



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE CHIEF

)

FRIDAY, THE 22nd

)

JUSTICE MORAWETZ

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DAY OF NOVEMBER, 2024

**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

ORDER

THIS JOINT MOTION made by the "**Tobacco Monitors**" being Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. ("**RBH**"), Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTI-Macdonald Corp. ("**JTIM**") and FTI Consulting Canada Inc. in its capacity as court-appointed Monitor (the "**Imperial Monitor**") of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "**Imperial**" and together with RBH and JTIM, the "**Applicants**") for an order amending and restating the Appointment of Representative Counsel Order of Mr. Justice McEwen dated December 9, 2019 (the "**Representative Counsel Order**") was determined this day in writing at Toronto, Ontario.

ON READING the Joint Notice of Motion of the Tobacco Monitors dated November 13, 2024 (the “**Joint Motion Record**”) including the Twenty-Second Report to Court of the Imperial Monitor dated November 13, 2024 (the “**Twenty-Second Report**”) filed, and upon being advised by counsel to the Tobacco Monitors that no party has provided notice of objection to this motion for an amendment and restatement of the Representative Counsel Order although duly served as appears from the affidavits of service of Jasman Singh Gill sworn November 13, 2024.

SERVICE

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and this Court hereby dispenses with further service of this motion and of this Order.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings given to them in the Twenty-Second Report, or the CCAA Plan in respect of Imperial.
3. **THIS COURT ORDERS** that, effective as of the date hereof, the Representative Counsel Order be and hereby is amended and restated in the form attached as Appendix “A” hereto.

GENERAL

4. **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 to give effect to this Order and to assist the Applicant 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 its court-appointed monitor as may be necessary or desirable to give effect to this Order or assist in carrying out the terms of this Order.



Chief Justice G.B. Morawetz

Appendix "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
)
MR. JUSTICE MCEWEN) MONDAY, THE 9th
 DAY OF DECEMBER, 2019

**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

**AMENDED AND RESTATED ORDER
(APPOINTMENT OF PCC REPRESENTATIVE COUNSEL)**

THIS JOINT MOTION made by the “**Tobacco Monitors**” being Ernst & Young Inc. in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc. (“**RBH**”), Deloitte Restructuring Inc. in its capacity as court-appointed Monitor of JTI-Macdonald Corp. (“**JTIM**”) and FTI Consulting Canada Inc. in its capacity as court-appointed Monitor (the “**Imperial Monitor**”) of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, “**Imperial**” and together with RBH and JTIM, the “**Applicants**”) for advice and directions regarding an order appointing representative counsel in these proceedings was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Joint Notice of Motion of the Tobacco Monitors dated November 25, 2019 including the Sixth Report to Court of the Imperial Monitor dated November 26, 2019 (the “**Sixth Report**”) filed, and on hearing the submissions of counsel for each of the Tobacco Monitors, the Applicants and such other counsel as were present, no one else appearing although duly served as appears from the affidavits of service of Monique Sassi sworn November 25 and November 26, 2019 and the affidavit of service of Robert Nicholls sworn November 27, 2019.

1. **THIS COURT ORDERS** that the timing and method of service and filing of this motion is hereby abridged and validated such that the motion is properly returnable today and this Court hereby dispenses with further service of this motion and of this Order.

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order (including in Schedule “A”) shall have the meanings given to them in the Twenty-Second Report to Court of the Imperial Monitor dated November 13, 2024, or the CCAA Plan in respect of Imperial.

3. **THIS COURT ORDERS** that The Law Practice of Wagner & Associates, Inc. (the “**PCC Representative Counsel**”) be and is hereby appointed to represent in these proceedings the Pan-Canadian Claimants as defined in Schedule “A” hereto, which definition may be amended following consultation among the Court-Appointed Mediator, the Tobacco Monitors and PCC Representative Counsel and as approved by further order of this Court.

4. **THIS COURT ORDERS** that, subject to further order of this Court, PCC Representative Counsel shall represent the interests of the Pan-Canadian Claimants as set out in paragraph 5 below without any obligation to consult with or seek individual instructions from those on whose behalf they have been appointed to represent, provided however, that PCC Representative Counsel is

hereby authorized, but not obligated, to establish a committee (the “**Representative Committee**”) on such terms as may be agreed to by the Court-Appointed Mediator and the Tobacco Monitors or established by further order of this Court.

5. **THIS COURT ORDERS** that PCC Representative Counsel be and is hereby authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, including, without limitation, by:

- (a) participating in and negotiating on behalf of the Pan-Canadian Claimants in the Mediation;
- (b) working with the Court-Appointed Mediator and the Tobacco Monitors to develop a process for the identification of valid and provable claims of Pan-Canadian Claimants and as appropriate, addressing such claims in the Mediation or the CCAA Proceedings;
- (c) responding to inquiries from Pan-Canadian Claimants in the CCAA Proceedings;
- (d) taking all steps or actions and providing all services in connection with its duties both before and after the Plan Implementation Date, as applicable:
 - (i) in these CCAA Proceedings; and
 - (ii) subject to the implementation of the CCAA Plan:
 - a. under the CCAA Plan, including the PCC Compensation Plan; and
 - b. as may otherwise be required by the CCAA Plan Administrators; and

- (e) performing such other actions as approved by this Court.

For greater certainty, nothing in this Order shall be construed as determining the validity of any claims of any Pan-Canadian Claimants.

6. **THIS COURT ORDERS** that PCC Representative Counsel be and is hereby authorized, at its discretion, on such terms as may be consented to by the Court-Appointed Mediator and the Tobacco Monitors, or, subject to the implementation of the CCAA Plan, the CCAA Plan Administrators following the Plan Implementation Date, or further order of this Court to retain and consult with subject area experts and other professional and financial advisors as the PCC Representative Counsel may consider necessary to assist it with the discharge of its mandate.

7. **THIS COURT ORDERS** that paragraphs 36 and 38 of the Second Amended and Restated Initial Order are hereby amended and are deemed from and after the date hereof to include PCC Representative Counsel as appointed herein among the parties who shall be paid its reasonable professional fees and disbursements in each case on an hourly basis, from and after the date of this Order and among those who benefit from the Administration Charge as defined therein and shall be paid by the Applicants in accordance with an agreement among the Applicants until the Plan Implementation Date.

8. **THIS COURT ORDERS** that, subject to the implementation of the CCAA Plan, all costs associated with the PCC Representative Counsel (including its advisors) after the Plan Implementation Date, shall be paid in accordance with the CCAA Plan.

9. **THIS COURT ORDERS** that PCC Representative Counsel shall not be liable for any act or omission in respect of its appointment or the fulfillment of its duties in carrying out the

provisions of this Order, other than for gross negligence or willful misconduct. No action or other proceedings shall be commenced against PCC Representative Counsel in respect of alleged gross negligence or willful misconduct, except with prior leave of this Court, on at least 7 days' notice to PCC Representative Counsel, and upon such further order as this Court may make in respect of security for costs to be given by the plaintiff for the costs of the PCC Representative Counsel in connection with any such action or proceeding.

10. **THIS COURT ORDERS** that the PCC Representative Counsel may from time to time apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order, upon notice to the Applicants and the Tobacco Monitors (or, subject to the implementation of the CCAA Plan, the CCAA Plan Administrators after the Plan Implementation Date) and to other interested parties, unless otherwise ordered by this Court.

Chief Justice G.B. Morawetz

Schedule "A"

Definitions

For the purposes of this Schedule "A", capitalized terms not otherwise defined herein shall have the meaning given to them in the CCAA Plan (as defined below).

"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.

"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.

"Individuals" means all individuals residing in a Province or Territory of Canada.

"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.

"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.

“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).

“**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.

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LIMITED AND IMPERIAL TOBACCO COMPANY LIMITED

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AMENDED AND RESTATED
APPOINTMENT OF REPRESENTATIVE COUNSEL ORDER**

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appointed Monitor of Imperial Tobacco Canada Limited and Imperial
Tobacco Company Limited*

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**ORDER
(RE AMENDED APPOINTMENT OF REPRESENTATIVE
COUNSEL ORDER)**

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Court-appointed Monitor of Imperial Tobacco Canada Limited
and Imperial Tobacco Company Limited*