File No.: 37524

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

APPLICANT
(APPELLANT)

AND:

PHILIP MORRIS INTERNATIONAL, INC.

RESPONDENT
(RESPONDENT)

RESPONSE OF THE RESPONDENT PHILIP MORRIS INTERNATIONAL INC. TO THE APPLICATION FOR LEAVE TO APPEAL
(pursuant to section 40 and paragraph 58(1)(*a*) of the *Supreme Court Act* and Rule 25 of the *Rules of the Supreme Court of Canada*)

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MEMORANDUM OF ARGUMENT OF THE RESPONDENT PHILIP MORRIS INTERNATIONAL INC. IN RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL

PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. The proposed interlocutory appeal concerns the interpretation of a discovery provision in the British Columbia *Tobacco Damages and Health Care Costs Recovery Act*.[1] Just a few months ago, this Court denied leave in a New Brunswick case about the interpretation of an identical provision.[2]

2. In an effort to save this second leave application from the fate of the first, the applicant (the "Plaintiff") invents issues that do not actually arise.

3. First, the Plaintiff claims that the Court of Appeal overrode the provision in question based on its own sense of fairness. But the Court of Appeal did no such thing. Neither did the application judge. Rather, they applied this Court's familiar and uncontroversial approach to statutory interpretation—reading the provision in its entire context and in its grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of the Legislature—to determine the provision's effect. This routine interpretive exercise to resolve an interlocutory dispute about document discovery does not deserve this Court's attention.

4. The Plaintiff also claims that the Court of Appeal's decision threatens the privacy of personal health information in the databases subject to discovery. This claim is false. The courts below ordered that the databases be anonymized to exclude individuals' names, addresses, and other similar personally identifying—and irrelevant—information. The application judge found as a fact that anonymization would eliminate any risk to personal privacy. The Plaintiff did not challenge that finding on appeal and the Court of Appeal endorsed it. The proposed appeal does not give rise to privacy issues at all, much less privacy issues of national or other public importance.

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[1] S.B.C. 2000, c. 30 (the "*Act*").

[2] *Rothmans, Benson & Hedges Inc. v. Her Majesty the Queen in Right of the Province of New Brunswick*, 2017 CanLII 2715 (S.C.C.).

5. Finally, the Plaintiff claims this Court's decision in *Imperial Tobacco*[3] precludes discovery of the databases. In *Imperial Tobacco*, this Court found the *Act* constitutional; it did not purport to decide which of the Plaintiff's documents would and would not eventually be subject to discovery. That issue was not before this Court.

6. The proposed appeal would be the third interlocutory appeal heard by this Court since the Plaintiff sued the respondent ("PMI") more than 15 years ago.[4] It relates to a narrow issue of statutory interpretation on which this Court already denied leave earlier this year. Just as this Court held that the issue was not of public importance then, it is not of public importance now. The Plaintiff's leave application should be dismissed.

B. Facts

7. The *Act* creates two types of actions: an individual action to recover the costs of health care benefits provided by the Plaintiff for "*particular individual* insured persons" (s. 2(4)(a)) and an aggregate action to recover costs provided "for a *population* of insured persons" (s. 2(4)(b)).

8. The Plaintiff's action is an aggregate action. In such an action, three elements that would be essential in an individual action—identity, causation, and damage—need not be proved for "particular individual insured persons" (s. 2(5)(a)). Accordingly, under s. 2(5)(b)—the provision in issue here—certain documents of and about "particular individual insured persons" are generally not discoverable. Instead, to prove causation and damage on an aggregate or population basis, the *Act* invites the use of statistical evidence (s. 5). As the British Columbia courts noted, much of this evidence will come from the anonymized administrative databases that the Plaintiff has been ordered to produce.[5]

9. The Plaintiff does not dispute the relevance of its administrative databases,[6] which contain aggregated data about the health care provided by the Plaintiff to the population of

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[3] *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49 [*Imperial Tobacco*].

[4] See *Imperial Tobacco* and *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42.

[5] *HMTQ v. Philip Morris International, Inc.*, 2017 BCCA 69 at para. 7 [BCCA Judgment]; *HMTQ v. Imperial Tobacco Canada Limited*, 2015 BCSC 844 at para. 7 [BCSC Judgment].

[6] BCCA Judgment at para. 12.

insured persons. It intends to use the databases to prove its claim, and has been analysing them to that end since 1998 or earlier.[7]

10. Nevertheless, the Plaintiff refused to produce the databases, arguing that they fall within the scope of s. 2(5)(b) as either "health care records and documents of particular individual insured persons" or "documents relating to the provision of health care benefits for particular individual insured persons". Instead, the Plaintiff proposed to give the databases to a non-party, Statistics Canada, who would then give PMI's experts access to the data under severe restrictions, including a stripping of privilege with respect to the experts' analyses.[8]

11. PMI rejected the Plaintiff's proposal. It applied for an order requiring the Plaintiff to produce the databases in anonymized form. The long-standing case management judge, Smith J., granted PMI's application, concluding that s. 2(5)(b) applies to particular individuals' medical records, not the aggregated data in the databases in question. He ordered the Plaintiff to produce the databases, with names and similar personally identifying information removed.

12. The application judge made several critical findings of fact, none of which was challenged on appeal, and all of which the Plaintiff now ignores.

13. First, the application judge found that the databases in question are entirely distinct from the medical records of particular individuals. The medical records are held across the province, often in paper form, in physicians' offices, hospitals, and the like. By contrast, the Plaintiff's administrative databases consist of select "data points" extracted from the detail in the medical records and objectively coded for administrative purposes—not for treatment.[9]

14. Second, the application judge found no risk to privacy in ordering the Plaintiff to produce the anonymized administrative databases in discovery. Moreover, even if it were possible to identify individuals from the data, and even if there were some motive to do so, "the sheer volume of material would make that unlikely and unproductive".[10]

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[7] BCCA Judgment at para. 8; British Columbia, Legislative Assembly, *Official Report of Debates of the Legislative Assembly (Hansard)*, vol. 12, No. 13, 3rd Sess., 36th Parl., July 30, 1998, at p. 10766.

[8] BCCA Judgment at para. 8; BCSC Judgment at paras. 25-26.

[9] BCSC Judgment at paras. 12, 49-50.

[10] BCSC Judgment at paras. 56-58.

15. The application judge commenced his statutory analysis by quoting the "fundamental rule of statutory construction" set out by this Court in *Bell ExpressVu* and *Canada Trustco*.[11] He found that s. 2(5)(b)'s purpose is both to protect privacy and to prevent an aggregate action from being bogged down in individual forms of discovery.[12] He considered the text of s. 2(5)(b) and held that it blocked discovery of the medical records of "particular individual insured persons"—*i.e.*, tens of millions of relevant documents that would otherwise be discoverable. Section 2(5)(b) did not, however, affect the anonymized databases. He considered the scheme of the *Act* and held that s. 2(5)(b) tailored discovery in an aggregate action to the documents most relevant in such action.[13] The *Act* would not make sense if s. 2(5)(b) blocked discovery of the very documents needed to produce the statistical evidence that s. 5 invites in an aggregate action.[14]

16. The application judge also observed—in a passage separate from his statutory interpretation analysis—that the Plaintiff's interpretation of s. 2(5)(b) would produce an unfair result: unequal access to essential evidence.[15]

17. In a unanimous judgment, the Court of Appeal dismissed the Plaintiff's appeal, which it characterized as "a case of statutory interpretation".[16] To do so, the Court of Appeal quoted and applied not only *Canada Trustco* but also this Court's recent summary in *B.C. Freedom of Information and Privacy Association* of the "long-accepted approach to statutory interpretation".[17]

18. First, the court held that the Plaintiff's interpretation of s. 2(5)(b) ignored its text, in that the Plaintiff was attempting to read "particular individual" out of the provision.[18] Second, the court found that the Plaintiff's interpretation was inconsistent with the scheme of the *Act*, which

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[11] BCSC Judgment at paras. 42-43, citing *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 and *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54.

[12] BCSC Judgment at para. 54.

[13] BCSC Judgment at paras. 45, 50.

[14] BCSC Judgment at para. 55.

[15] BCSC Judgment at paras. 36-38.

[16] BCCA Judgment at para. 23.

[17] BCCA Judgment at paras. 23-24, citing *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 and *B.C. Freedom of Information and Privacy Association v. British Columbia (Attorney General)*, 2017 SCC 6.

[18] BCCA Judgment at para. 37.

contemplates the use of statistical evidence for aggregate actions. There was nothing to support the Plaintiff's view that the Legislature had intended to block discovery of the very evidence needed to establish causation and damages on a population basis.[19] Third, the court rejected the Plaintiff's assertion that the Legislature's paramount concern was privacy. Instead, the court agreed with the application judge that the purpose of s. 2(5)(b) is both to protect privacy and to prevent aggregate actions from getting bogged down with individual discovery.[20]

19. The Court of Appeal reiterated the application judge's findings of fact, which were unchallenged on appeal. The court noted that the administrative databases in question are of a "very different character" from the individual health records to which s. 2(5)(b) applies, and that disclosure of the anonymized databases would pose "no realistic threat to personal privacy".[21]

20. Finally, the Court of Appeal explained that if the Plaintiff's interpretation of s. 2(5)(b) were correct, then "essentially no data" about health care costs would be discoverable in an aggregate action for health care costs. The court found no indication that the Legislature had intended to create such an extreme exception to the usual rules of discovery.[22]

PART II – QUESTIONS IN ISSUE

21. The Plaintiff asserts that its proposed appeal raises the following issues: (i) the extent to which "the judiciary's view of what is 'fair' can or should override a statutory privacy protection" and (ii) "the degree of protection to be afforded to Canadians' health care records and documents, and documents relating to the provision of health care benefits for Canadians".[23]

22. These two issues are not, in fact, in issue. They have nothing to do with the actual dispute in this case: the statutory interpretation of s. 2(5)(b). The Plaintiff's application raises no real issue, let alone an issue of public importance. Leave should be denied.

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[19] BCCA Judgment at paras. 33, 37.
[20] BCCA Judgment at paras. 31, 34
[21] BCCA Judgment at paras. 35-36.
[22] BCCA Judgment at paras. 37-39.
[23] Plaintiff's Notice of Application at paras. 4-5.

PART III – STATEMENT OF ARGUMENT

A. Fairness did not override s. 2(5)(b)

23. The Plaintiff seeks to have this Court address whether a court's view of fairness can override legislation. But neither the application judge nor the Court of Appeal ever suggested that fairness could determine s. 2(5)(b)'s interpretation. The Plaintiff's argument mischaracterizes their reasoning.

24. Both the application judge and the Court of Appeal quoted this Court's established jurisprudence on statutory interpretation and diligently applied it, examining the wording of the provision, the statutory scheme, and the object of the *Act*. Both concluded that there was no indication that the Legislature had intended to exempt the anonymized administrative databases from the usual rules of discovery.

25. Both courts held that the Legislature did not intend the interpretation the Plaintiff advanced—which, they observed, would produce an unfair result. There is nothing anomalous about their having made that incidental observation, especially as the Plaintiff had itself argued that its interpretation of s. 2(5)(b) ensured procedural fairness.[24]

26. The courts below did not find that s. 2(5)(b) means one thing but then read it to mean something else based on fairness. The question of whether fairness can override legislation therefore does not arise in this case. This question does not justify leave to appeal.

B. Producing the anonymized databases in discovery does not threaten privacy

27. Throughout its leave application, the Plaintiff states that the proposed appeal raises the "degree of protection to be afforded to health care records and documents".[25] It does not. The Plaintiff misrepresents the data in question, ignores the findings of the courts below, and fundamentally mischaracterizes the dispute in this case.

28. The Plaintiff's argument never explains that its databases will be anonymized before they are produced. The irrelevant information for which PMI has no use in this aggregate action—

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[24] *HMTQ v. Philip Morris International, Inc.*, 2017 BCCA 69 (Appellant's Factum at para. 60); BCCA Judgment at para. 18; BCSC Judgment at para. 37.

[25] Plaintiff's Memorandum of Argument at paras. 16, 19, 24; Plaintiff's Notice of Application at para. 4.

names, personal health numbers, and the like—will be removed. The application judge held that producing such anonymized data in discovery poses no privacy risk,[26] and the Plaintiff did not challenge this finding on appeal.

29. Nevertheless, the Plaintiff asserts that producing the anonymized databases poses a privacy risk and that this casts doubt on the lower courts' interpretation of s. 2(5)(b).[27] Even if the Plaintiff's privacy concerns had some basis in fact, however, the Plaintiff's argument would fly in the face of this Court's firmly entrenched approach to statutory interpretation. The concept of privacy is not a free-standing basis on which to ignore the express wording, the statutory scheme, and the purpose of the provision, all of which properly guided the British Columbia courts' interpretation.

30. On the facts, privacy is not at stake. And, in any event, the question of how much privacy the anonymized databases deserve does not bear on what s. 2(5)(b) means. The privacy issue articulated by the Plaintiff cannot justify leave.

C. <u>There are no other issues of public importance</u>

31. There are no other issues of public importance raised by the Plaintiff's leave application. Leave should be denied.

32. The Plaintiff argues that *Imperial Tobacco* somehow determined that s. 2(5)(b) exempts its databases from discovery and that the British Columbia courts failed to follow it.[28] Not so.

33. In *Imperial Tobacco*, the Court was asked to decide whether the *Act* was constitutionally valid. The Court decided that it was, and that although defendants sued under the *Act* were not *constitutionally* entitled to a fair civil trial, they would get one anyway.[29] *Imperial Tobacco* did not interpret s. 2(5)(b) or determine to what documents it applies. No court has ever held that it did.[30] This makes sense: *Imperial Tobacco* cannot have determined an issue that was not before

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[26] BCSC Judgment at para. 56.

[27] Plaintiff's Memorandum of Argument at para. 6.

[28] Plaintiff's Memorandum of Argument at paras. 2-3.

[29] *Imperial Tobacco* at para. 55.

[30] BCSC Judgment at para. 41; BCCA Judgment at para. 26; *Her Majesty the Queen in Right of the Province of New Brunswick v. Rothmans Inc.*, 2016 NBQB 106 at paras. 35-36.

the Court at that time. It is, however, consistent with *Imperial Tobacco*'s prediction of a fair trial for the lower courts to have concluded that s. 2(5)(b) may not preclude that result.

34. The Plaintiff also asserts that the existence of conflicting decisions in New Brunswick and British Columbia gives rise to an issue of public and national importance. But this Court already considered the issue and the conflict and held just a few months ago that they did not justify leave.[31] Having denied leave when PMI sought it, it would be remarkable if this Court granted leave now that the Plaintiff seeks it.

35. No issues of public or national importance are raised in the leave application. Indeed, if anything, the public interest favours the Plaintiff's action moving forward to trial. The Plaintiff sued in 2001. It has been refusing to produce its databases for almost a decade. It is high time for the parties to get on with it.

PART IV – SUBMISSIONS ON COSTS

36. This Court should follow its usual practice and award costs in the cause.

PART V – ORDER SOUGHT

37. The application for leave to appeal should be dismissed, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of May, 2017.

MICHAEL A. FEDER
Counsel for the respondent
Philip Morris International Inc.

[31] *Rothmans, Benson & Hedges Inc. v. Her Majesty the Queen in Right of the Province of New Brunswick*, 2017 CanLII 2715 (S.C.C.)

PART VI – TABLE OF AUTHORITIES

PART VII – RELEVANT STATUTORY PROVISIONS

***Tobacco Damages and Health Care Costs Recovery Act*, S.B.C. 2000, c. 30, ss. 2 and 5**

Direct action by government

2 (1) The government has a direct and distinct action against a manufacturer to recover the cost of health care benefits caused or contributed to by a tobacco related wrong.

(2) An action under subsection (1) is brought by the government in its own right and not on the basis of a subrogated claim.

(3) In an action under subsection (1), the government may recover the cost of health care benefits whether or not there has been any recovery by other persons who have suffered damage caused or contributed to by the tobacco related wrong committed by the defendant.

(4) In an action under subsection (1), the government may recover the cost of health care benefits

(a) for particular individual insured persons, or

(b) on an aggregate basis, for a population of insured persons as a result of exposure to a type of tobacco product.

(5) If the government seeks in an action under subsection (1) to recover the cost of health care benefits on an aggregate basis,

(a) it is not necessary

(i) to identify particular individual insured persons,

(ii) to prove the cause of tobacco related disease in any particular individual insured person, or

(iii) to prove the cost of health care benefits for any particular individual insured person,

(b) the health care records and documents of particular individual insured persons or the documents relating to the provision of health care benefits for particular individual insured persons are not compellable except as provided under a rule of law, practice or procedure that requires the production of documents relied on by an expert witness,

(c) a person is not compellable to answer questions with respect to the health of, or the provision of health care benefits for, particular individual insured persons,

(d) despite paragraphs (b) and (c), on application by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in paragraph (b) and the order must include directions concerning the nature, level of detail and type of information to be disclosed, and

(e) if an order is made under paragraph (d), the identity of particular individual insured persons must not be disclosed and all identifiers that disclose or may be used to trace the names or identities of any particular individual insured persons must be deleted from any documents before the documents are disclosed.

Population based evidence to establish causation and quantify damages or cost

5 Statistical information and information derived from epidemiological, sociological and other relevant studies, including information derived from sampling, is admissible as evidence for the purposes of establishing causation and quantifying damages or the cost of health care benefits respecting a tobacco related wrong in an action brought

(a) by or on behalf of a person in the person's own name or as a member of a class of persons under the Class Proceedings Act, or

(b) by the government under section 2 (1).

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1998 Legislative Session: 3rd Session, 36th Parliament
HANSARD

Official Report of

DEBATES OF THE LEGISLATIVE ASSEMBLY

(Hansard)

THURSDAY, JULY 30, 1998

Afternoon

Volume 12, Number 13

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The House met at 2:08 p.m.

R. Masi: It is my pleasure today to introduce Michele McManus, a longtime colleague of mine from the Surrey school district and a longtime family friend. Would the House please welcome Michele.

J. Dalton: On behalf of my roomie and colleague the member for North Vancouver-Seymour and myself, I would like everyone to welcome our landlord from Japan who has come in for his annual visit, Mr. Ron Jones. Please welcome him.

Hon. J. MacPhail: I'd like the House to join me, if we all could, in extending a very heartfelt thank-you to Jo-Anne Kern, the deputy chief of Hansard for this House. If everything goes according to rumour, this will be Jo-Anne's last day dedicated to recording the highs and lows of debates in this august chamber. Jo-Anne has worked well with Hansard since 1973, and her dedication and commitment to an accurate public record will be sorely missed.

There is good news, though. Jo-Anne is starting work as an investigator with the ombudsman's office, so she will continue to work on behalf of the members of the House and the people of British Columbia. On behalf of all of us, I extend our best wishes to Jo-Anne Kern.

Hon. P. Priddy: I actually have two introductions to make today. One of the people who recently joined my office is Steve Arnett, who has joined us as a ministerial assistant. He has some guests in the gallery whom I'd like people to welcome. They are his partner Cathy Rogers Arnett and their children, Matthew and Christopher, and some friends who are visiting from Calgary, Alberta -- Dan and Debbie Fehr and their children, Ryan, Jared and James. Would the House please make them welcome.

Hon. P. Priddy: That's correct.

[3:45]

M. de Jong: When that action is launched -- I'm now looking at section 13.1(3) -- the court will be asked to determine the aggregate cost of health care benefits that have been paid. The act in fact speaks of speculating about future health

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care costs. I can't recall whether the government has put a figure to that issue. I presume that that work has been done in anticipation of the action that will be commenced. I would like to know what that figure is.

Hon. P. Priddy: There has been significant work done on this recently. Obviously that probably won't be a public figure until the case is filed. It is difficult, when you look over the past 25 years, to do that kind of calculation. But we have had people hard at work doing that for some time. What we do know now is that we currently spend about $400 million a year treating tobacco-related diseases in the province.

M. de Jong: I'm just trying to get a handle on this. I don't know if there is a tobacco manufacturer that commands 10 percent of the market. But am I correct, as I work through this and apply the formulas, that if an action were commenced against such a manufacturer, they would minimally, if found liable, be on the hook then for $40 million times whatever period the court saw fit to apply to the case? I'm just trying to get a handle on what the calculation of damages recovery for government will be.

Hon. P. Priddy: In terms of magnitude, I don't know if it's order of magnitude that the member is trying to get a sense of or not, but the most we can do, other than our own calculations, is look at some other judgments that have come in. For instance, in Minnesota -- sort of the same population as we have, although the costs are split differently, because they only covered the government costs and not the huge private costs that you see in American health care -- it was a $6.8 billion settlement. So I think we can really only look at what probably a dozen court cases have shown us and use that as some kind of estimation.

M. de Jong: Does the government contemplate in the action, when it is commenced -- as apparently it will be -- naming all of the known manufacturers -- that is, all of the known persons that fall within the definition of manufacturer?

Hon. P. Priddy: I think that is information that really is part of the client-solicitor privilege, if that's what you want to call it, in terms of the case we're taking forward. I'm not sure this is the right place to debate that.

M. de Jong: I'm not sure I agree. It's a unique act insofar as it contemplates a very specific action by the government. It provides government with the means to do that in a way that no other plaintiff could, with the possibility of a significant return to government if it is applied and if findings are made in the way that I think the government hopes and anticipates they will be.

I'll try again. It seems to me that a case can be made that great efficiencies are served if the government takes that set of defendants that it says are captured by the new and expanded definition of manufacturer, and proceeds on that basis -- that the liability that each of those defendants are exposed to is related to their market share. So I am puzzled. . . . Does the minister think there are

Court of Appeal File No.: CA42871

COURT OF APPEAL
(On Appeal from the Order of Mr. Justice Smith of the Supreme Court of British Columbia, pronounced on May 20, 2015)

Between

HER MAJESTY THE QUEEN IN RIGHT OF BRITISH COLUMBIA

Appellant
(Plaintiff)

and

PHILIP MORRIS INTERNATIONAL, INC.

Respondent
(Defendant)

and

IMPERIAL TOBACCO CANADA LIMITED,
ROTHMANS, BENSON & HEDGES INC.,
ROTHMANS INC.,
JTI-MACDONALD CORP.,
CANADIAN TOBACCO MANUFACTURERS' COUNCIL,
B.A.T INDUSTRIES P.L.C.,
BRITISH AMERICAN TOBACCO (INVESTMENTS) LIMITED,
CARRERAS ROTHMANS LIMITED,
PHILIP MORRIS USA INC. (formerly PHILIP MORRIS INCORPORATED),
R.J. REYNOLDS TOBACCO COMPANY,
R.J. REYNOLDS TOBACCO INTERNATIONAL, INC.,
ROTHMANS INTERNATIONAL RESEARCH DIVISION and
RYESEKKS p.l.c.

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> individual insured persons must be deleted from any documents before the documents are disclosed.

57. The PMI's application is not based on this provision. The meaning of the Legislature's reference to a "statistically meaningful sample" is not before the Court, and can await another occasion to be explored.

58. Section 2(5)(d) and (e) are nevertheless of interest, in that they underline the Legislature's desire to maintain the privacy of British Columbians to the greatest extent possible, and, together with the expert-reliance exception, show the overall balance that was struck. In making its submission about the context and scheme of the *Act*, Smith J. largely ignores the important role of s. 2(5)(d) and (e) in the interpretive analysis.

59. Importantly, if documents protected by s. 2(5)(b) are to be disclosed under s. 2(5)(d) and (e), then (1) it will only be a sample that is sufficient in size to be "statistically meaningful"; and (2) the documents disclosed must be not include personal identifiers.

60. These two exceptions serve the dual role of providing the statutory answer to any judicial concern about procedural fairness while preserving the overarching purpose of s. 2(5)(b) of protecting from disclosure the personal medical history of individual insured persons in British Columbia.

61. Neither of the exceptions is at play in this appeal.

62. Absent an order for production under either of the two exceptions, health care databases are not compellable.

PART 4 - NATURE OF ORDER SOUGHT

63. BC seeks an order allowing the appeal, setting aside the judgment of Smith J. made October 22, 2015 and granting the Appellant costs in this court and the Court below.