
Nom du bénéficiaire (chèque)	Adresse à laquelle le chèque doit être transmis	Montant
Nom du bénéficiaire (bien mobilier)	Le bien mobilier doit être remis en main propre	

Signature du demandeur	Année Mois Jour

4- SECTION RÉSERVÉE AU GREFFE

4.1- CAUTIONNEMENT DÉTENU EN MATIÈRE CRIMINELLE (si applicable)

Type d'engagement : ☐ Personnel ☐ Tierce personne (caution)

☐ Dossier terminé ☐ Certificat de défaut ☐ Ordonnance de confiscation ☐ Avis d'exécution et/ou demande formelle ARQ / ARC
☐ Dossier non terminé ou dossier en appel et cautionnement conservé pendant l'appel

4.2- AUTORISATION DU GREFFIER

☐ J'autorise le retrait de la somme d'argent ou la remise du bien mobilier.

Bénéficiaire : _____ ☐ Montant : _____$ ☐ Bien mobilier : _____
Bénéficiaire : _____ ☐ Montant : _____$ ☐ Bien mobilier : _____

☐ Je refuse le retrait de la somme d'argent ou la remise du bien mobilier.

Motif(s) : _____

_____

Nom du greffier (en caractères d'imprimerie)	Signature	Année Mois Jour

5- SECTION RÉSERVÉE AUX SERVICES FINANCIERS (cocher l'une des deux cases)

5.1- Remboursement d'une somme d'argent

☐ Remboursement demandé au système le _____

5.2- Remise du bien mobilier

☐ J'accuse réception du bien mobilier spécifié à la section 4.2.

_____
Signature du bénéficiaire

Superviseur financier (en caractères d'imprimerie)	Signature	Année Mois Jour

COURT OF APPEAL
District of Montreal

IMPERIAL TOBACCO CANADA LTD. et al.

Appellants/Defendants

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ et al.

Respondents/Plaintiffs

-and-

FTI CONSULTING CANADA INC. et al.

Interveners/Monitors

-and-

JTI MACDONALD CORP.

Mise en cause/Defendant

-and-

DELOITTE RESTRUCTURING INC.

Mise en cause

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Lawyers for Ernst & Young Inc. in its capacity as Monitor and CCAA Plan Administrator of Rothmams, Benson & Hedges Inc.

JOINT APPLICATION TO RELEASE AND WITHDRAW THE CASH SECURITY DEPOSITS AND EXHIBITS M-1 TO M-9