

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

PLAINTIFF

AND:

IMPERIAL TOBACCO LIMITED AND OTHERS

DEFENDANTS

REPLY TO THE STATEMENT OF DEFENCE OF RJR-MACDONALD INC.

1. In reply to paragraphs 126, 172 and 172 (c) and 172 (e) of the Statement of Defence:
 - (a) the government denies that its claim is for the “net cost” to the government of health care benefits and in any event says that the net cost of health care benefits has been increased as a result of tobacco related disease and will be increased by reason of the consumption of tobacco products;
 - (b) the government denies that its claim is for the “incremental increase” in costs resulting from tobacco related disease and in the alternative says that it has incurred incremental increases in costs resulting from tobacco related disease; and
 - (c) if by “net cost” or “incremental increase in health care costs” the defendant means the cost of health care benefits less any alleged “savings” in health care expenditures due to the early death of persons from the consumption of tobacco products, the government denies that such savings, if any, are deductible from a claim for the cost of health care benefits under the *Tobacco Damages and Health Care Costs Recovery Act* (hereinafter the “Act”).

2. In reply to paragraph 170(a) of the Statement of Defence, the government says that whether or not insured persons have suffered pecuniary damages in respect of health care costs is immaterial to a claim by the government under the *Act*.

3. In reply to paragraph 170(b) of the Statement of Defence, the government denies that the liability alleged is an *ex post facto* attempt to make actionable conduct that was not actionable when it occurred and, in any event, the *Act* has the retroactive effect necessary to give the provision full effect for the purpose of a claim under section 13.

4. The government denies the allegations of fact contained in paragraphs 154-169 (a) to (c), 171(d), and 182 to 186 of the Statement of Defence and says that:

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

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

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

5. The government denies the allegations contained in paragraph 172(a) and further says that the issue of causation is to be determined according to the provisions of the *Act*.

6. In reply to paragraph 172(b) of the Statement of Defence, if the cost of health care benefits was paid pursuant to the requirements of the statutes referred to, this does not preclude a claim to recover those costs in a claim under the *Act*. In fact, the right of government to recover

the cost of health care benefits under the *Act* depends upon those benefits being paid pursuant to, *inter alia*, the statutes referred to.

7. In reply to paragraph 172(d) of the Statement of Defence, the government admits that it receives tax revenue from the sale of cigarettes but denies that this revenue exceeds the costs of providing health care services to insured persons who have suffered tobacco related disease. Further, tax revenue from the sale of cigarettes is not to be deducted from a claim for the cost of health care benefits under the *Act*.

8. In reply to paragraph 174 of the Statement of Defence, the government pleads section 15 of the *Act*.

9. The government denies the allegations contained in paragraphs 187 to 198. The government says that the action is an aggregate action under section 13 of the *Act*, in respect of which defences based on the conduct of individual insured persons are inapplicable. The allegations contained in paragraphs 187 to 198, which are not admitted, are material, if at all, only under section 13.1(5) of the *Act* pursuant to which the defendant may seek to establish that its breach of duty did not cause or contribute to the exposure of insured persons to a tobacco product.

Bull, Housser & Tupper

per:

Dated: _____

Solicitors for the Plaintiff

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

NO. C985776
VANCOUVER REGISTRY

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