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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

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

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

Applicants

QCAP MOTION RECORD
(Motion for the Approval of the Quebec Class Counsel Fee Returnable on January 29, 2025)

January 13, 2024

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TO : **THE COMMON SERVICE LIST**

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4.	Affidavit of André-H. Dandavino sworn January 10, 2025, together with an official English translation thereof
	Schedule “A” – Detailed summary of the media coverage of the Plans following the first announcement on October 18, 2024 (Public stratégies conseils)
	Schedule “B” – Fee agreement, original version (1998) between the QCTS and its lawyers (Quebec Class Counsel), together with an official English translation thereof
	Schedule “C” – Fee agreement, current amended version (2017) between the CQTS and its lawyers (Quebec Class Counsel), together with an official English translation thereof
5.	Affidavit of Lise Boyer Blais sworn January 13, 2025
6.	Affidavit of Marc Beauchemin sworn January 7, 2025
	Schedule “A” - *Curriculum vitae* of Marc Beauchemin
7.	Affidavit of Gordon Kugler sworn January 10, 2025
	Schedule “A” - *Curriculum vitae* of Gordon Kugler
8.	Affidavit of Avram Fishman sworn January 12, 2025
	Schedule “A” - *Curriculum vitae* of Avram Fishman
9.	Draft Quebec Class Counsel Fee Approval Order

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NOTICE OF MOTION

(Motion for the Approval of the Quebec Class Counsel Fee)

TAKE NOTICE that Quebec Class Counsel, representing the Conseil Québécois sur le Tabac et la Santé (the "**CQTS**") and the estate of the late Jean-Yves Blais and Cécilia Létourneau (the "**Quebec Class Action Plaintiffs**" or "**QCAPs**"), will make a motion before the Honourable Chief Justice Morawetz returnable on January 29, 2025.

PROPOSED METHOD OF HEARING: The Motion is to be heard in hybrid format, in person and by Zoom.

THE MOTION IS FOR an Order substantially in the form included at Tab 9 of the Motion Record:

A. approving the retainer agreement dated October 30, 1998, as amended on March 16, 2017, between the representative plaintiff, CQTS, and Quebec Class Counsel (the "**CQTS Retainer Agreement**");

B. approving the Quebec Class Counsel Fee in the amount of $901,177,915, plus applicable taxes thereon (the "**Quebec Class Counsel Fee**"), which encompasses:

i. all fees earned by Quebec Class Counsel throughout the litigation of the Quebec Class Actions and the CCAA Proceedings, as well as all future fees of Quebec Class Counsel in connection with their role under the Quebec Class Action Administration Plan; and

ii. all disbursements and litigation costs incurred by Quebec Class Counsel throughout the Quebec Class Actions and the CCAA Proceedings, all costs to be incurred by them in connection with their role under the Quebec Class Action Administration Plan, and all costs for the services rendered and to be rendered by Proactio, a division of Raymond Chabot, in connection with their engagement by Quebec Class Counsel to facilitate the claims process for *Blais* Class Members;

C. ordering that the Quebec Class Counsel Fee shall be paid out of and deducted from the QCAP Settlement Amount;

D. ordering the CCAA Plan Administrators to pay the Quebec Class Counsel Fee to Quebec Class Counsel from the QCAP Trust Account at the time of the implementation of the CCAA Plans, based on wire instructions to be provided by Quebec Class Counsel; and

E. ordering Quebec Class Counsel to reimburse the *Fonds d'aide aux actions collectives* (the "**FAAC**") the balance of all financial aid received from them in connection with the Quebec Class Actions, namely, the amount of $1,847,876.47, within 10 Business Days of the receipt of the Quebec Class Counsel Fee.

THE GROUNDS FOR THE MOTION ARE:

1. The CQTS Retainer Agreement was entered into in 1998, and then amended in 2017 to take into account the additional expertise that was required from firms specializing in bankruptcy, insolvency and arrangements under the CCAA, due to the likelihood that the Tobacco Companies would avail themselves of insolvency proceedings in the event that the Quebec Court of Appeal dismissed their appeals.

2. The CQTS Retainer Agreement was entered into with a sophisticated representative plaintiff, which fully understood all of the terms and conditions thereof, and benefits from a presumption of validity. It is submitted that on the specific facts of this case, where the success was achieved as a result of a final judgment of the highest court in Quebec, this presumption may not be rebutted except in exceptional circumstances which clearly do not exist in this unique case.

3. The Quebec Class Counsel Fee, established on the basis of the CQTS Retainer Agreement, is fair and reasonable based *inter alia* upon the enormous amount of work devoted to prosecute the Quebec Class Actions against adversaries with virtually unlimited resources, the immense risks assumed by Quebec Class Counsel at the outset of the proceedings and at all times throughout, the undeniable success of these actions, the extremely meaningful financial recovery achieved on behalf of Quebec Class

Members (and other Claimants), and the public interest served in finally holding the Tobacco Companies accountable for the harms they have caused.

4. The CQTS, as representative plaintiff in the *Blais* Class Action, and Lise Boyer Blais, the wife and heir of the designated *Blais* Class Member the late Jean-Yves Blais, support the request of Quebec Class Counsel for the approval of the Quebec Class Counsel Fee in the amount herein requested, which has been determined in accordance with the CQTS Retainer Agreement, and they have provided affidavits to evidence such support.

5. Section 14.9(f) of the CCAA Plans provides that the approval of the Quebec Class Counsel Fee shall be dealt with by the CCAA Court at the Sanction Hearing, and Section 16.2 (note 8) thereof provides that, subject to such approval, the Quebec Class Counsel Fee shall be paid in full at the time of plan implementation.

6. Accordingly, the purpose of the present Motion is to seek the approval of the CCAA Court of (i) the CQTS Retainer Agreement, and (ii) the Quebec Class Counsel Fee established on the basis thereof in the amount of $901,177,915, being 22% of the $4.119 billion allocated under the CCAA Plans to compromise and resolve the Claims of the *Blais* Class Members, less $5,002,085[1], plus applicable taxes thereon.

7. Quebec Class Counsel are not seeking any fee in connection with the amount of $131 million forming part of the QCAP allocation under the CCAA Plans and contributed

[1] The amount of $901,177,915 is 22% of $4.119 billion ($906,180,000) less $5,002,085 previously paid to the FAAC from insurance settlements achieved on behalf of the QCAPs in separate proceedings, which were used to reimburse certain litigation costs in the Quebec Class Actions which Quebec Class Counsel have agreed to assume.

to the Cy-près Foundation to compromise and resolve the Claims in respect of the *Létourneau* Class Action.

8. The following is a non-exhaustive summary of some of the key factual elements germane to this Court's assessment of the fairness and reasonableness of the requested Quebec Class Counsel Fee, all of which are set forth in greater detail in the affidavits filed in support of the Motion.

Scope of the Work

Quantification of the Work Performed by Quebec Class Counsel

9. The fees sought have been earned over a period of 26 years, and also include all future work to be performed by Quebec Class Counsel until the claims and distribution process under the Quebec Class Action Administration Plan is completed.

10. The professional services rendered by Quebec Class Counsel related to novel and complex factual and legal issues and were performed under extremely difficult and demanding conditions against highly motivated and litigious adversaries represented by some of the country's finest legal talent. From the beginning until the very end, the work was performed by Quebec Class Counsel in unrelenting full litigation mode, in a case where the qualifier "*gargantuan*" was considered an understatement by the Quebec Court of Appeal.[2] This work required an extraordinary level of personal and professional

[2] *Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 622, para. 5.

commitment by the Quebec Class Counsel team and represents a truly unprecedented situation in the annals of class action litigation in Canada.

11. Many of the lawyers in the firms comprising Quebec Class Counsel have dedicated a significant portion or even the majority of their careers to these files and to the interests of the Quebec Class Members.

12. As of January 10, 2025, Quebec Class Counsel (through the involvement of about 140 lawyers and other legal professionals) have devoted at least 203,849 hours of their professional time without receiving payment on account thereof. It is anticipated that between January 10, 2025 and the end of the Quebec Class Action Administration Plan, Quebec Class Counsel will devote at least an additional 8,000 hours, such that the total professional time dedicated by Quebec Class Counsel to the Quebec Class Actions and the CCAA Proceedings will amount to at least 211,849 hours.

13. The straight-line billing value of such professional time amounts to at least $214,653,500, which does not begin to take into account the persistent and material risk of non-payment for such work (often performed on a full-time basis for years at a time) or the tremendous personal and professional sacrifices made as a result of the non-receipt of fees for so many years.

14. Included in the Quebec Class Counsel Fee are all litigation costs already paid by Quebec Class Counsel over the years as well as contingent and future expenses they must pay both in respect of the litigation and the Quebec Class Action Administration Plan, the aggregate of which totals at least $46,598,926. By far the most important component of such amount are the past and future fees of their agent, Proactio, a division

of Raymond Chabot ("**Raymond Chabot**"), who were engaged to facilitate the claims process for *Blais* Class Members.

15. Consequently, from the fee of $901,177,915, if approved, an amount of at least $46,598,926 must be reimbursed and/or paid by Quebec Class Counsel to cover past and future expenses relating to the Quebec Class Actions and the Quebec Class Action Administration Plan, resulting in a net available amount of $854,578,989 to be shared by the Quebec Class Counsel firms in accordance with the agreements between them.

Qualitative Review of the Work Performed by Quebec Class Counsel

16. After a lengthy battle to have the Quebec Class Actions authorized (certified), including an exceptional 14-day authorization hearing, it took seven more years of intensely contested litigation to get the cases to trial, at which point they had already resulted in 49 judgments of the Quebec Superior Court and 17 judgments of the Quebec Court of Appeal on interlocutory matters.

17. From the very outset and throughout, the Quebec Class Actions faced an avalanche of proceedings, oppositions and legal challenges by the Tobacco Companies at the Quebec Superior Court and Quebec Court of Appeal, many of which, if successful, would have sounded the death knell to these actions.

18. The trial spanned 253 judicial days over the course of almost three years, involving the filing of thousands of exhibits at trial (the admissibility of many of which were forcefully contested by the Tobacco Companies), as well as the examination and cross-examination

of at least 50 ordinary witnesses and 26 experts, resulting in over 60,000 pages of trial transcripts.

19. The complexity of the questions of fact and evidence was extraordinary, involving countless pre-trial examinations, the disclosure and review of hundreds of thousands of documents (representing many millions of pages of materials) prior to trial, and the production of over two dozen expert reports by the parties in highly specialized and complex areas, including addiction, oncology, pneumology, epidemiology, pathology, toxicology, chemistry, psychiatry, history, marketing, public opinion, political economics and econometrics. The legal issues at play were also highly complex and novel and called upon counsel to address concepts and legal principles that were either judicially untested or subject to significant uncertainty.

20. During the trial itself, the Tobacco Companies lodged numerous appeals of interlocutory judgments to the Quebec Court of Appeal. Indeed, more than 30 additional Court of Appeal judgments have been rendered in these matters between the commencement of trial and 2019.

21. The historic trial judgment of Justice Riordan was confirmed on appeal by a bench of five members after an appeal hearing lasting an exceptional seven days, including one additional day of questioning from the bench.

22. Even after their success on the merits at both the Quebec Superior Court and the Quebec Court of Appeal, Quebec Class Counsel continued to represent the Quebec Class Members for another almost six years in highly demanding and challenging CCAA

Proceedings (described by this Court as among the most complex in Canadian history) and played a pivotal role in the process that led to the historic CCAA Plans.

23. As recognized by this Court, the singular event that gave rise to the CCAA Proceedings was the Quebec Court of Appeal Judgment in the Quebec Class Actions[3] and all Claimants (including Governments and other Tobacco-Victims across Canada) have now benefited greatly from that "singular" achievement.

Risks

Litigation Risks

24. It is nearly impossible to fully capture the extent of the risks, both professional and financial, assumed by the Quebec Class Counsel firms in this matter.

25. At the time that the Quebec Class Actions were instituted, Quebec Class Counsel were well aware that no tobacco company anywhere in the world had ever paid a single penny of compensation to any smoking victim, whether as a result of settlement or judgment. The scorched-earth litigation strategy of the tobacco industry — notorious for exhausting their adversaries' resources by defending every claim no matter the cost and refusing to settle — was well recognized.

26. The Tobacco Companies had every advantage of size, power, and virtually unlimited resources to devote to their vigorous no-compromise defense strategy. In Quebec, they were represented by forceful and well-respected lawyers from three major

[3] *JTI-Macdonald Corp. (Re)*, 2019 ONSC 2222, para. 2*; Imperial Tobacco Limited*, 2024 ONSC 6061, para. 15.

national firms. Two of their lead lawyers are now judges on the Supreme Court of Canada. Their parent companies were represented by similarly senior British and American counsel.

27. The Tobacco Companies' aggressive defense strategies played out in every manner imaginable in the Quebec Class Actions. Quebec Class Counsel were nonetheless prepared to pursue this litigation, even at great personal and professional cost and despite the fact that all other similar cases had failed. This was a true win or lose proposition where complete success or total failure were the only possible outcomes.

28. The FAAC, the Quebec government body established to assist in the financing of class actions, issued a decision in 2001 refusing to provide financing for the Quebec Class Actions. At the time, the organization believed that there was virtually no likelihood that the actions would even be authorized (certified) by a court, let alone be successful on the merits.

29. In addition, the Tobacco Companies had delivered a knock-out blow to a similar class action in Ontario in the months prior to the authorization (certification) hearing, exponentially increasing the risk to Quebec Class Counsel at a critical moment.

30. Even after winning at trial and on appeal against all odds, there was no certainty of any recovery. The Tobacco Companies made it clear that they would avail themselves of every recourse available, including under insolvency law. The Quebec Court of Appeal considered the expression "*Heads I win, tails you lose*" [4] an apt description of steps taken

[4] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1737, para. 43.

by certain of the Tobacco Companies to avoid having to satisfy any appeal judgment that would ultimately be rendered in favour of the QCAPs.

Financial Risks

31. The risk of non-payment of Quebec Class Counsel's legal fees has been extraordinary throughout this entire legal odyssey.

32. Because they accepted this mandate on a strictly contingent basis, Quebec Class Counsel have had to self-finance the Quebec Class Actions over the past 26 years.

33. In order to do so, some of the Quebec Class Counsel firms were forced to rely on a patchwork combination of revenue generated from other files, regular bank financing, high-interest loans, personal debts, debts secured against personal assets, litigation financing, deferred payment agreements and contingency-based arrangements. Each of the firms made substantial sacrifices and accepted enormous opportunity costs, financial and otherwise, given the protracted length of these cases.

34. The enormity of the damages awarded in the Quebec Class Actions and the creditor-proofing efforts of the Tobacco Companies meant that there was the risk that the judgment debt would never be satisfied. In response, the Quebec Court of Appeal ordered the furnishing of security (suretyship) as a condition of the appeals in the aggregate amount of approximately $1 billion, an amount that dwarfs the next largest amount ever ordered to this day in Quebec by a factor of at least 58 times. However, once the CCAA Proceedings were initiated, virtually all other stakeholders adopted the position that the deposited security formed part of the property of the applicable Tobacco Companies and

could not be relied upon by the QCAPs to secure any portion of the judgment debt in their favour.

35. Finally, the possibility that no CCAA Plans would ever be filed, approved and/or implemented (with great uncertainty as to what would follow next) has been a constant and ever-present risk throughout the entire CCAA Proceedings.

Benefit to Class Members and the Public Interest

36. The trial judgment of Justice Riordan holding the Tobacco Companies accountable for their conspiracy and faults and awarding Quebec Class Members compensatory and punitive damages in the amount of more than $13.5 billion was unprecedented, never before achieved elsewhere in the world despite numerous attempts. This landmark judgment was then confirmed on appeal in a further landmark decision.

37. The Quebec Court of Appeal decision upholding the trial judgment is the definitive statement on the law in Quebec on numerous complex and controversial issues relating to the conditions for the liability of manufacturers and their duty to inform, the apportionment of liability among solidary debtors (joint and several tortfeasers), principles of causation and collective recovery, issues relating to the *Consumer Protection Act* and the Quebec *Charter of Human Rights and Freedoms* and the availability and quantum of punitive damages, among others. No appeal judgment in Canadian legal history has ever awarded such a significant amount.

38. It was a monumental feat to get the Quebec Class Actions to trial, let alone achieve judgments on the merits that judicially determined that the Tobacco Companies were

"*guilty of reprehensible conduct*"[5], that they "*intentionally conceal[ed] the pathological and addictive effects of the cigarettes they marketed from the public and users*"[6], and "*conspired in order to maintain a common front*"[7], and then held them liable, on a collective-recovery basis, to the victims who were so gravely harmed by their products.

39. By exposing the reprehensible conduct of the Tobacco Companies through a full adversarial trial process and by obtaining judgments condemning this conduct in the harshest possible terms, Quebec Class Counsel have achieved a great societal benefit, in addition to the undeniable monetary success achieved. For the thousands of Quebec victims who tragically are no longer alive to see the benefits of this litigation, this constitutes a part of their legacy and posthumous justice being served in their names.

40. The amounts allocated under the CCAA Plans to compromise the Claims of the QCAPs represent an objectively remarkable achievement. The amounts of compensation payable to individual *Blais* Class Members are also a recognition that these Quebec victims are in a unique category given the litigation success achieved on their behalf. It is also undeniable that but for the success achieved in Quebec, the enormous recoveries that both Governments and other victims across Canada will now be receiving under the CCAA Plans would not have been possible.

[5] *Létourneau c. JTI-MacDonald Corp.*, 2015 QCCS 2382, para. 1076.
[6] *Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 622, para. 477.
[7] *Ibid*, para. 97.

41. The success achieved in developing the CCAA Plans and obtaining the unanimous support of the creditors is also a credit to the dedication and tireless efforts of the Court-Appointed Mediator, the Honourable Warren K. Winkler.

Objectives of the Class Action Regime

42. The objectives of the class action regime, including access to justice, compensation, and behavior modification and deterrence, have been fully realized by Quebec Class Counsel. This achievement is a credit to the justice systems of Quebec and Canada.

43. The Quebec Class Actions could only have been pursued on a collective basis. Without legal counsel prepared to take on this epic challenge, assume the financial risk and sacrifice, and devote the effort necessary to pursue the case to a trial on the merits and beyond, no class member would have had any viable recourse to the justice system or the ability to seek redress for the harms that they suffered.

44. The overwhelming legal victory in the Quebec Class Actions constitutes an important and effective punishment and deterrent on both a specific and societal basis. It is proof that no defendant, no matter how rich and powerful, can escape accountability for the grave harms caused by its egregious misconduct. Justice Riordan described this behavior modification and deterrence objective, as well as the financial burden assumed to reach this objective, as follows in his 2015 trial judgment:[8]

[8] *Létourneau c. JTI-MacDonald Corp.*, 2015 QCCS 2382.

> [1037] (…) If the Companies are allowed to walk away unscathed now, what would be the message to other industries that today or tomorrow find themselves in a similar moral conflict?
>
> [1038] The Companies' actions and attitudes over the Class Period were, in fact, "particularly reprehensible" and must be denounced and punished in the sternest of fashions. To do so will be to favour prevention and deterrence both on a specific and on a general societal level.
>
> […]
>
> [1200] Besides the simple, common-sense notion that it is high time that the Companies started to pay for their sins, it is also high time that the Plaintiffs, and their lawyers, receive some relief from the gargantuan financial burden of bringing them to justice after so many years.

45. The approval of the Quebec Class Counsel Fee would further public policy objectives and represent a recognition of the effort expended and success achieved in this case against all odds. It would incentivize other lawyers in the future to take on difficult and important contingency cases in the public interest, even where the likelihood of settlement is low or non-existent and an unwavering commitment to see the case through to the end is required for justice to be served.

Additional Grounds

46. The provisions of the CCAA and the equitable jurisdiction of this Court.

47. Such further and other grounds as counsel may advise and this Honorable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

48. Affidavit of Bruce W. Johnston sworn January 13, 2025, together with Schedules “A”, “B”, “C” and “D” thereto;

49. Affidavit of Philippe H. Trudel sworn January 12, 2025, together with Schedules “A”, “B” and “C” thereto;

50. Affidavit of André-H. Dandavino sworn January 10, 2025, together with Schedules “A”, “B” and “C” thereto;

51. Affidavit of Lise Boyer Blais sworn January 13, 2025;

52. Affidavit of Marc Beauchemin sworn January 7, 2025, together with Schedule “A” thereto;

53. Affidavit of Gordon Kugler sworn January 10, 2025, together with Schedule “A” thereto; and

54. Affidavit of Avram Fishman sworn January 12, 2025, together with Schedule “A” thereto.

January 13, 2024

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Applicants

AFFIDAVIT OF BRUCE W. JOHNSTON
(sworn January 13, 2025)

I, Bruce W. Johnston, of the Town of Frelighsburg, in the Province of Quebec, MAKE OATH AND SAY:

1. I am a founding partner of the law practice of Trudel Johnston & Lespérance ("**TJL**"), a leading Montreal-based law firm specialized in plaintiff-side class actions and public interest litigation.

2. TJL is one of the four law firms designated as Quebec Class Counsel[1] in the Court-Appointed Mediator's and Monitors' *CCAA* Plans of Compromise and Arrangement (each a "***CCAA* Plan**" and collectively the "**Plans**") in respect of (i) Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively "**Imperial**") (ii) Rothmans, Benson & Hedges Inc. ("**RBH**"), and (iii) JTI-MacDonald Corp. ("**JTIM**") (collectively, the "**Tobacco Companies**" or "**the defendants**" in the actions described below).

[1] As defined in the Plans, "**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., LLP and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P.

3. Quebec Class Counsel represent the members of two class-action lawsuits instituted in Quebec in 1998 (the "**Quebec Class Actions**") on behalf of (i) Quebec smokers who developed lung cancer, throat cancer or emphysema as a result of smoking the Tobacco Companies' cigarettes (the "***CQTS/Blais* Class Action**")[2] and (ii) Quebec smokers who became addicted to the nicotine contained in the cigarettes made by the Tobacco Companies (the "***Létourneau* Class Action**")[3] (collectively, the "**Quebec Class Action Plaintiffs**", "**QCAPs**" or "**class members**").[4]

4. It was in direct response to the judgments in the Quebec Class Actions, at first instance (May 27, 2015) and on appeal (March 1, 2019), condemning the Tobacco Companies to pay damages to the QCAPs in excess of $13.5 billion that the Tobacco Companies filed their proceedings in March 2019 (just days after the appeal decision) under the *Companies' Creditors Arrangement Act* ("***CCAA***"), culminating in the $32.5 billion global settlement set forth in the Plans now before this Honourable Court for approval.

5. I swear this affidavit in support of the Quebec Class Counsel's *Motion for the Approval of the Quebec Class Counsel Fee* (the "**QCAP Fee Motion**"). Pursuant to section 14.9(f) of the Plans, the QCAP Fee Motion is to be dealt with at the Sanction Hearing.

6. I have personal knowledge of the matters to which I depose herein. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

7. Unless otherwise defined herein, all defined terms used in the present affidavit have the same meanings as ascribed to them in the Plans.

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[2] *Jean-Yves Blais and the Conseil québécois sur le tabac et la santé v. Imperial Tobacco Canada Ltd., et al.* (500-06-000076-980).
[3] *Cecilia Létourneau v. Imperial Tobacco Canada Ltd., et al.* (500-06-000070-983).
[4] The eligibility requirements for class members in the *CQTS/Blais* Class Action and the *Létourneau* Class Action are set forth in the judgment of Mr. Justice Brian Riordan J.S.C. and are contained in the definitions of *Blais* Class Members and *Létourneau* Class Members in the Plans.

8. In support of the Motion, this affidavit offer details on the following themes:

3. **Overview of the Quebec Class Counsel Fee:** An executive summary of the Motion Record and the Quebec Class Counsel Fee, including an overview regarding the amount sought and the rationale for that amount, as detailed in the Motion, in this affidavit and in the other affidavits filed in support of the Motion;

4. **History of the Class Actions and Litigation Risks:** The nature and complexity of the work carried out in relation to the litigation by me personally and by others at TJL from 1998 to present, with a focus on the legal, factual, strategic and other challenges that made involvement in the litigation a profoundly high-risk endeavour;

5. **Overview of Trudel Johnston & Lespérance:** Relevant background regarding TJL, the firm's business model and the practice of class actions in Quebec.

9. My affidavit should be read in conjunction with the affidavits sworn by other Quebec Class Counsel lawyers and others in support of the QCAP Fee Motion.

10. In particular, whereas the affidavit of Philippe H. Trudel (the "**Trudel Affidavit**") focuses on challenges that rendered the litigation costly and high-risk from a financial perspective, my affidavit focuses on the legal and practical risks of the class actions. I also provide some context regarding our firm's history, philosophy and values in order to help the Court fully evaluate the nature of the risks assumed.

A. Overview of the Motion Record and the Quebec Class Counsel Fee

11. The following section offers an executive summary of the Motion Record, including an overview explaining the amount sought and the rationale for that amount.

The Quebec Class Counsel Fee

12. In the event that the Plans are approved by the CCAA Court at the Sanction Hearing, an amount will be paid from the Global Settlement Amount for the benefit of the QCAPs in settlement of the Tobacco Companies' liability pursuant to the judgments rendered in the two Quebec Class Actions, as set forth in detail in the Plans ("**QCAP Settlement Amount**").

13. If approved by the CCAA Court, an amount will then be deducted from the QCAP Settlement Amount and paid to Quebec Class Counsel in full at the time of the Plans' implementation ("**Quebec Class Counsel Fee**").

14. Quebec Class Counsel seeks the approval by the CCAA Court of its fee agreement in the *CQTS/Blais* file, amounting to 22% of the direct compensation available to class members, plus applicable taxes. On the basis of this agreement, Quebec Class Counsel are entitled to a fee of $906,180,000, representing 22% of $4.119 billion recovered in respect of those claims.

15. In light of the proceeds of an insurance settlement already paid to the Fonds d'aide aux actions collectives (the "**FAAC**")[5] in order to reimburse them for litigation costs they financed, Quebec Class Counsel requests that the Court deduct an amount of $5,002,084.94 from the total of $906,180,000, and that it order the CCAA Plan Administrators to make payment of a Quebec Class Counsel Fee in the amount of $901,177,915 plus applicable taxes.

16. As described below and as further specified in the Plans, this amount is inclusive of all fees, costs, and disbursements.

17. The present affidavit, as well as the other affidavits and exhibits filed in support of the Motion, provide information that I believe will be useful for the CCAA Court to evaluate the factors generally used in determining whether fees sought by class counsel are fair and reasonable.

[5] Discussed in detail in the Trudel Affidavit and the affidavit of Avram Fishman (the "**Fishman Affidavit**").

18. In addition to the fee agreement between the representative plaintiff and class counsel, these factors include the risks assumed by class counsel at the outset and throughout the case, the results obtained for the benefit of class members and in the public interest, and the value of the time and effort devoted by class counsel to the pursuit of the litigation.

19. In the following subsections, I provide an overview of the main themes contained in the Motion, affidavits and exhibits.

Background Regarding the Class Actions

20. Quebec Class Counsel have represented class members in the Quebec Class Actions against the Tobacco Companies since 1998. The *Létourneau* file was taken on behalf of Quebec smokers who became addicted to the nicotine contained in the Tobacco Companies' cigarettes. The *CQTS/Blais* file was launched by the Conseil Québécois sur le tabac et la santé (the "**CQTS**") on behalf of Quebec smokers who developed lung cancer, throat cancer or emphysema from smoking the Tobacco Companies' cigarettes.

21. The *CQTS/Blais* and *Létourneau* files are widely regarded as unprecedented in Canadian legal history. They have been the longest running, most complex, and most intensely contested class actions to ever succeed in Canada. They are also the only class proceedings in the world where compensation will be awarded to victims of tobacco-related diseases on a class-wide basis.

22. These two class actions proceeded jointly and were heard together in a single trial that lasted over 250 days, resulting in a landmark judgment by the Superior Court of Quebec in 2015.[6] The Superior Court's decision was then upheld by a unanimous five-member Quebec Court of Appeal panel in 2019, awarding class members upwards of $13.5 billion in compensation.[7] No appeal judgment in Canadian legal history has ever awarded such a significant amount.

[6] *Létourneau c. JTI-MacDonald Corp.*, 2015 QCCS 2382.
[7] *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 358.

23. Facing the consequences of that judgment, the Tobacco Companies sought protection under the *CCAA,* which triggered almost six years of confidential mediation involving all of the Tobacco Companies' creditors — including Quebec Class Counsel on behalf of Quebec Class Members — as well as representatives of other Canadian victims and every provincial and territorial government in Canada.

24. On December 12, 2024, the creditors voted in favour of the Plans, permitting the potential for a global resolution of all claims against the Tobacco Companies. The CCAA Court is now asked to approve those Plans.

25. If the Plans are approved, the Tobacco Companies will pay $32.5 billion to their creditors. This amount includes $4.119 billion to directly compensate *CQTS/Blais* class members (as well as their heirs, and, if applicable, the heirs of their heirs). It also includes a $131 million contribution to a $1 billion public interest foundation in settlement of claims of members of the *Létourneau* class action. The Plans also provide for billions of dollars in compensation to provincial and territorial governments across Canada and for certain Canadian smokers who are not included in the *CQTS/Blais* file.

26. The Plans stipulate that the CCAA Court will be asked to approve the Quebec Class Counsel Fee at the Sanction Hearing.

The Agreement with the Representative Plaintiff

27. The fee agreement entered into with the CQTS in 1998, as amended in 2017 to account for the addition of insolvency experts to our team, governs Quebec Class Counsel's entitlement to legal fees, costs and disbursements. In accordance with that agreement, we are seeking the approval of a Quebec Class Counsel Fee equivalent to 22% of the direct compensation of $4.119 billion allocated to *CQTS/Blais* class members ($906,180,000, plus applicable taxes), less an amount of $5,002,084.94 already received, for a total order of $901,177,915.

28. As appears from the affidavit of André-H. Dandavino (the "**Dandavino Affidavit**"), the CQTS supports our motion for fee approval and consents, in its capacity as

representative plaintiff on behalf of the class members, that our fee agreement be approved by the CCAA Court.

29. The Class Counsel Fee will compensate all of the law firms who comprise Quebec Class Counsel, including former iterations of these firms that have merged over the years, i.e. Trudel, Johnston & Lespérance, Kugler Kandestin LLP, De Grandpré Chait and Fishman Flanz Meland Paquin.

30. As is standard in class actions, our firms have pursued these cases on a contingency fee basis. Our remuneration has always been conditional on our ability to obtain compensation for class members and is fixed as a percentage of the total amount ultimately recovered on their behalf. Since 1998, we have never been paid for that work.

31. Class action fee agreements typically entitle class counsel to fees ranging from 20% to 33.33% of any amount recovered for the benefit of the class, plus taxes and disbursements. While it is common practice for fee agreements to stipulate that this percentage will increase with the duration of the litigation or the stage at which recovery is ultimately obtained, the Quebec Class Counsel Fee is fixed near the low end of the typical range.

32. As mentioned, the Quebec Class Counsel Fee is all-inclusive. It includes the legal fees to compensate the lawyers and our teams for the work carried out over the course of the litigation's history, as well as the considerable work that remains to be done over the next several years to implement the Plans and ensure the distribution of compensation to class members.

33. It also includes all disbursements and costs incurred and to be incurred in the future in connection with the class actions, the CCAA Proceedings and the claims and distribution process. As detailed in the Trudel Affidavit, at least $46,598,926 will be assumed by Quebec Class Counsel in respect of past and future costs or disbursements, including for the services of Proactio, a division of Raymond Chabot Administrateur Provisoire Inc. ("**Proactio**"), the firm retained to facilitate the claims process and to assist in the distribution of compensation to class members.

34. Class members will have access to assistance and guidance from Quebec Class Counsel and Proactio when filing claims under the Quebec Class Action Administration Plan, all at no additional cost.

35. Additional information regarding the fee agreement between Quebec Class Counsel and the CQTS is detailed in the Dandavino Affidavit and the Trudel Affidavit. Details regarding the costs and disbursements assumed by Quebec Class Counsel are also included in the Trudel Affidavit.

The Nature, Complexity, and Extent of Quebec Class Counsel's Work

36. The class actions we piloted span nearly three decades and are among the most complex and challenging civil litigation matters in Canadian history. Many experienced attorneys on our team have dedicated large portions or even the majority of their entire careers to the interests of class members in these files.

37. The unprecedented procedural and judicial history of the litigation in these class actions speaks for itself. The authorization judgment allowing the files to proceed by way of class action was rendered in 2005 — more than six years after the cases were filed, and only after a battery of preliminary debates, extensive and demanding examinations of the class representatives, and an unprecedented 14-day hearing.

38. It took seven more years of intensely contested litigation to get the case to trial, at which point the class actions had already resulted in at least 49 judgments of the Quebec Superior Court and at least 17 judgments of the Court of Appeal of Quebec on interlocutory matters.

39. The litigation was also subject to the most intensive and demanding case management in the history of Quebec civil procedure, resulting in upwards of 85 pre-trial case management conferences between the authorization judgment and the beginning of the trial in 2012, many of which lasted a day or more.

40. The litigation raised high-risk and precedent-setting legal issues at every stage of proceedings and in many areas of law. Several of these issues represented existential threats to the class actions themselves.

41. It also raised complicated questions of fact and evidence involving numerous pre-trial examinations, the disclosure and review of hundreds of thousands of documents representing many millions of pages of materials prior to trial, and the production of over two dozen expert reports by the parties in highly specialized and complex areas, including from experts on addiction, oncology, pneumology, epidemiology, pathology, toxicology, chemistry, psychiatry, history, marketing, public opinion, political economics and econometrics.

42. The litigation featured one of the longest civil trials in Canadian history, lasting almost three years, involving the filing of thousands of exhibits, the admissibility of many of which was forcefully contested by the Tobacco Companies, as well as the examination and cross-examination of at least 50 ordinary witnesses and 26 experts. The trial transcripts alone are over 60,000 pages long.

43. After the trial began, the Tobacco Companies repeatedly forced interlocutory debates to the Court of Appeal, resulting in 30 additional Court of Appeal judgments between the start of the trial and the Court of Appeal's final judgment.

44. In May 2015, 17 years after the class actions were first initiated, Justice Brian Riordan of the Superior Court of Quebec, who had managed the cases since 2008, found in favour of our clients in a landmark decision over 1250 paragraphs long, ordering the Tobacco Companies to pay in excess of $13.5 billion for the benefit of class members.

45. The trial judgment is easily among the most important trial decisions in the history of class proceedings in Canada, meticulously addressing challenging questions of fact and breaking new ground in many areas of law.

46. The appeal to the Court of Appeal of Quebec took place before an exceptionally constituted panel of 5 justices at a hearing lasting 6 days, plus an additional day of questioning, in the fall of 2016. In 2019, after deliberating for over two years, the Court of

Appeal rendered a unanimous, 1285-paragraph decision, upholding the trial judgment in almost every respect.

47. The Court of Appeal's decision is the definitive statement of the law in Quebec on numerous complex and controversial issues in the areas of civil liability, civil procedure, human rights law, and consumer protection, among others.

48. Almost immediately following the Quebec Court of Appeal's decision, the Tobacco Companies sought protection under the *CCAA* before the Ontario Superior Court of Justice in Toronto rather than attempting to appeal the judgment to the Supreme Court.

49. Expecting to face the challenge of complex insolvency proceedings, we had reinforced our Quebec Class Counsel team by engaging Avram Fishman and Mark Meland and their team at FFMP, top tier insolvency lawyers whose fees will be paid out of the Quebec Class Counsel Fee.

50. The *CCAA* proceedings brought all the creditors of the Tobacco Companies to the table — including every provincial and territorial government in Canada — with unproven claims in excess of $1 trillion. This stage of the litigation included nearly six years of intensive mediation and court proceedings, described by the CCAA Court as among the most complex insolvency cases in Canadian history.

51. Quebec Class Counsel participated fully and in good faith in the complex CCAA mediation process, adopting and maintaining a reasonable negotiating position from the outset that allowed room for an eventual global settlement to emerge.

52. In addition to the many CCAA Court hearings at which our team played a prominent role, we actively participated in hundreds of mediation sessions over the course of the CCAA proceedings, including as members of the select committees formed by the Mediator and the Monitors to assist them in the negotiation and drafting of the Plans, the terms of which are complicated and novel. Due in part to these efforts, we are now on the brink of an unprecedented global resolution of all tobacco litigation in Canada, a result many considered unattainable.

53. Additional information regarding the nature, complexity, and extent of Quebec Class Counsel's work is detailed in the present affidavit and the Trudel Affidavit, as well as the affidavits of Marc Beauchemin (the "**Beauchemin Affidavit**"), Gordon Kugler (the "**Kugler Affidavit**") and the Fishman Affidavit in particular.

The Risks, Challenges, and Opportunity Costs Assumed by Quebec Class Counsel

54. The litigation was an extremely high-risk endeavour from the very beginning. To our knowledge at the time the class actions were filed in 1998, no smoker had ever received a penny from a tobacco company for the harms caused by their products anywhere in the world. Though there had been many attempts by victims to hold the tobacco industry to account — mostly in the United States — not one of them had been meaningfully successful. The aggressive scorched-earth litigation tactics of the tobacco industry had become notorious internationally and we knew that the risks we were assuming were unparalleled.

55. We also knew that no tobacco company had ever offered to settle a single lawsuit brought against it by a smoker anywhere in the world. Most class actions settle out of court prior to trial, and this possibility is factored into how both courts and class counsel evaluate risk. However, the Tobacco Companies' global litigation strategy meant that settlement was never an option.

56. Despite our knowledge of the difficult road ahead, we believed that holding the industry accountable for the harms caused by its products was an idea whose time had come. We also believed that our justice system would be capable of responding to the inevitable challenges imposed by the litigation.

57. As anticipated, the class actions were contested in every manner imaginable and to the fullest extent possible at each stage of the litigation from 1998 onward. The Tobacco Companies made full use of their virtually unlimited financial resources to make the proceedings as difficult, expensive, complicated and lengthy as possible.

58. We knew from the outset that the industry's first line of defence would be to attempt to exhaust our resources. We also knew that most of the lawsuits brought against them

had never made it to trial. As a result, it was always a very real possibility that we would simply run out of the funds required to continue the litigation. We came very close several times.

59. At every stage, the Tobacco Companies were represented by some of the most accomplished and respected lawyers in the country, including by three "Seven Sisters" firms (Osler, Hoskin & Harcourt LLP, McCarthy Tétrault, and Borden Ladner Gervais LLP). Their parent companies were similarly represented by senior British and American counsel. They could and did bring resources to the fray that we could never hope to match.

60. As a result, we were always outnumbered by teams of high-profile lawyers, billing every month for their work. Unlike our opposing counsel, who were paid throughout the litigation and regardless of the outcome, we had to dedicate ourselves to the class actions — at times on a full-time basis, for years— without any revenue being generated or any guarantee that we would receive payment for our work, even in the event of a complete victory on the merits.

61. Indeed, the complex multinational corporate structure of the Tobacco Companies, their expected recourse to insolvency proceedings, the systematic transfer of their profits to their parent corporations, and efforts by the Tobacco Companies to render themselves creditor-proof and "structure their affairs in a manner that drastically, if not completely, reduces their exposure to satisfy any substantial condemnation that might be made against them",[8] meant that recovery of any substantial amount was always highly uncertain. In this way, these cases are very different than class actions against government defendants whose ability to pay is never in doubt.

62. The extreme risk inherent in this kind of file also meant that no traditional source of financing was available to us. The limited funds available through the Fonds d'aide aux actions collectives were rapidly exhausted. Our firm was forced to rely on a patchwork combination of revenue generated from other files, regular bank financing, high-interest

[8] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1737, para. 44.

loans, personal debts, debts secured against personal assets, litigation financing, deferred payment agreements and contingency-based deals with everyone from suppliers and advisers of all kinds, to our extremely talented team, who could work anywhere they wished but accepted to work on a reduced base salary and share in the risks we take on in files like these.

63. Despite these resource constraints, over 140 legal professionals collectively worked more than 200,000 hours since the inception of the files in 1998. We estimate that thousands more will be required to bring the eventual claims process to the finish line in the event that the Plans are approved.

64. I would note here that the enormous number of hours invested does not even tell the whole story. We were always desperately understaffed, facing significantly greater numbers of skilled and motivated lawyers. Had we had the financial means to assign twice or three times as many lawyers to the litigation, we would have certainly done so. Instead, with our own resources stretched to the limit, we worked under intense pressure, forced into maximal efficiency. We had no choice but to focus on the key aspects of the core issues. We simply did not have the manpower to attack or defend everything, and knew that every decision we made would be tested in court.

65. These hours also do not include the full picture of the tens of thousands of hours devoted by administrative support staff and others who worked tirelessly in these files at great personal cost over the years. Our team was also in constant communication by phone, mail and email with thousands of class members and their families, whose inquiries required enormous administrative time on limited internal resources. The high stakes of the litigation meant that these conversations were often stressful and emotional for class members and counsel alike.

66. In this sense, the responsibility taken on by our team has often transcended the normal solicitor-client relationship. The deadly effects of the Tobacco Companies' products coupled with the length of the litigation has meant that in addition to representing their interests before the courts, we have also accompanied many class members and their families through uncertainty, grief and profound loss. These conversations have

never been more challenging than over the last six years, during which time we were prevented from sharing even basic information with our members as a result of the highly confidential nature of the CCAA mediation.

67. Additional details regarding the legal and practical risks and challenges faced by Quebec Class Counsel are detailed in the present affidavit, the Beauchemin Affidavit and the Kugler Affidavit.

68. Additional details regarding the financial dimensions of the risks, challenges, and opportunity costs assumed by Quebec Class Counsel are provided in the Trudel Affidavit and the Fishman Affidavit.

The Results Obtained for Class Members and the Broader Public Interest

69. The results achieved in these class actions are unprecedented. As a result of our team's efforts, tens of thousands of class members will now share billions of dollars in compensation. Nowhere else in the world have smokers received direct compensation on a collective basis from the tobacco industry.

70. Beyond the direct results for our class members, our success in holding the Tobacco Companies to account before the Quebec courts ultimately brought about the present CCAA Proceedings. If approved, the Plans will result in a total of $28.25 billion being paid to provincial and territorial governments and to other victims across Canada. In addition, tens of thousands of Canadian victims who are not members of the *CQTS/Blais* class will receive significant amounts totalling $2.5 billion as a direct result of our work.

71. Additionally, the Plans benefit smokers who are not directly compensated by creating a $1 billion public interest foundation to fund research focused on improving outcomes in tobacco-related diseases. As mentioned, a $131 million contribution to that foundation operates as settlement of the claims of members of the *Létourneau* class action, serving the same functions of vindication, deterrence and denunciation achieved by the Court of Appeal's award of punitive damages in that file.

72. The amounts secured for class members are objectively significant, fair and reasonable both in the aggregate and for each individual member of the class. For many class members, the compensation they will receive as a result of the present litigation will represent the largest sum they will receive in their lifetime.

73. The Quebec Class Action Administration Plan also allows compensation to be paid to heirs of heirs (successions of successions), something that would very probably not have been possible other than as part of the Plans. This feature of the Plans helps to mitigate the tragic consequences of the extraordinarily long delays in these files. In the case of many deceased class members, the compensation their heirs will receive will make up a large part or the entirety of the succession.

74. The fact that the protocol governing the claims process has been negotiated and drafted in the context of the CCAA Proceedings also protects against the risk — still present following the Court of Appeal's judgment in 2019 — that the Tobacco Companies would attempt to impose contested and lengthy "mini-trials" upon class members in the context of the processing of their claims. Instead, the Plans explicitly provide for a non-adversarial process in which each class member will have access to assistance at no additional cost to them. The result is a streamlined approach that will ensure meaningful access to justice for every eligible claimant, without overloading the judicial system.

75. Finally, I believe the outcome of the litigation has profound moral and social significance to class members, their families and heirs, and to the broader public in Quebec and Canada. Beyond the precedent-setting amounts awarded, the judgments of the Superior Court and the Court of Appeal expose the tobacco industry's decades of deceit in the name of profit. That these files could be brought to trial and won constitutes an immense achievement for our justice system, for our legal institutions, and for respect for the rule of law in Canada, demonstrating that no industry is too large or powerful to be held accountable by our courts.

76. Additional details regarding the results obtained for class members are detailed principally in the Dandavino Affidavit, the Trudel Affidavit, and the affidavit of Lise Boyer Blais (the "**Blais Affidavit**").

B. History of the Class Actions and Litigation Risks

77. In this section, I summarize the history of the Quebec Class Actions while highlighting the main legal, factual and strategic challenges that made our involvement in the litigation as class counsel a profoundly difficult and high-risk endeavour. The financial risks, an explanation of the time we invested, the lawyers involved, and TJL's financial stakes in the litigation are described in the Trudel Affidavit.

Procedural History

78. Likely the most comprehensive summary of the class actions' procedural history and evidentiary record until 2016 is found in the Joint Schedules filed by the parties to the Court of Appeal of Quebec, which include most of the judgments, notices, motions, minutes of case conferences, transcripts from pre-trial examinations filed as evidence, transcripts from trial, and exhibits filed at trial, as well as certain evidence filed on interlocutory motions.

79. The table of contents for those materials alone is 1,168 pages long. The appeal record itself totals 267,000 pages in 688 volumes and, as mentioned, includes over 60,000 pages of trial transcripts.

80. However, even the Joint Schedules on appeal do not include the full procedural history of the class actions. For example, key documents such as the applications for authorization in both cases are excluded. Of course, they also do not include the judgment of the Court of Appeal itself, nor any of the judgments, notices, motions, minutes, transcripts or exhibits from any of the procedural steps that followed, including throughout the nearly six-year history of the present CCAA Proceedings. Inclusion of those additional documents would involve the addition of tens of thousands of pages of additional motions, factums, and evidence filed before the CCAA Court.

81. As a point of reference, tables listing all of the main reported decisions from the Superior Court and the Court of Appeal in both the *Létourneau* and *CQTS/Blais* files are included as **Schedule "A"** and **Schedule "B"** to the present affidavit. Note that these tables are under-inclusive representations of the litigation, as many judgments were

rendered in the form of recorded minutes at case conferences or during the trial, and several key earlier decisions (e.g., the judgment suspending the *CQTS/Blais* class action in 1999) are not available online. Decisions of administrative bodies (e.g., the Tribunal administratif du Québec and decisions of the Fonds d'aide aux actions collectives) are also not included in these tables.

History Prior to Initial Filing of the Quebec Class Actions (1997-1998)

82. I received the degrees of B.C.L./L.L.B. from the Faculty of Law of McGill University in 1992. I also hold a Bachelor of History from McGill University, which I obtained in 1988. I was called to the bar of Quebec in 1993. I have been a member in good standing since that time. My curriculum vitae is included as **Schedule "C"**.

83. In 1992, I was hired as a summer student at McMaster Meighen, and completed my articles there in 1993. McMaster Meighen was one of Canada's oldest and most respected law firms, later merging twice to become part of Borden Ladner Gervais in 2000. I chose the firm because they had an outstanding litigation department.

84. I worked as an associate at McMaster Meighen between 1993 and 1997. My practice focused on litigation for banks, hospitals, construction firms, and other large companies and organizations, mostly on the defence side. The first time I argued before the Supreme Court of Canada I was a third-year call, representing the appellant in a maritime file.[9]

85. McMaster Meighen represented RJR-Macdonald, the predecessor to JTI-Macdonald, during the period that I worked there. The appeal which would eventually become the landmark Supreme Court decision *RJR-MacDonald Inc.*[10] was an active file for the firm during that era. However, I never docketed any time in that file or in any file for a tobacco client.

[9] *Armada Lines Ltd. v. Chaleur Fertilizers Ltd.,* [1997] 2 S.C.R. 617.
[10] *RJR-MacDonald Inc. v. Canada (Attorney General),* [1995] 3 SCR 199.

86. In 1997, a group of partners from McMaster Meighen's litigation department decided to leave the firm to join Hudon, Gendron, Harris, Thomas. The group included some of my closest mentors, and I agreed to follow them.

87. I first met my future law partner Philippe Trudel at the new firm. He had begun his legal career in civil and commercial litigation there and had been called to the bar in the same year as me.

88. Both Philippe and I were seen as serious and ambitious young litigators. Everyone assumed we would be competitors, but instead we worked together and quickly became friends. Despite the fact that we were only five-year calls, we had both been told we could expect to be named partners in the next year. Philippe and I worked on every single step of this litigation together, as a team. There is nothing described in this affidavit that we did not live through and decide together.

89. Although class actions had existed in Quebec since 1978, in the late 1990s they were only beginning to come into their own as a powerful tool for corporate and government accountability, and for access to justice. Philippe and I were interested in those aspects of class litigation and began discussing potential files, including a case on behalf of patients dying on waiting lists in the public healthcare system. While these conversations would eventually form the blueprint for our own firm, neither us nor anyone in the firm had ever actually practised in the area at the time.

90. Then, one morning in April of 1998, Philippe came into my office and suggested that instead of suing the government, we should file a class action against the tobacco industry. It seemed like an idea whose time had come.

91. When we thought about our futures, we understood that there was no obvious place for a plaintiff-side class action against the tobacco industry in such a defence-minded litigation firm. The idea captured our imaginations though, and we set out to build a business case for the file.

92. Philippe began drafting a detailed memorandum outlining all of the potential bases of liability for the tobacco industry under Quebec law. For my part, I read every textbook,

treatise and reported decision about class actions in Quebec, and drafted a framework for how to get the case past the authorization stage.

93. On its face, the case didn't actually seem that hard: the tobacco industry was manufacturing the most dangerous and arguably useless consumer product in history. They knew that it was addictive, they knew it was deadly, and they had lied about those facts for decades. We figured that a case like that ought to be winnable.

94. Prior to filing the class action though, Philippe and I had also read everything that we could find regarding the history of litigation against the tobacco industry. In particular, I refer the Court to an academic article published in 1992 in the *Stanford Law Review* by Robert L. Rabin, a law professor at Stanford University, entitled "A Sociolegal History of the Tobacco Tort Litigation".[11]

95. We had read and discussed this article and others[12] at length during the summer of 1998 and I refer to it here because it offers an excellent discussion of the risks we would eventually face as we understood them prior to filing the litigation.

96. The article explores two waves of tort litigation against the tobacco industry in the United States over a roughly thirty-five-year period from the 1950s to the end of the 1980s. In addition to matters of substantive tort law, it examines the situations of the contesting parties and of their respective litigation strategies, including a detailed summary of the tactics adopted by the tobacco industry, based on interviews with the lawyers who had participated on both sides.

97. Professor Rabin explains that by the end of the first wave, "at least eleven judicial opinions were written, and an estimated 100-150 other filings, like *Lowe* [the first case filed], were simply dropped at some point without formal disposition" — not a single one

[11] Robert L. Rabin, "A Sociolegal History of the Tobacco Tort Litigation," *Stanford Law Review*, vol. 44, no. 4, 1992, pp. 853–78. JSTOR ("**Rabin, a Sociolegal History of the Tobacco Tort Litigation**").
[12] See in particular: William E. Townsley and Dale K. Hanks, "The Trial Court's Responsibility to Make Cigarette Disease Litigation Affordable and Fair," *California Western Law Review*, vol. 2, no. 2, 1989 ("**Townsley and Hanks, "The Trial Court's Responsibility to Make Cigarette Disease Litigation Affordable and Fair**").

successful.[13] In other words, we understood that historically, litigation filed against the tobacco industry rarely even made it to trial. This was true in Canada as well in 1998. None of the limited tobacco litigation filed in Canada up to that point had ever resulted in a decision on the merits — with one exception, our client Cécilia Létourneau, whose case is discussed below.

98. In his article, Professor Rabin explains that the tobacco industry maintained a “no compromise” strategy, without exception, and throughout both waves of tobacco litigation. “From the beginning,” he writes, “the cigarette companies decided that they would defend every claim, no matter what the cost, through trial and any possible appeals. Concomitantly, the companies decided that they would, as a first line of defence, spare no cost in exhausting their adversaries' resources short of the courthouse door.” [14]

99. Rabin notes that this approach was “unique in the annals of tort litigation”.[15] As in Canada, the large majority of mass tort, product liability and private injury claims in the United States settle rather than go to trial. By contrast, he writes, “over a period exceeding thirty-five years, the tobacco industry never offered to settle a single case.”[16]

100. Professor Rabin suggests that this approach stemmed from the immense financial stakes that would arise if the industry signalled any willingness to settle. By the mid-1950s, the industry was aware that its products were responsible for tens of thousands of lung cancer deaths every year. Settlement with any one of these victims could open the floodgates of liability and compromise the future of the companies’ business model.[17] Later, a series of bankruptcies flowing from the asbestos litigation of the late 1980s reinforced the perceived necessity of a no-holds-barred approach. As Rabin summarized: “the industry saw its very existence threatened and responded in an uncompromising fashion”.[18]

[13] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 857.
[14] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 857.
[15] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 857.
[16] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 857-858.
[17] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 868.
[18] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 858.

101. The companies' refusal to compromise was also informed by an understanding of the business model of plaintiff-side firms — which, like ours, are generally small and financed by cases taken on a contingency-fee basis, which involves endemic cash-flow concerns.[19]

102. As just one example, the need for a multiplicity of experts and counter-experts — not just medical and scientific, but also behavioural, historical, economic, psychological, and in the areas of marketing and addiction — imposes enormous front-end costs on plaintiffs. As explained in the Trudel Affidavit, these kinds of financial pressures played out for our own firm at every level, forcing us to resort to increasingly costly and high-risk options to finance the litigation over the years.

103. Professor Rabin also explains the ways in which the tobacco industry sought to make discovery as complex and lengthy as possible, including by "engaging in seemingly endless pre-trial interrogation" and "a continuing onslaught of pre-trial motions, procedural challenges, and deposition taking".[20] The singular feature of tobacco litigation is "to press the plaintiffs' attorneys to their limits".[21] He describes the "all-out blitz"[22] suffered by litigants, and "the "blizzard of pre-trial motions, depositions, and other procedural moves" they faced.[23]

104. Professor Rabin also notes the extensive collaboration among prestigious defence firms, another challenge that we had understood prior to filing the class action. This coordination between defendant companies (which are normally direct competitors), their multinational parent companies and their respective high-powered law firms meant that the knowledge, resources and the experience of an entire industry could be brought to bear on a single lawsuit.[24]

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[19] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 858.
[20] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 859.
[21] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 867.
[22] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 865.
[23] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 866.
[24] See Townsley and Hanks, "The Trial Court's Responsibility to Make Cigarette Disease Litigation Affordable and Fair", p. 280.

105. Indeed, the fact that many of the serious litigation firms in the country had some tie to the tobacco industry would cause repeated headaches — beginning with efforts to disqualify Philippe and me from the file, but also in terms of the lawyers with whom we could collaborate.

106. We understood and expected that this "playbook" would likely materialize in the litigation we were contemplating in Quebec and it did, at every level. I know of no more extreme articulation of these tactics than the procedural history in these class actions — from the relentless procedural war waged to complicate, derail or stall the litigation, to the microscopically technical debates over causation and choice advanced to drain our resources.

107. We also understood that if we were ever going to make it to trial, we would need to convince the courts that our cases were serious and manageable enough to warrant their assistance.[25] As detailed in this affidavit and in the Beauchemin Affidavit in particular, this litigation tested the absolute limits of the Quebec civil justice system. Without the Superior Court and the Court of Appeal's unwavering commitment to the principle of proportionality over the years, we may have died a slow procedural death not unlike that of all of the other competent lawyers who tried and failed before us.

108. Additionally, while the substantive law governing liability of the tobacco industry in the United States is somewhat different than that in Quebec or the common law Canadian provinces, we expected the theoretical arc of the companies' defence to be similar. We understood from the very beginning that the question of causation, coupled with the narrative of "personal choice" — no matter how scientifically flawed — was a "linchpin of defence strategy" and a major threat to the success of the class actions.[26]

109. Indeed, as we learned repeatedly, this strategy was not only meant to exhaust our resources — it was also meant to entangle and maximize the complexity of individual issues: from how much each claimant knew about the risks of smoking, to the other health

[25] See generally Townsley and Hanks, "The Trial Court's Responsibility to Make Cigarette Disease Litigation Affordable and Fair".
[26] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 871.

and environmental risks they accepted or were exposed to, the brands of cigarettes they smoked, whether and how often they had tried to quit, the advertisements and warnings they had seen, their individualized medical history, their risk profile, and their subjective attitudes towards smoking.

110. We believed that the ultimate goal of these efforts was to put class members themselves on trial — from "the victim's lifetime stress experiences, all personality traits, all genetic factors, all environmental exposures during the victim's lifetime, as well as discovering everything ever taken into his body". [27] It thus "enables a cigarette manufacturer to scrutinize every minute of a person's life, as well as that of his immediate family, ancestors, and siblings".[28] This strategy would also maximize the difficulty of either finding or quantifying liability on a collective basis.

111. Our class representatives and designated member indeed faced barrages of questions along these lines and were subject to relentless scrutiny. In this light, it is difficult to imagine how the litigation could have survived if any of the Tobacco Companies' repeated attempts to discover and examine dozens or hundreds of class members had been successful.

112. What's more is that ordinary people, and even smokers themselves, were quick to blame victims for their use of tobacco products, turning smoking into a question of character and individual morality — fatal for cases in which we needed to prove responsibility on a collective basis. Indeed, in the *Létourneau* file, Philippe and I had initially seen the issues of individual choice and causation as so risky that we structured the entirety of the claim to avoid them, seeking damages for the fact of being addicted, and punitive damages, but no compensation for the diseases caused by smoking.

113. Our study of past litigation led us to believe that in order to have a chance, we had to flip the script and ensure that it was the tobacco industry that was on trial, not its victims. In other words, the case could not be about the victims' lifestyles or what they knew.

[27] Townsley and Hanks, "The Trial Court's Responsibility to Make Cigarette Disease Litigation Affordable and Fair", p. 287.
[28] Townsley and Hanks, "The Trial Court's Responsibility to Make Cigarette Disease Litigation Affordable and Fair", p. 287.

Instead, it had to be about the companies and about what *they* knew and conspired to hide from the public for decades. This focus led us to make certain strategic decisions that were difficult and counter-intuitive, as discussed below (for example, in regard to class member testimony at trial).

114. As the class actions and the Quebec Class Counsel team merged, the need to grapple directly with the problem of causation in the *CQTS/Blais* file complicated this approach, particularly on the issue of causation. The joinder of the two cases was nonetheless essential to our victory: ultimately, the *Létourneau* and *CQTS/Blais* files completed each other. The joint proceedings allowed the court to understand the health consequences of smoking and the powerfully addictive effects of nicotine together, at every step of its analysis.

115. As mentioned above, the Tobacco Companies had known for decades that the cigarettes they produced were both deadly and highly addictive. Even as the law stood in the late 1990s, the egregiousness of the defendants' misconduct in conspiring to deny those facts should have meant that the class actions would have had a strong prospect of success on the merits in any functioning justice system. However, as Professor Rabin observed, not a single case in the first two waves of American litigation had survived the wars of attrition waged in the tobacco industry's defence.[29] He comments of the apparent paradox that "in an era of comparative fault, it must be regarded as a remarkable feat that an industry claimed to be responsible for the highest toll of premature death in human history could withstand almost four decades of litigation without paying a single adverse monetary award."[30]

116. Of course, we probably presented a slightly more optimistic picture to our colleagues. As explained in the Trudel Affidavit, Philippe and I had managed to convince the partners at our firm to let us take the file, despite the odds, at first in addition to our regular workload. This was in part because a settlement of public health cost recovery actions by American states was being negotiated that year.

[29] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 859-60.
[30] Rabin, a Sociolegal History of the Tobacco Tort Litigation, p. 878.

117. That litigation, led by a series of Attorneys General in the U.S., was very different than the private tort suits that had failed, and did not involve any individual compensation for individuals who had smoked. Because the government litigants were not victims themselves, they could not be made to face the same kinds of causation and assumption of risk arguments that had defeated every single plaintiff in tort. The government lawyers also had the infrastructure, legislative control and financial stability to match the resources of the industry in a way that no private law firm could.

118. Still, it was an encouraging development, which had itself been made possible by the disclosure of industry documents that demonstrated that it had recognized internally for decades that nicotine was an addictive drug and that smoking causes various diseases. In particular, in 1994, thousands of documents from Brown and Williamson, ITL's American sister company, became public. Those documents led to the publication in 1995 of several papers in the *Journal of the American Medical Association* and the documents themselves became accessible on the internet.

119. I remember reading internal memos and documents on the only computer in the firm in 1998 with an internet connection. One such document had been written in 1963 by Addison Yeaman, General Counsel of Brown and Williamson, stating that "Nicotine is addictive. We are, then, in the business of selling nicotine, an addictive drug." The industry was still publicly denying this reality decades later.

120. Over the summer of 1998, we had many meetings with the representatives and went through at least twenty-seven drafts of the application for authorization. We had also reached out to the anti-tobacco lobby prior to filing, expecting that they would be natural allies. Instead, we received a rather flustered reaction from the CQTS. Of course, the organization would eventually become our client — but at the time, they were already working with another firm on a case against the industry, and informed us that they couldn't speak as a result.

121. The possibility of a competing lawsuit created an additional risk and lit an enormous fire under us to finish the application. In Quebec the rule has always been that the party who is first to file a class action gets carriage of the case.

122. We worked non-stop over the summer months and filed our application for authorization in *Létourneau* in September of 1998, seeking moral and punitive damages on behalf of those addicted to cigarettes. In November 1998, the *CQTS/Blais* case was filed by Lauzon Bélanger, the leading plaintiff-side class actions firm in Quebec at the time, seeking compensatory damages for tobacco-related illnesses.

123. In the sections that follow, I outline some of the principal challenges and risks we faced in the prosecution of the class actions from filing onward. Rather than follow a strict chronology, I have divided these comments by general theme and era.

Prior to Authorization of the Quebec Class Actions (1998-2005)

The Threat of Disqualification and Our Departure from PTH

124. The first serious challenge we faced was a harshly worded motion to disqualify our law firm from acting against the tobacco industry and to remove Philippe and me from the file. This was the first of many existential threats we came up against — had the motion been successful, it would have all ended there.

125. One of the partners I had worked with at McMaster Meighen, Michel Pinsonnault (as he then was), had represented RJR-Macdonald in the constitutional litigation regarding tobacco advertising. We had established an ethical wall as soon as the partners accepted the file and were confident we could survive the effort to have our firm disqualified.

126. Still, the motion was prosecuted aggressively, and while Pinsonnault, Torralbo, Hudon (the successor firm to Hudon Gendron Harris Thomas) had hired an excellent lawyer to defend us, we could tell that the firm was getting cold feet and wanted out of the tobacco file.

127. The partners informed us that the firm had obtained a legal opinion to the effect that we would likely lose the disqualification motion. For Philippe and I, the writing was on the wall. By late November, we had decided that if the firm wanted out of the tobacco file, we would start our own firm and advance the case on our own.

128. Somewhat impulsively, I had a heart-to-heart with Robert Torralbo, my closest mentor at the firm, at the Christmas party that year. In response to a question from Robert, I told him that Philippe and I were planning to leave. Philippe was not impressed with my unexpected candour.

129. The firm's reaction was quicker and more severe than I had expected, and the first thing the next morning — December 23, 1998 — Philippe and I were summoned to the board room. Most of the firm's partners were present, and continued to gain prominence as members of the litigation bar in the years that followed and three of the seven became judges. Emotions ran high, and our decision to leave was taken as a very personal betrayal by some of them. Many felt that the tobacco file was hopeless, a moonshot at best. No one understood how it could be worth leaving.

130. We were kicked out that day. Our key cards were deactivated, we lost all our files and client lists, and they refused our notice. We weren't allowed to go back to our desks — they had a security guard escort us out of the building. The only thing we ultimately kept was the tobacco class action, though we were forced to leave boxes of research and drafting behind. It ended up taking an enormous effort to rescue and reconstitute the work that we had lost.

131. More immediately, Philippe and I were out in the cold, two days before Christmas, faced with the challenge of building a law firm from scratch. I was 32 at the time, and Philippe was 36. In a lucid moment, Philippe realized that we needed phones, so we walked to the Fido store together. I managed to buy one and sign up for a service plan, but Fido refused Philippe's credit. I tried to put him on my plan, but my own credit was only good enough for one phone, not two. He ended up having to get a prepaid card. That more or less sums up our financial situation at the time.

132. We had friends at a small firm who let us work from their office until we got our own. We both still had negative balance sheets and debts from law school. I naïvely tried to explain the tobacco litigation to our banker, and her response was something like, "I hope you have other files." She turned down our application. Still, we managed to secure a small amount of credit, thanks to a government-backed small business loan and a

guarantee from my dad. Many of our own clients from Pinsonnault, Torralbo, Hudon later chose to follow us, which gave us some hope and a degree of financial stability in the early years.

133. I should mention that even our closest friends and family thought that we had done something crazy, impulsive, almost quixotic. We had had very good jobs — the work we had been doing was prestigious, stable, and respected. We were good at it, and just about to start making real money. I had two young kids at the time and their mother was not working. It was hard for people to understand why we had taken this kind of risk.

134. Even then though, we believed in the case. We had estimated the odds of defeat at each step, and concluded that despite the obvious challenges, and even though our own estimation of the aggregate odds of us succeeding in the end were dismal, we still had a decent shot at success.

135. Once we set up shop, the first thing we had to do was fight the disqualification motion. We were confident on the legal ethics issue — the firm had taken every step possible to prevent the appearance of a conflict and to isolate Michel Pinsonnault from the file. Now that we were on our own, the source of potential conflict was eliminated. Still, from the beginning, every minor issue was contested — in fact, the first motion we argued was simply to allow our new firm to appear in the file, which took months.

136. We had no money to pay a lawyer, but Philippe's brother-in-law helped us find someone willing to represent us for free on the disqualification motion. The process had involved depositions of some of the most respected lawyers in the city, and it felt very personal given our recent departure. While we defeated the motion in the Superior Court, the Tobacco Companies sought leave to appeal, at which point we decided to represent ourselves. A few months later, before a packed courtroom in room 17.09 — the same room in which the trial would begin 13 years later — the Court of Appeal refused leave, and we were finally in a position to begin advancing the class action in earnest.

The Need for Experienced Counsel and Expert Guidance

137. Philippe and I were well aware of our own relative youth and inexperience, and even though we felt confident we could do the work required, the coming authorization debate made us realize that we needed the guidance and credibility of a senior member of the litigation bar.

138. During that same period, Philippe and I had been personally sued for $21 million in defamation by the Quebec media baron Pierre-Karl Péladeau and his brother Erik, essentially to deter us from representing their sister in a dispute over their late father's estate.

139. Gordon Kugler had been named by the Barreau du Québec's insurer to represent us. He was a highly respected and senior member of the bar. He was also the managing partner of Kugler Kandestin, a premier boutique litigation firm with a serious track record in civil liability matters and considerable expertise in health law. Gordon defended us successfully in the Péladeau matter, and we had enormous respect for him.

140. In 1999, we approached him to see if he would join the file in an advisory capacity and help us shoulder some of the burden and risk of the case. He agreed. Gordon's insight, experience, expertise, reputation, and extensive professional networks — as well as the support of the whole Kugler Kandestin team, and in particular Gordon's partner Pierre Boivin — would prove essential to the success of the class actions. Without Gordon's advice and involvement, it is not clear to me that Philippe and I would have gotten the case past the authorization stage.

The Suspension of the *CQTS/Blais* File and Competition Between Files

141. We had been closely following the development of the *CQTS/Blais* class action in parallel. As the Beauchemin Affidavit explains in greater detail, the industry had tried to defeat that case at a preliminary stage by arguing that the *Létourneau* file created a form of *lis pendens* and that as a result, the "first to file" rule applied. On that basis, they were seeking to permanently suspend the *CQTS/Blais* case in favour of our file and were successful in that attempt at first instance.

142. While there was some overlap, we had always seen the two class actions as distinct — invoking different causes of actions, seeking different remedies, for different kinds of harms. At the same time, the Tobacco Companies had positioned the files as competitors. Indeed, as detailed in the Trudel Affidavit, a similar dynamic was playing before the Fonds d'aide aux actions collectives in parallel during the same period. The Court of Appeal had also just rendered its decision in Servier a few months prior — a decision confirming the "first to file" rule in Quebec and that left much open to interpretation.[31]

143. This put Philippe and I in a challenging position and forced us into another difficult decision. Even though we had no working relationship with Lauzon Bélanger at the time, we agreed with their view, and despite the significant potential advantage for us had we sided with the defendants on this issue, we refused to take a position or participate in the industry's "divide and conquer" strategy. The Court of Appeal ultimately lifted the suspension, ordering that both class actions be joined and proceed to the authorization stage together.[32]

144. The joinder of the files was unexpected and presented a different challenge. It was clear to Philippe and me that if both class actions went into an authorization hearing as enemies or even as competitors, the chances of prevailing were minimal.

Preliminary Exceptions and Examinations Prior to Authorization

145. Once the disqualification and suspension were defeated, we were able to move in earnest towards an authorization hearing. In Quebec, the authorization stage has always been meant to be a summary verification to ensure that a class action is an appropriate procedural vehicle for the litigation — and not a rigorous test of its ability to succeed on the merits. Examinations of representative plaintiffs were supposed to be limited to the criteria for authorization under the *Code of Civil Procedure*. The rules of evidence at

[31] *Hotte c. Servier Canada inc.*, 1999 CanLII 13363 (QC CA).
[32] *Conseil québécois sur le tabac et la santé c. J.T.I.-MacDonald Corp.*, 2000 CanLII 28985 (QC CA). Leave to appeal denied.

authorization are flexible, and expert reports are rarely filed. An authorization hearing that lasts more than a few days was, and remains, quite exceptional.

146. The tobacco class actions were different. In my 31 years of practice, I have never heard of a case as intensely and thoroughly tested at the authorization stage. Even before the hearing itself — which lasted an unprecedented 14 days — we faced a battery of gruelling depositions and complex preliminary motions. This process was particularly hard on our representative plaintiff, Cécilia Létourneau.

147. When we filed the Létourneau class action, we had three proposed representative plaintiffs — one who had smoked the products of each of the three defendants. We knew that this approach protected us against a very serious threat. As explained in the Beauchemin Affidavit, the question of whether a representative plaintiff needed a direct legal link to each defendant would not be resolved in Quebec law until *Marcotte* was decided by the Supreme Court in 2014.[33]

148. On the other hand, the defendants' interest in maximizing their discovery rights in relation to every named individual meant that we would face triple the cost and risk by representing multiple clients. Our review of the U.S. litigation also reinforced what we knew intuitively, which is that the quality of a representative plaintiff could make or break a case. With Gordon's advice, we decided to amend to move forward with a single client, Cécilia Létourneau.

149. Cécilia was a schoolteacher from Rimouski. To our knowledge, she was also the only person in Canada to have ever gone to trial against a tobacco company at that time, having sued for damages in her rural small claims court some years prior. In Quebec, parties are not allowed to be represented by lawyers in small claims cases, and Imperial Tobacco was not, but that had not stopped them from filling the courtroom with them.

150. I had read Cécilia's file and written to her, and she agreed to meet me. I drove to Rimouski in the summer of 1998. Although she had lost her small claims case, there was no issue of *res judicata* in relation to the remedies sought by the class action (though at

[33] *Bank of Montreal v. Marcotte,* 2014 SCC 55.

authorization, the Tobacco Companies argued vigorously to the contrary), and she was interested in taking another crack at the industry.

151. From the beginning, we were impressed by how articulate, smart, and rigorous Cécilia was. She was preoccupied by the public interest dimensions of the case and wanted to protect vulnerable people. Her experience as an educator also meant that she was particularly motivated by the fact that the Tobacco Companies targeted teenagers.

152. Though she was intimidated by the prospect of taking on the tobacco industry in a larger forum, Philippe and I felt that she wanted to act for the right reasons and would be able to withstand the challenges of leading the class action. That intuition was right — though Cécilia's health has declined in recent years and she is now under legal tutorship, she was an extraordinary representative plaintiff and friend throughout the history of the class actions and followed each development closely and with great care.

153. As mentioned, pre-authorization discovery of the proposed representative plaintiff is, at least as a general rule, supposed to be strictly limited in Quebec. However, in this case we were subjected to a battery of discovery measures and other motions that would be considered excessive even in a normal civil trial on the merits.

154. In both cases, the Tobacco Companies insisted upon obtaining the medical records before even beginning examinations of the representatives. It took a year to assemble all of these documents, and months just to identify all of the healthcare providers Cécilia had seen throughout her life.

155. She was then interrogated for days, with no defined end point — every time a session would end, the defence would insist on scheduling new dates. Cécilia, whose examination ultimately took seven full days, faced these tests with enormous courage and dignity. In 2002, we filed a 19-page motion detailing the tactics employed by the defendants and requesting the court's assistance. Without issuing a formal ruling, Justice Lagacé summoned the parties to his chambers and put an end to the exercise.

156. The designated representative in the *CQTS/Blais* file, Jean-Yves Blais, and the CQTS's representative, Dr. Marcel Boulanger, faced a similarly gruelling process over the course of 13 days in total.

157. The Tobacco Companies had also retained several experts and filed their reports prior to the debate on authorization, along with many volumes of other evidence, which was and remains an unusual practice in Quebec. When defendants are allowed to file large amounts of evidence prior to authorization, the judge can inadvertently be led to commit an error in law by deciding on aspects of the merits of the dispute rather than evaluating whether the criteria for authorization of a class action have been met.

158. Plaintiffs are almost always at an evidentiary disadvantage at the authorization stage. This is because when a plaintiff sues government or corporate defendants on a class-wide basis for systemic misconduct, they are almost always forced to make their case with evidence obtained through discovery and cross-examination, as opposed to publicly available records or documents in the hands of their client. Defendants often take advantage of this fact to shift the debate at authorization to a merits-focused analysis. This case was no exception. While our files had a strong factual and logical foundation, we were somewhat empty-handed compared to the defendants when it came to expertise and documentary proof. The admissibility and relevance of what we did file was aggressively contested.

159. In this context, we felt that it would be a fatal error to get into an evidentiary arms race or debate the merits of the case in a context of such extreme informational asymmetry. As a result, the only way to win was to insist that the court focus exclusively on the criteria for authorization, rather than contested questions of law and fact meant for the trial judge to decide.

160. However, for this approach to be convincing, we had to be extremely consistent in our own strategic choices. For example, there was an issue with the concept of addiction and how to define the class in a manner that was not circular or dependent on the outcome of the trial. However, if we sought to resolve the question of what it meant to be "addicted" at the authorization stage, we would have needed an expert — opening the

door to a process of cross-examination and counter-expertise that would have been never-ending. This was another decision which carried huge risk, as it left our flank open to a serious argument that the class definition in *Létourneau* depended on the outcome of the trial.

161. Similarly, while we had spent hundreds of hours preparing to cross-examine the Tobacco Companies' experts before the debate on authorization, we ultimately decided not to do so, realizing that we could not descend into merits-based arguments ourselves. These were the right decisions, but they also required a degree of restraint and came with considerable risk.

The Authorization Hearing and the *Caputo* Decision

162. When the authorization hearing finally took place in the fall of 2004, we had developed the beginning of a working relationship with the Lauzon Bélanger team. As mentioned, we had been very concerned that competition between the two class actions at authorization could cause both to fail. I think it is fair to say that both teams felt stress and uncertainty about what the other would argue, and the risk that the judge would want to pick and choose between the two class actions was one we wanted to avoid.

163. With this in mind, we approached Michel and Marc and requested a meeting where we suggested to merge the two files. While the proposal proved unworkable at that early stage, we did agree that both teams would argue in favour of the authorization of both class actions. All of the lawyers stuck to this agreement with growing confidence and enthusiasm.

164. We were also up against what felt like every serious defence lawyer in the city, who collectively raised every argument imaginable to defeat the authorization of the class action. The debates that would dominate the pre-trial motions and the trial on the merits — including on class definition, standing, the responsibility of the Canadian corporations as opposed to their American, British or Japanese parent corporations, the assumption of risk by smokers and their theoretical ability to quit, the individuality of class members' experiences, the challenges in determining the cause of a tobacco-related illness in any

given class member, problems of scientific and behavioural causation, and prescription (limitation periods) — were all present and hotly contested at authorization. The adequacy of the representative plaintiffs in both files was also aggressively disputed.

165. Worse still, in the months before our authorization hearing, Justice Warren K. Winkler of the Ontario Superior Court had refused to certify a tobacco class action in the *Caputo* case.[34] Justice Winkler, who would go on to become the Chief Justice of Ontario, was already known as an eminent jurist and a highly respected class actions expert. Quotes from his judgment were front and centre in the Tobacco Companies' briefs at authorization, including the following:

> [85] In essence, the plaintiffs seek certification of an amorphous group of people comprised of individuals of different ages, covering different decades, who knew different things concerning the risks inherent in smoking and who began to smoke for different reasons. They smoked different products, in different amounts, received different information about the risks of smoking, quit smoking or continued to smoke for different reasons and developed or failed to develop different diseases or symptoms associated with different risk factors. The only apparent common element in this action is that all of the proposed class members allegedly smoked cigarettes at one time or another.

166. We were familiar with the *Caputo* case, which had been developed over many years and was led by very competent counsel with whom we had been in frequent contact. While our cases were framed differently and the test to authorize a class action in Quebec is and was more liberal than in Ontario, much of the paragraph quoted from *Caputo* above could have been drafted to dismiss our two class actions in Quebec as well.

167. Still, over the course of the 14-day hearing, we gained ground, and cemented a much closer working relationship with the *CQTS/Blais* team. The last day of the hearing went late, with lawyers from both sides standing up for replies and counter-replies, trying to get the last word in. Our overarching message was that based on the misconduct alleged, if any industry had ever behaved in a manner that deserved a trial, it was the

[34] *Caputo v. Imperial Tobacco Ltd.,* 2004 CanLII 24753 (ON SC).

tobacco industry. Implicitly, we also had to convince the Court that if the class actions were authorized, we had a realistic plan to bring them to trial in a manner that would not overwhelm the justice system.

168. Justice Jasmin's decision authorizing both class actions was rendered in February 2005, nearly 7 years after the cases had been filed.[35] At that time, there was no appeal from a judgment authorizing a class action in Quebec. We could finally move forward towards a trial on the merits.

Prior to the Trial and the Trial on the Merits (2005-2014)

The Need to Collaborate and Join Forces

169. The authorization hearing and the landmark authorization judgment we had won together brought the *Blais* and *Létourneau* legal teams even closer. In the period following authorization, we formalized the relationship between our two groups, appeared on the record in each other's files, and gradually became a single team, committed to winning both class actions together. Originating applications were filed, and we started the work of preparing the case for trial.

170. For the first time in the files, we were assigned a case management judge by the Chief Justice of the Court in March of 2005 (at the time, Justice Carole Julien). Even as early as 2005 and 2006, decisions regarding notices to class members,[36] objections made in the pre-trial discovery process,[37] and preliminary exceptions raised by the defendants[38] were all heard and rendered jointly in respect of the two class actions. It was therefore clear very early on that the two files would be joined for trial and proceed together at every step.

171. We faced a barrage of preliminary motions during this period, some of which sought to relitigate issues dealt with prior to or during authorization, others raising new issues entirely. Many of these procedures posed an existential threat to the litigation,

[35] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2005 CanLII 4070.
[36] *Conseil québécois sur le tabac et la santé c. JTI-Macdonald Corp.*, 2005 CanLII 12488 (QC CS).
[37] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2006 QCCS 7251.
[38] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2006 QCCS 1098.

including repeated efforts to dismiss or de-authorize the class action entirely over the years. There were several of these debates that, if lost, would have effectively put an end to the litigation before trial. It felt like playing Russian roulette every time we went to court on one of these motions — we usually felt that our odds were good, but could not help wondering how many times in a row could we win on matters of life and death.

172. From the very beginning, we were also seriously outgunned. It happened many times over the years that we would receive an enormous motion on a Friday night, or lengthy written plans of argument accompanied by volumes of authorities the day before a hearing. We didn't have the resources to assign an army of juniors and articling students to solve problems, so we were forced to pick our battles and concentrate on nothing but the most important issues. We had to make the best use we possibly could of the time we had. We couldn't afford — in time or money — to be anything less than maximally efficient.

173. We collectively came to adopt a decision-making process which could be summarized as "*Best idea wins, blitzkrieg on offence, Thermopylae on defence*". In other words, when deciding what to do, we brainstormed and sought to identify the best idea, no matter whose idea it was without letting our egos get in the way, and then implemented it. When on offence, we tried to put most of our effort on the main point of attack —as most issues become irrelevant once you have broken through on a key point. When defending, we tried to choose terrain where a determined few could stand against a multitude.

174. As long as we saw the issues and the law clearly, chose the right point of attack or the right terrain to defend, this worked surprisingly well. But we knew that every such decision, and the quality of the work we did to implement them, would be tested in court.

175. This continuous and relentless pressure-cooker atmosphere forced us into a level of cohesiveness as a team, which we soon realized was a significant advantage. We became good at making difficult decisions rapidly and decisively, even major strategic ones.

176. As the two class actions gradually became a single case, our firm also began to collaborate with Lauzon Bélanger on other class actions, and we did several trials together in those early years.

177. In 2008, my partner André Lespérance took a leave of absence from the Department of Justice to join Lauzon Bélanger's litigation team (then forming Lauzon Bélanger Lespérance). His involvement changed everything. Philippe and I had first met André as our opposing counsel in *Chaoulli* at first instance and at the Court of Appeal, where he had been a formidable adversary.

178. André's *curriculum vitae* is attached as **Schedule "D"** to the present affidavit. André had held the title of Senior General Counsel (the highest ranking for a government lawyer) since 2003, and had led the federal government's approach to class actions defence for years. He represented the Attorney General of Canada as lead counsel in several major class actions at the federal level and in Quebec, including the Mad Cow Disease litigation against the Minister of Agriculture (*Bernèche*) and the breast implant litigation against Health Canada (*Attis*). He also had an encyclopaedic knowledge of public law issues, an area of expertise that was increasingly critical to our class actions given the number of constitutional issues piling up and the threat that the federal government would be called in warranty. His background in economics also meant that he had both the intuition and training to take on some of the hardest questions in the file around causation and collective recovery.

179. André joining the team was a defining moment in our cases. His style and professional experience complemented and completed the existing team, and his experience in "megafile" litigation meant that he was prepared to act as a field marshal in the discovery process despite the avalanche of documents we faced. Most of all though, André has a prodigious mind and memory, sees the big picture and understands long-term strategic planning better than anyone I have ever met. In retrospect, there is no way we would have been able to set down the case for trial or win it on the merits without André's singular talents as a master planner, conductor, manager and dispatcher.

Discovery and Document Review

180. Discovery was an enormous legal, logistical, and technical problem. André was particularly instrumental throughout the process, in which he coordinated the review and analysis of millions of pages of documents.

Unlike in the common law provinces, in Quebec there is no express obligation to itemize or divulge all documents relevant to the proceeding in the form of an affidavit of documents or similar record. This means that discovery takes place largely through pre-trial examinations, requests for undertakings in the context of those examinations, and targeted written requests for documents or categories of documents. This procedural context changes some of the strategic considerations around discovery, and makes it particularly challenging to obtain all relevant materials when dealing with a complex corporate defendant without being accused of making unreasonably large demands or engaging in "fishing expeditions".

181. We had spent countless hours attempting to identify the kinds of records that would be essential to our case, working closely with the documents already made public through various sources — including as a result of Justice Gladys Kessler's 1683-page *Philip Morris* decision in 2006, which had ordered the Tobacco Companies to create and maintain public document depositories and websites providing access to industry documents disclosed in the litigation and disaggregated marketing data — much of which would become essential exhibits at trial.[39] Philippe in particular had spent hundreds of hours working on subpoenas requesting the right documents based on what we knew would be available from the public record.

182. Ultimately though, in large part thanks to André, we took a different path, instead negotiating to obtain all the documents that had been disclosed in an Affidavit of Documents in British Columbia's healthcare recovery lawsuit. In exchange, we withdrew the subpoenas. This was one example where both internal resource constraints and the need to avoid additional pretexts for delay forced us to make a high-risk strategic choice

[39] *United States v. Philip Morris USA Inc.,* 9F. Supp. 2d 1 (D.D.C. 2006).

that would not have been intuitive to any normal civil litigator. In exchange for a solution that avoided years of fighting over the scope of communication orders in court, we sacrificed the possibility of a much more tailored and complete set of records, requiring us to find other ways to fill the gaps later on.

183. Of course, even once we received those documents, there was the problem of what to do with them. The document disclosure included hundreds of thousands of documents, totalling millions of pages. As mentioned in the Trudel Affidavit, we had no money to pay technical staff. André nonetheless managed to negotiate the creation of a complex database on a contingency basis — like many of our suppliers, the developers who built the database agreed to receive most of what was owed only in the event we succeeded. Thanks to their efforts, we could begin to navigate through an ocean of materials and build our case.

184. Though the documents were searchable, the work took place many years before sophisticated e-discovery technology or artificial intelligence tools were available. Instead, we used what little resources we had to hire squadrons of law students, several summers in a row, who built dossiers on key witnesses, time periods, and themes. We also organized regular “discovery retreats” in which four or five of the senior members of our team went together to Philippe’s cottage for days at a time, all of us searching the database simultaneously while sitting at the kitchen table, sharing insights and results and competing to find the best documents. It is difficult to overstate the scale of this project, which monopolized the majority of our firm’s resources for years.

185. During this same period, Cécilia and Jean-Yves were examined again, covering many of the same themes as their gruelling pre-authorization examinations, and more.

186. In 2008, a full four years after the cases were authorized, we finally received the Tobacco Companies’ statements of defence, which were predictably lengthy and intricate. We began planning examinations of their representatives. The first discovery of any defence representative took place a full decade after the class actions were filed.

187. We also sought permission to carry out two rogatory commissions during this period, one in Kentucky and the other in London, England. While the commission in Kentucky was authorized, it did not take place because the witness died suddenly. The commission in London did take place however, and was particularly sensitive, because it focused on the destruction of scientific documents by counsel for ITL. As a result, it implicated lawyers in the United Kingdom, raising complicated issues of applicable law and solicitor-client privilege. It also required us to engage a team of barristers in London to assist us with the work.

188. This line of inquiry is one of many examples of the difficult and sometimes uncomfortable strategic choices we made on behalf of class members over the years. While ultimately pivotal in a large punitive damages award against ITL at trial, our decision to pursue a line of fact-finding that called the integrity of some of our opposing counsel into question elevated the stakes of the litigation and alienated us from some portions of the Montreal legal community.

Challenges Regarding Case Management

189. A few years after authorization, we lost Justice Julien as case management judge, which we worried would be a major setback. While her initial approach had been rather accommodating, her experience with the industry's tactics and the scale of the case had led her to become more structured over the years. We feared that an ineffectual case management judge could sink the case entirely. Our opposing counsel were difficult to corral and trying to resolve certain issues often felt like nailing Jello to the wall. Without someone prepared to reign in the Tobacco Companies, we feared we would never get to trial.

190. We were lucky, as the Chief Justice assigned Justice Riordan to the cases in early 2008. The monthly case management conferences continued, often lasting a day or more, and he managed the cases firmly but fairly, keeping the train on the rails.

191. Still, it was not uncommon for the agendas for these conferences to include multiple contested motions, with written plans of argument filed days before we saw the

judge. It is not an exaggeration to say that many of these monthly case conferences were an order of magnitude more complicated than the average civil trial on the merits. We had to keep up with them while simultaneously advancing the file in every other respect.

192. Still, the intensive case management process kept the class actions on track, and held all parties accountable to the Court. Without the Superior Court's investment in this regard — and the Court of Appeal's disciplined deference towards the case management judge's expertise, as detailed in the Beauchemin Affidavit — it is not clear that we would have ever made it to trial.

Recourse in Warranty Against the Federal Government

193. When framing our cases in 1998 and in the years that followed, we did consider whether there was any possible liability of the federal government. We thought we could possibly make out a case — though tenuous — based on its scientifically unfounded encouragement of "light" and "mild" cigarettes, but we believed it would be doomed to fail because the governmental decisions involved were political in nature and thus likely to fall within the state's limited immunity from civil liability. In deciding whether to add the government as a defendant, we therefore weighed the advantage of adding a solvent debtor (even if the case was weak) against the consequences of gifting the tobacco industry a well-resourced ally with the public credibility it lacked. We concluded it would be a grave mistake.

194. After the authorization judgment, the Tobacco Companies expressed an intention to call the federal government in warranty for years, but repeatedly delayed actually doing so. After a formal request from Justice Julien to move forward on the matter, they finally filed a motion in 2008. Their legal theory was essentially that the companies had acted in conformity with the regulatory framework for tobacco products in place at the time, and that as a result they could not be held liable for the harms resulting from their products. If anyone was responsible, they argued, it was the government that had failed to control them.

195. It was clear for us that the Tobacco Companies had no genuine intention to make a real claim against the federal government. They wanted to highlight the fact that cigarettes were legal, but we felt that the warranty action was also (and perhaps mainly) meant to add delay and complexity to the proceedings. Its legal foundation was questionable in our view and became even thinner when the Supreme Court confirmed that the government decisions raised in the action in warranty were in fact covered by the public immunity for policy decisions in 2011.[40]

196. Nonetheless, the introduction of the federal government as a party to the litigation complicated our strategic position, as the first line of defence when any party is called in warranty is naturally to deny any liability whatsoever. As mentioned, had the federal government actively defended the case, it would have had a level of credibility that the tobacco industry did not, and the Attorney General's addition to the file meant more competent and respected adversaries to deal with.

197. Any collaboration between the government and the tobacco industry would also have seriously complicated the constitutional and public law debates governing questions of prescription and causality that lay ahead. As far as public perception was concerned, the fact that the government was called in warranty also meant that taxpayers could potentially be forced to shoulder the burden of the judgment on a politically unpopular issue if we were successful. In short, an alliance between the government and the tobacco industry represented a very serious threat for our position.

198. To counter these risks, we built relationships with counsel for the Attorney General, and worked to convince them that the federal government should not be on the wrong side of this fundamental public health issue. André's reputation and preexisting relationships were essential in this regard, as was the dedicated work of Marc, who was instrumental in the negotiation and drafting of a complex settlement agreement between our clients and the federal government in July 2011.

[40] *R. v. Imperial Tobacco Canada Ltd.,* 2011 SCC 42.

199. The settlement agreement would have granted the AGC a full release of any liability arising out of the facts as alleged in the class actions, and indemnified the government for any damages awarded to the defendants pursuant to their actions in warranty. In exchange, the AGC would have agreed to collaborate in leading evidence demonstrating that the Tobacco Companies should alone be held responsible for the damages claimed. The deal would also have guaranteed us access to certain key government employees, experts, witnesses, and documents, as well as the ability to cover certain costs for additional rebuttal experts as well as transcripts. The settlement discussions were long and arduous, but brought our two teams closer together.

200. Even though we had not instituted proceedings against the AGC, the proposed settlement represented a partial compromise that could impact the rights of our class members, and therefore required court approval. When weighed against the risks of the government as an adversary, we believed that the agreement was unambiguously in the interests of class members. Justice Riordan, however, did not agree, and refused to approve the settlement.[41] In his view, the stakes of approving the release were too high, as the prejudice to class members would have been enormous if the Tobacco Companies had been incapable of satisfying an eventual judgment against them and their warranty actions were ever upheld.

201. The threat that the defendants would seek protection from their creditors was thus a concern even at the time of this decision in 2011, in which Justice Riordan wrote that "[g]iven the magnitude of the sums in question here, anything is possible, including the bankruptcy of one or even more of the Companies. In such a scenario, what interest could the members possibly have in cutting off access to the solvent debtor, the Government of Canada, even if it were then necessary to go through the process of the *Bankruptcy and Insolvency Act*?"[42]

202. We were discouraged, and this was one of the very few times we seriously considered appealing an interlocutory ruling by Justice Riordan. We had also retained

[41] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2011 QCCS 4981.
[42] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2011 QCCS 4981, para. 70 (note that this was likely to have been intended to be a reference to the *CCAA*).

new experts expecting that the settlement with the AGC would cover their costs, and had to scramble to find funds to pay them when the settlement fell through. We were also uncertain how the AGC's continued involvement in the file would play out.

203. However, the climate of collaboration we had created with the AGC led to success in one respect that we felt was important. On the first day of the trial in March 2012, the lawyers representing the Government of Canada sat on our side of the aisle, prompting one of the principal lawyers for the Tobacco Companies to remark in court that he had never in his career seen a defendant in warranty sit on the same side of the courtroom as the plaintiff. The message was clear: the AGC chose the side of accountability for the tobacco industry.

204. Reacting to the refusal to approve the settlement, the AGC filed a motion to dismiss the actions in warranty based on public immunity for policy decisions , shortly before the beginning of the trial. Justice Riordan dismissed the motion, distinguishing the Tobacco Companies' claims from those made in a similar decision in British Columbia the year prior.[43] They were granted leave to appeal the decision, and several months into the trial Justice Gascon (as he then was), writing a detailed judgment on behalf of a unanimous panel of the Court of Appeal, overturned the decision, granted the AGC's motion to dismiss the claim in warranty, and formally let the AGC out of the file.[44]

205. This was an excellent result and it confirmed our initial assessment. Nonetheless, as far as we were concerned, much of the damage had been done. By the time the AGC was removed from the file, a massive and in our view virtually useless discovery of the federal government had taken place. In a plainly exasperated judgment in November of 2009, Justice Riordan lamented that [translation] "the history behind these cases occupies a vast territory over which the trial risks getting lost unless it stays on the right track",[45] describing the lawyers' "appetite for documentation" as "voracious, to say the least"[46] and observing that "the impression that emerges is not so much that these are

[43] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 474.
[44] *Canada (Procureur général) c. Imperial Tobacco Ltd.*, 2012 QCCA 2034.
[45] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2009 QCCS 5862, para. 82.
[46] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2009 QCCS 5862, para. 83.

fishing expeditions as expeditions designed to delay the progress of the cases."47 "We cannot deny," he writes, "that the words 'excessive' and 'unreasonable' have crept into our minds several times in contemplating the subpoenas in this case."[48]

206. Additionally, the start of the trial had been significantly delayed in order to allow for the production of further documents and the participation of representatives of the federal government. More than a week was spent examining three Agriculture Canada witnesses to no particular end. The defendants announced that they would call 60 former employees of the Federal Government as witnesses. In the end, they called six — the testimony offered, and the documents filed in relation to these witnesses were in our view completely irrelevant.

207. Despite the fact that we had no desire to pursue the AGC and felt that the Tobacco Companies' theory of liability was marginal, we were forced to participate in all of these steps, involving thousands of hours of work over the course of years.

Discovery and Examination of Class Members

208. As mentioned, we believed that we could only win the class actions if we were successful in making the trial about the tobacco industry. They, on the other hand, had won countless cases by putting individual plaintiffs on trial. One of the most serious threats to the viability of the class actions, particularly in the pre-trial phase, was therefore the risk of getting dragged down to the individual level and the litigation devolving into dozens or hundreds of miniature civil trials. Not only would that deflect the attention of the court away from the behaviour of the industry, it would add years of delay and would likely have taxed our resources beyond the breaking point.

209. We knew from our experiences with Cécilia and Jean-Yves that even a single pre-trial examination of a class member could take years, necessitating contested medical expertise and reams of health records spanning decades. The Tobacco Companies were very skilled at shifting the blame onto the victim, and we knew that if pre-trial examinations

[47] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2009 QCCS 5862, para. 84.
[48] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2009 QCCS 5862, para. 85.

were authorized by the court, we might never make it to trial. The industry's playbook included a microscopic scrutiny of every detail of a person's life and family history. A plaintiff could be confronted with regional newspaper articles or government statements about the health effects of smoking for days at a time to bolster the argument that they had knowingly assumed the risks. Questions as particular as whether a person ever lived in a home with a wood-burning stove were on the table, and every question risked more documents, objections, and undertakings. We would have been forced to hunt down medical records from every doctor the person had ever encountered. It would have been interminable.

210. As detailed in the Beauchemin Affidavit, variations on this strategy came up so many times that it was the subject of multiple Court of Appeal decisions. We opposed the motions to obtain class members' records or force them to testify on discovery as the existential threats they were. On two occasions, the industry sought permission to examine class members during the discovery phase, and permission was refused.[49] Leave to appeal was denied in both cases.[50] The Tobacco Companies sought leave to the Supreme Court on its first failed attempt. Leave was denied.

211. Luckily for us, both the Superior Court and the Court of Appeal understood this risk and acted as careful guardians of class members in this respect, expressing doubt that these efforts would do anything to advance the common issues in dispute.[51] It helped us that the Tobacco Companies had argued in the authorization debate that class members' knowledge of the risks of smoking *could not* be treated collectively.

212. The Companies also sought to obtain class members' medical records three times prior to and during the trial. The Superior Court and the Court of Appeal refused those requests.[52] They then sought and eventually obtained the list of class members and their

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[49] *Conseil québécois sur le tabac et la santé et al.* c. *JTI-MacDonald Corp. et al.*, 2009 QCCS 830; *Conseil québécois sur le tabac et la santé et al. c. JTI-MacDonald Corp. et al.*, 2011 QCCS 4090.
[50] *Rothmans, Benson & Hedges inc. et al. c. Létourneau et al.*, 2009 QCCA 796; *Imperial Tobacco Canada Ltd. et al. c. Letourneau et al.*, 2012 QCCA 2013.
[51] See e.g. *Imperial Tobacco Canada Ltd. c. Létourneau*, 2012 QCCA 2013, para. 51, Imperial Tobacco Canada Ltd. c. Létourneau, 2014 QCCA 944, 17-18, 30-36.
[52] *Conseil Québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2013 QCCS 4863, *Imperial Tobacco Canada Ltd. c. Létourneau*, 2014 QCCA 944.

locations for the stated purpose of conducting a survey on their beliefs and knowledge in respect of tobacco products.[53] They never filed any such expertise.

213. Class member testimony at trial may be more or less useful depending on the case, but in my experience, it is rarely an issue of concern to class counsel. On the contrary, it often helps the court to better understand the human dimensions of a file. In these class actions however, the possible trial testimony of class members posed another high-stakes strategic dilemma. If we chose to put class members on the stand, their testimony might have been powerful and useful, but it would also have represented a huge risk of individualizing the class actions. We decided that the risk was too great and chose not to call a single class member at trial, not even Cécilia or Jean-Yves.

214. Counsel for the Tobacco Companies had to deal with the opposite side of the same dilemma. Calling class members at trial could have been highly detrimental to their position, but also represented their best chance to muddy the waters on causation.

215. In refusing their right to examine class members on discovery, the courts had repeatedly made it clear to the defendants that even though pre-trial discovery had been refused, the Tobacco Companies would have a right examine class members at trial if they so wished as part of their defence regarding conduct causation on an individual scale.[54]

216. They claimed that they would do so until the very end, and the trial schedule reserved large blocks of time for those examinations. As detailed in the Court of Appeal's judgment, the defendants had chosen class members from the member list to call as witnesses. We then had no choice but to prepare all 150 class members that they had selected in this manner,[55] meeting them, reviewing their files, canvassing their histories, and walking them through the process of testifying in court.

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[53] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 4090, para. 17-19.
[54] See *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 508, para. 730 et seq.
[55] *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 508, para. 731 et seq.

217. This was an enormous and difficult task that we had to accomplish while the trial was ongoing. Preparing ordinary class members who did not volunteer to testify for a trial of this nature is a uniquely challenging job, and we were deeply anxious about the process. It is inherently stressful to be questioned under oath, particularly regarding highly personal details spanning decades of one's life by extremely qualified and well-prepared counsel. In addition to the infinite particularity of class members' experiences, we knew that even smokers who had suffered enormously had a tendency to overestimate their agency, underestimate their addiction, and blame themselves. This would also have been the first time in their lives that almost any of these people had testified in court, increasing the potential that things could simply go off the rails.

218. All the while though, we believed that the Tobacco Companies' stated intention to call class members at trial was probably conditional upon obtaining their medical records prior to their testimony. In the context of their last attempt to obtain medical records which had been denied by Justice Riordan, we told the Court of Appeal that we did not believe that ITL had any real intention of calling class members if no prior disclosure of medical records was ordered. When asked directly by the Court of Appeal though, ITL responded that irrespective of the Court of Appeal's decision, it would call class members as witnesses.

219. In the end, the defendants chose not to call a single class member at trial. The Court of Appeal discussed that decision at length, considering it fatal to the Tobacco Companies' ability to advance a competing theory on causation and to refute epidemiological evidence demonstrating the harms of their products on a population-wide level.[56]

220. The issues of examination of class members on discovery and at trial was thus central to the vital issue of causation, which was itself fraught with difficulties in both law and fact.

[56] *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 508, para. 734.

Causation and Other Complex Legal Issues

221. In Quebec law, causation had not been treated uniformly in the jurisprudence or doctrine, which encompassed competing theories, some of which more closely reassembled the "but for" test generally applied in the common law, while others centered on issues of adequacy, proximity, and reasonable foreseeability.[57] Not having a clear picture of our legal burden on such a vital issue was a huge source of stress for our team.

222. Ultimately, the Court of Appeal clarified the legal standard, confirming our position that causation is proven when a party can show that the prejudice suffered is the logical, direct and immediate consequence of the defendant's fault, without the necessity to prove that it was a necessary condition or the only cause of the prejudice.[58]

223. With respect to causation in fact, the Tobacco Companies argued that for the purposes of a damages award, causation could only ever be proven on an individual basis, which required an individualized trial for every class member. This position was central to their repeated attempts to discover class members.

224. They approached causation with a microscopic degree of particularity. Was the person's illness truly and exclusively caused by smoking, or perhaps by some unrelated genetic or environmental factor? What if any impact did the defendants' conduct have on the person's decision to start or continue smoking? What brand of cigarettes had they smoked, and during what period, in what quantity? Did they have preexisting conditions? What kind of treatment did they receive? To what extent had the smoker knowingly assumed the risk? Had they tried to quit? How many times? If not, why not? Had their doctor told them to quit? If so, why had they not followed their doctor's advice? The list went on and on.

225. As discussed above, the effect of this approach — if successful — would have been an infinitely expensive and lengthy fact-finding process, an unmanageable volume

[57] *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 508, para. 660 et seq.
[58] As it did in many areas of the law in Quebec. The Court of Appeal's ruling has already been cited 215 times according to CanLII since 2019.

of complex evidence and individualized medical expertise with no hope of a judgment that got plaintiffs any closer to a meaningfully collective result for class members.

226. This approach to causation — and the closely related issue of individual choice — would also put class members on trial for the harms they suffered. This is why we had initially structured the *Létourneau* case to avoid the problem entirely, focusing the claim on the harms of addiction, rather than on the specific diseases caused by smoking. However, as the two class actions were joined and the *Létourneau* team became counsel for the CQTS as well, the problem of the causal link between the defendants' conduct and the tobacco-related diseases suffered by class members became both central and unavoidable.

227. After much study and consultation, we concluded that it should be possible to prove, based solely on expert epidemiological evidence and statistical data, that for any given smoker who had one of the diseases that our class members had contracted, and who had been exposed to a specific minimal dose (as expressed in pack-years) of the cancer-causing components contained in cigarette smoke, their disease was more likely than not caused by smoking. We could thus satisfy our burden of proof on causation for every single class member by proving only the existence of the disease and the minimal number of cigarettes smoked, regardless of the individual's particular circumstances or characteristics.

228. By the time the trial started, there was not one Court of Appeal decision that supported this approach to causation, although one that we argued was rendered before the trial ended.[59] But there was no true precedent — anywhere in the world as far as we knew. If we won on the merits but failed on this novel approach to causation, we would have likely faced the impossible prospect of thousands of mini-trials on individual causation. From an access to justice perspective, it would have been the ultimate Pyrrhic victory, one truly indistinguishable from defeat.

[59] *Montréal (Ville de) c. Biondi*, 2013 QCCA 404.

229. We worked on the issue with the urgency, intensity and thoroughness corresponding to the stakes. We had to combine technical legal rules — including a careful articulation of our burden of proof and the principles surrounding the court's ability to operate on the basis of presumptions — with the available epidemiological and medical data on relative risk.

230. The issue of causation was further complicated because in 2009, the Quebec legislature had adopted the *Tobacco-Related Damages and Healthcare Costs Recovery Act*, which was based on similar legislation enacted in British Columbia several years prior. Both Acts were the subject of constitutional challenges, and were ultimately upheld by the Supreme Court of Canada and the Quebec Court of Appeal respectively.[60]

231. Section 15 of that Act provides that in an action brought on a collective basis, proof of causation between the defendant's wrongful conduct and the disease may be established on the sole basis of statistical information or information derived from epidemiological studies.

232. On its face, this provision was directly on point for our case, and confirmed, through legislation, the strategy we had adopted to satisfy our burden of proof. However, the Tobacco Companies challenged the constitutionality of the legislation, which unfolded in parallel to the class actions. Leave to appeal to the Supreme Court from the judgment of the Quebec Court of Appeal upholding the constitutionality of the law was only denied in 2016.

233. This meant that at the time of trial, we did not know whether the provision would ultimately be upheld. We had to choose between allowing the trial to be postponed pending the resolution of this issue — which the Tobacco Companies had argued should be the case — or arguing that we could meet our burden either way. We chose to fight any postponement and proceeded to trial with real uncertainty as to the applicable law on

[60] *British Columbia v. Imperial Tobacco Canada Ltd.,* 2005 SCC 49; *Imperial Tobacco Canada Ltd. v. Québec (Procureure générale)*, 2015 QCCA 1554, leave to appeal to SCC refused, 36741 (5 May 2016).

a crucial issue. This indeterminacy created an additional layer of risk and legal complexity, both in our evidence and in our legal position.

234. I would add that causation was only one of the serious legal issues at play in the class actions.

235. Another issue where we had to face uncertainty in the applicable law resulted from the extremely long class period. The alleged misconduct went back to the 1950s, so the applicable law had changed significantly over the years. At first, the claims were governed by the 1867 *Civil Code of Lower Canada*, which had undergone a major reform during the relevant period resulting in the adoption of the *Civil Code of Quebec* in 1994. Of course, the jurisprudence on civil liability had also been evolving incrementally throughout the entirety of that time, adding further complexity.

236. Similarly, the Quebec *Charter of Human Rights and Freedoms*, which formed part of the basis for our claim in punitive damages, had only come into force in 1976, and the *Consumer Protection Act* had only come into force in its first iteration in 1971. There were also questions of prescription that depended on contested questions of fact, like the point at which class members could have known they had a claim against the industry, and whether and how the 2009 *Tobacco-Related Damages and Health Care Cost Recovery Act* applied.

237. The scope of the legal issues in dispute is evidenced by the Court of Appeal's judgment, which, as mentioned, either confirmed, altered, or clarified the law on a vast range of issues — including nearly every aspect of extracontractual liability; manufacturer's liability; problems of fault, injury and causation; issues of prescription and retroactivity; intricate problems in the areas of consumer protection and human rights law; the principles surrounding punitive and moral damages; and several issues specific to the procedure and practice of class actions, including the rules of collective recovery, another critical issue which I discuss below. We had to collectively become experts in every one of these issues, which were all debated vigorously at trial and on appeal.

The Risk of Individual Recovery

238. Closely related to the issue of causation was the equally critical procedural issue of the availability of collective recovery. Even if we won on our novel approach to the causation question, a loss on this point would have been equally fatal in practice.

239. In Quebec, class action judgments can be subject to either individual or collective recovery. Collective recovery is available if the evidence enables the Court to establish the total value of the claims of the members with sufficient accuracy, even if the identity of each of the members or the exact amount of their claims cannot be established in advance.[61] In those cases, the Court will order all or part of the total aggregate compensation to be paid by the defendant at the outset, and then distributed in accordance with the judgment or subsequent claims protocol.

240. On the other hand, if a Court determines that collective recovery is not available, and an individual recovery process is imposed, the defendant is not obliged to compensate any class member until they present and prove an individual claim. In cases involving thousands or tens of thousands of class members and potentially complex individual issues, like these class actions, the distinction between collective and individual recovery is close to the difference between victory and defeat.

241. The Tobacco Companies had argued forcefully that collective recovery was impossible, largely because the exact size of the class was not known, and because they saw the quantum as highly dependent on the nature and severity of individual injury, among other individual factors. Had the Court agreed with the Tobacco Companies on this issue, we have little doubt that they would have sought to contest every single claim filed on an individual basis.

242. Individual recovery processes are not only resource-intensive for counsel, but extremely costly to administer and highly demanding on the justice system. Indeed, an individual recovery process would have almost inevitably resulted in thousands of “mini-trials”, involving reams of medical evidence, competing expertise, and examinations of

[61] At the time, article 1031 *CCP.*

class members. This kind of adversarial process deters legitimate claimants and radically increases administration costs.

243. Initially, the *CQTS/Blais* class action claimed not only moral and punitive damages, but pecuniary damages as well. Unlike the claims for moral damages (pain and suffering) and punitive damages — which we believed could be treated on a collective recovery basis — the pecuniary damages claimed, such as lost revenue, simply could not meet the test for collective recovery, and would therefore have had to be dealt with on a case-by-case basis. In our final written submissions, we decided to amend our proceeding to renounce individual claims for pecuniary damages entirely.

244. The decision to amend at such a late stage might have looked as if we had "left money on the table" or otherwise limited the rights of class members. However, no matter what the Court decided, it was clear to us by this point that an individual claims process rendered these claims fully illusory in practice. Our written submissions on this issue (which were reproduced by the Court of Appeal[62]) explained the decision as follows:

> 2329. […] it will be impractical and excessively expensive to adjudicate each individual claim. Given the past behaviour of the defendants, they will likely succeed 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.

245. In response, the trial judge remarked that "[t]he 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."[63]

246. Indeed, at the Court of Appeal hearing, André more or less told the Court that we would rather lose the case than face an individual recovery process for the moral and punitive damages that remained. The simple reality is that we would never have had the

[62] *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 508, para. 722.
[63] *Létourneau c. JTI-MacDonald Corp.*, 2015 QCCS 2382, para. 1193.

resources to handle such a process — and neither would the justice system. Indeed, as discussed below, even after winning twice on the question of collective recovery, the issue of whether the Tobacco Companies would have the right to participate in the design or adjudication of an eventual claims process was never fully settled — so the risk of some form of an adversarial claims process loomed even following the Court of Appeal's final judgment. That issue is now finally resolved in the class members' favour in the Plans, as is discussed below.

Complexity of Expertise and Factual Issues in Dispute

247. The trial involved the production of dozens of expert reports by the parties in highly specialized areas, including from experts on addiction, oncology, pneumology, epidemiology, pathology, toxicology, chemistry, psychiatry, applied statistics, applied psychology, smoking behaviour, history, marketing, public opinion, political economics, consumer warnings and econometrics. Many of the experts were examined both prior to and during the trial.

248. We understood that every one of our experts would be subjected to the most rigorous scrutiny imaginable, as the Tobacco Companies had unlimited resources to prepare and carry out background research. We chose each expert with this in mind and prepared them to face extensive cross-examination by some of the best trial lawyers in the country. Additionally, many of our experts were cross-examined by highly skilled senior lawyers who were not members of the defendants' regular trial teams, and could thus prepare without the pressure of conducting the trial itself.

249. We had no such luxury, and instead had to find the time to prepare to cross-examine the Tobacco Companies' experts, fully aware that we would need to make much of our case using these witnesses. Their experts were in general highly qualified technically (including, among other leaders in their fields, a Nobel Prize-winning economist) and often experienced trial witnesses. We prepared as much as possible, feeling the pressure to verify not only every footnote of every expert report, but also often the footnotes in the articles cited in those footnotes. We consulted external specialists, reviewed the scientific literature, and carefully workshopped lines of questioning. The

degree of preparation meant that we had to develop some expertise in every one of these fields as well.

250. The Tobacco Companies did everything in their power to maximize the number of factual issues that would remain on the table at trial, and hardly ever conceded a point. For every fact they refused to concede, we needed a document or a witness to prove it, which substantially increased our evidentiary burden and the resources expended.

251. Justice Julien managed the case for almost three years from 2005 to 2008. In that time, she called repeatedly on the defendants to consent to meetings between the experts of both sides in order to better identify points of consensus and dispute between the parties. We strongly supported this initiative, which was first avoided, then delayed, and then outright rejected by the Tobacco Companies.

252. In light of this refusal, we nonetheless attempted to narrow the issues in dispute and build a common factual basis for trial. We worked with our experts to draw up a list of admissions that no serious expert in their respective fields could deny. The list of 106 statements included lines such as “the tobacco used in the preparation of cigarettes for human consumption contains an alkaloid called nicotine”, “nicotine is a psychoactive drug”, “ benzo[a]pyrene is a carcinogen in laboratory animals”, “the degree of risk increases with an increased dose of exposure to a carcinogen”, and “lung cancer is the most deadly cancer among both women and men”. Not one of these statements was meaningfully disputed in the basic scientific literature of the time.

253. The Tobacco Companies declined to even submit our list to their experts, which forced us to make evidence of facts that were obvious to any qualified expert in the field. It also sheltered the defendants’ experts in many cases from becoming vectors for the admissions we were hoping to obtain from them and from being exposed to evidence that would have made it difficult for them to render the type of opinions that the defendants required. The overarching result was a process that was needlessly onerous, designed to impose the maximum factual and logistical burden possible on the plaintiffs.

254. I would add that despite admissions ultimately obtained during cross-examinations of their experts, the defendants denied or refused to admit clearly that tobacco causes any disease in any individual until the very end of the trial.

Debates Over Admissibility of Documents

255. The Tobacco Companies usually insisted on the strict application of every rule of evidence, all while taking full advantage of our desire not to delay proceedings any further. They objected to virtually everything, whereas we rarely felt that we could afford to object, given the risk of appeals and further delays.

256. They denied the authenticity of many documents which formed part of their own corporate records even though most of them had been identified as relevant to the matters before the Court by their lawyers and provided as part of the discovery process. We argued that they could not question the authenticity of such documents in good faith, and the Court ultimately agreed.[64]

257. In addition, the Tobacco Companies objected to the filing of most documents into the Court record — including those from their own corporate records — without the author being present. They claimed that without the author, a document made no proof whatsoever and was inadmissible, insisting on the strictest application of article 2870 of the *Civil Code of Quebec* despite two judgments from the Court early on in the process to the contrary.[65]

258. When the Tobacco Companies produced documents in their own defence, however, they adopted the opposite approach. A document which had no evidentiary value whatsoever when produced by the plaintiffs suddenly made full proof of its contents and was fully credible when produced by the defence. On many occasions, the same document whose authenticity was denied when we sought production was entered into evidence by the defence without comment.

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[64] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2012 QCCS 1870.
[65] *Conseil Québécois sur le tabac et la santé et al. c. JTI-MacDonald Corp*., 2013 QCCS 20; *Conseil Québécois sur le tabac et la santé et al. c. JTI-MacDonald Corp*., 2013 QCCS 226.

259. The Tobacco Companies also systematically objected to the filing of documents emanating from their parent companies, claiming that such documents were irrelevant to the case. Counsel for the defendants stated numerous times prior to trial that events outside of Canada had nothing to do with Canada. The evidence revealed, however, that almost all fundamental research was carried out at by the parent companies and was shared with other members of the corporate group. Critically, the policy on smoking and health was dictated internationally by those companies.

260. Debates regarding admissibility, relevance, and the need for a witness in support of every document monopolized enormous amounts of judicial resources and lawyers' time. Many days of trial were lost going through this tedious process.

The Scale and Length of the Trial

261. We fought relentlessly for a trial date, which was initially set for the fall of 2011. The defendants succeeded in postponing it for several months. Then, shortly before the trial was set to begin in early 2012, ITL sought another postponement in the form of a reorganization of the trial calendar to address certain issues *in limine litis*, including issues related to the confidentiality of documents, parliamentary immunity, threshold debates related to the admissibility of documents without witnesses, the production of documents, etc.

262. As mentioned in the Beauchemin Affidavit, many of these questions opened the door to appeals on questions of law. If it had been granted, the trial would have never truly been allowed to begin. Thankfully, Justice Riordan dismissed the motion except for a minor issue related to the start date, and the Court of Appeal upheld the judgment. The trial thus went ahead as planned.

263. As mentioned, the trial itself, which began on March 12, 2012, was one of the longest civil trials in Canadian history, spanning 253 judicial days over the course of almost three years. In addition to dozens of complicated debates on points of law and evidence, it involved the examination and cross-examination of at least 50 ordinary witnesses and 26 experts. The trial transcripts alone are over 60,000 pages long.

Philippe, André and I were in the courtroom almost every day, as were Gabrielle Gagné, Pierre Boivin and Michel Bélanger. Gordon also attended key portions of the trial, as detailed in his own affidavit as did Marc.

264. As mentioned, we had the difficult task of making our case almost exclusively with adverse witnesses whom we could neither meet nor prepare in advance. Aside from our experts, virtually all of our witnesses were ex or current employees of the defendants. The sheer logistical work of preparing dossiers for each witness, including CD-ROMs stocked with the documents that would be relevant to each examination was overwhelming, and fell largely on the shoulders of Gabrielle Gagné. Though the most junior member of the team, there is no way the trial would have been possible without her extraordinary organizational and technical talent.

265. We worked in pairs for every witness. The fact that all four law firms had appeared for both plaintiffs meant that we had the right to examine and cross-examine each witness twice. We could thus work as a team and divide the topics, which gave us flexibility and allowed us to take advantage of complementary approaches.

266. Still, the intense pace of the trial meant that we were often forced to prepare at the last minute, searching our database and reviewing critical documents and pre-trial transcripts the night before a witness's testimony began. It happened regularly that we would still be finalizing a plan for an examination the morning of a witness's testimony, only to run back to the office at the lunch break to finalize questions for the afternoon. Despite the fact that we were working 10 to 15 hour days for weeks on end, there was simply not enough time in the day, with the resources at our disposal, to prepare fully in advance. We had to be maximally efficient, and the pace was relentless.

267. In parallel to the trial, we were being forced to the Court of Appeal every few weeks on interlocutory debates. As detailed in the Beauchemin Affidavit, we knew that any appeal had the potential to derail the trial completely, and we were constantly adjusting our strategy to avoid letting those debates sabotage the advancement of our evidence.

268. Marc had developed an extraordinary rapport with the Court of Appeal and defended the team's position on appeal with skill and integrity while we remained in the trenches. It is hard to imagine that any lawyer appeared before the Court of Appeal more frequently than Marc during those years. In 2014, the Court commented on the frequency of these appeals, writing that [translation]:

> The appeal arises in the context of a case that has been before the courts since 1998, which has since given rise to an unusual deployment of resources on both sides, and has monopolized a Superior Court judge for many years, not to mention the parties' trips to this Court, trips that have regularly - and often quite unnecessarily - punctuated the proceedings. It is clear that the judicial system is struggling to absorb a case of such magnitude.[66]

269. These relentless appeals were gruelling, like the trial itself. There was no fixed end date, and the feeling that it could go on forever added to the uncertainty, stress and strain on all of us.

270. In May 2013, following nearly 150 days and the close of our evidence, the defendants filed a third motion to dismiss the class actions. It was another spin of the barrel at Russian roulette. We expected to win, and did, but the fact that it occurred at all speaks to the number of times we survived this kind of existential threat.

271. The defendants announced initially that they required 300 days to put on their defence. In the end, they took only 94. Over 30 days they had reserved for the hearing were eventually lost because of their inability to present witnesses — witnesses for which we had nonetheless had no choice but to prepare extensively, rendering weeks and months of work useless.

272. As discussed above, the uncertainty about whether they would ultimately examine the 150 class members selected also created enormous pressure and held everyone's schedules hostage.

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[66] *Imperial Tobacco Canada Ltd. c. Létourneau*, 2014 QCCA 944, para. 79.

273. Here I would note that a class action is not like an ordinary civil case. Class counsel cannot simply cease acting for clients at their discretion. In a file with any merit, class counsel have an obligation to do all the work required, fight every fight no matter how long it takes, or how many appeals they face. There was no possibility of a settlement with the tobacco industry, and unlike many other class actions, there was no market for these files — no other plaintiff-side firm that would have been willing or able to take it off our hands if our firms had been unable to continue. We knew that no matter how long it took, we could not give up: the only way out was through.

274. In this respect, it is important to acknowledge the immense resources invested by the Quebec Superior Court. A trial of this nature is a superhuman task for any judge. There are teams of lawyers on both sides bombarding the court with reams of materials continuously. Justice Riordan was incredibly hard-working and disciplined, uniquely committed, meticulous, respectful and fair. The same is true for the dedicated court staff assigned to the litigation, who were present and dedicated for years as the trial unfolded.

275. When the evidence of the Tobacco Companies closed, we agreed to a brutal six-week timeline for final written plans of argument summarizing our positions on every issue of fact and law. The issues were immensely complex and the volume of material to synthesize was gigantic. Every member of the team worked seven days a week during this period with very little sleep. The final document is over 600 pages long and includes nearly 3000 hyperlinked footnotes.

276. The trial ended with weeks of oral argument spread over three months in the fall of 2014, concluding with the announcement that Suzanne Côté, lead counsel for ITL, had been named to the Supreme Court of Canada. A few years later, Mahmud Jamal, ITL's lead counsel on appeal, would be named to the Ontario Court of Appeal, and later join Justice Côté on the Supreme Court.

277. In the legal community in Quebec over the years, a fear was sometimes expressed that these class actions were simply too complex for our judicial institutions to handle, and that the Tobacco Companies were in some real sense too big to fail. We refused to accept that idea, and we are proud that our court system had the resilience and vision to

see the class actions through. There are very few jurisdictions in the world where the justice system would have been up to the task, and this fact should be a source of pride for Canadian jurists everywhere.

The Judgment and Appeal on the Merits (2015 to 2019)

Provisional Execution and the Security Order

278. We received the Superior Court's landmark judgment in May 2015.[67] The decision was widely celebrated as an historic victory for victims and for the rule of law in Quebec and beyond.

279. We had asked for provisional execution of the judgment and the possibility of that order being granted made it urgent for us to consider the potential ramifications. The possibility that we could win on the merits but still obtain nothing for class members always loomed over the case. As mentioned above, Philippe and I were aware of that risk to some degree even in 1998.

280. Over the years, we regularly consulted the publicly available financial documents of the Tobacco Companies and their parent companies. We understood that they were foreign held entities with few significant assets in Canada and that they lacked the capacity to pay any substantial portion of the amount we were seeking. We concluded that we absolutely needed insolvency experts on our team.

281. Justice Riordan had given the parties a few days advance notice that his judgment was going to be rendered. We used the grace period to call Avram Fishman. Gordon had already contacted Avram for advice in the case during the trial, notably in relation to a safeguard order to prohibit JTIM from continuing to make certain payments to a wholly owned subsidiary. André, Philippe and I also knew Avram as a formidable adversary in the *Mount Real* case,[68] a class action in which we were acting for investors. Avram

[67] *Létourneau c. JTI-MacDonald Corp.*, 2015 QCCS 2382.
[68] No. 500-06-000453-080 (*Ménard*).

represented one of the major accounting firms who had acted as auditors for a publicly traded corporation that had been used as a front for a Ponzi scheme.

282. We all agreed that if Avram and his partners accepted to act on a contingency basis, which we knew was decidedly not their business model, they would clearly be our first choice. They were the best insolvency firm in Montreal. They accepted to join our team and in retrospect, it is clear to me that we could not have navigated the incredibly intricate and difficult CCAA proceedings without Avram, his partner Mark Meland, who made himself ever more indispensable over the years, and their team at FFMP.

283. Justice Riordan did order provisional execution of his judgment notwithstanding appeal in an amount of $1.131 billion. In justifying it, while he recognized that provisional execution of an order for moral and punitive damages was very exceptional, he noted that "there is very little in these files that is not very exceptional, and this is no exception."[69] Unsurprisingly, the Tobacco Companies immediately moved to overturn the order.

284. The Court of Appeal overturned the provisional execution order,[70] and disagreed with Justice Riordan's estimate that an appeal could take upwards of six years.[71] While the appeal stage took "only" four years, it has now been nine and a half years since Justice Riordan's judgment, and class members have still not received a single dollar in compensation.

285. Following our loss on the provisional execution debate, at Gordon's initiative and with the invaluable help of Avram and Mark, we filed an ambitious motion to obtain security before the Court of Appeal. As detailed in the Fishman and Kugler affidavits, that motion was beyond unprecedented in Canada. Justice Schrager granted it and forced ITL and RBH to set aside $ 984 million to secure an eventual judgment debt.[72]

[69] *Létourneau c. JTI-MacDonald Corp.*, 2015 QCCS 2382, para. 1202.
[70] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1224
[71] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1224 at 31.
[72] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1737.

The Appeal

286. The appeal was almost certainly one of the most complex matters ever heard by the Quebec Court of Appeal. The Tobacco Companies raised virtually every question of fact and every question of law that could be identified, forcing us to relitigate many of the issues that we had fought and won repeatedly on interlocutory motions and at trial.

287. The three defendants filed separate appeals in which they collectively raised issues relating to the conditions for liability of manufacturers and their duty to inform; the apportionment of liability among the defendants; causation; issues relating to the *Consumer Protection Act*, and the Quebec *Charter of Human Rights and Freedoms;* prescription; the availability and quantum of punitive damages; the appropriate method of recovery; issues of evidence; issues relating to the effects of interlocutory judgments; the transfer of obligations of Macdonald Tobacco, the predecessor of JTI; efforts of JTI to render itself creditor-proof; and the destruction of documents by ITL, among other issues.

288. We decided to file a cross-appeal, asking for an increase in the quantum of punitive damages in the *CQTS/Blais* file in the event the quantum of compensatory damages was reduced in the main appeal. Justice Riordan had attributed 90% of the punitive damages to the *CQTS/Blais* file, but then reduced the quantum to account for the massive compensatory damages awarded.

289. As mentioned above, the Joint Schedules — which were not even a complete record of the case — required 688 volumes, totalling hundreds of thousands of pages. All of the senior lawyers on our team spent months working on the factum, painstakingly reviewing the enormous trial record for pinpoint references and responding to every argument.

290. The Court of Appeal's case management was remarkably efficient considering the unprecedented volume and complexity of the file. Less than 18 months after Justice Riordan's judgment, we were before an exceptional panel of 5 justices, which included two former deans of the Law Faculty of McGill University, one of whom — Nicolas Kasirer — later became a Supreme Court judge.

291. The hearing was scheduled for 6 days, followed by an additional day of questioning in 2016. We worked for months to prepare for oral arguments and when it was over, we felt that the hearing had gone very well.

292. The Court of Appeal then took over two years to issue its judgment. Those two years were exceptionally stressful for everyone on the team. Our assessment of how the hearing had gone and the questions the bench asked led us to believe we would win; any serious lawyer knows that no appellate court takes two years to uphold the first judge.

293. As the months dragged on, some of us came to believe that we would lose on some fundamental level. During this period, we were in limbo — expecting a judgment that could come at any moment, with nothing to tell class members, and an increasing sense of dread. It was hard to plan for the future of the firm.

294. In March of 2019 however, we finally received the judgment — a unanimous, airtight 1285-paragraph decision which upheld the trial judgment in almost every respect. The wait had not been in vain. The delay had been caused by the unbelievable amount of work required to arrive at so thorough an analysis. The Court of Appeal's decision is a fundamental judgment in the civil law of Quebec and has already been cited hundreds of times since its release.

During the *CCAA* Proceedings (2019-present)

295. While we had begun to have doubts as to whether we would win the appeal, in whole or in part, we had assumed that an application for leave to appeal to the Supreme Court from the losing side was inevitable. Instead, the Tobacco Companies almost immediately sought protection under the *CCAA* before the Ontario Superior Court of Justice (Commercial List) in Toronto, bringing us to an entirely new battlefield.

296. Everyone, including the Tobacco Companies' other creditors, knew that if we were successful before the courts, the endgame would have always been in *CCAA* proceedings. However, we were surprised by the fact that they did not first seek leave to appeal to the Supreme Court, and had to act quickly.

297. The *CCAA* proceedings brought all the creditors of the Tobacco Companies to the table — including every provincial and territorial government in Canada — with unproven claims in excess of $1 trillion. We were no longer on home turf. For over two decades, the class actions had proceeded before Quebec courts in Montreal, largely in French and under the rules of Quebec civil procedure. Suddenly we were on Bay Street, operating under federal jurisdiction in an entirely different litigation culture.

298. In preparing for the Court of Appeal's judgment, we had worked hard to plan the next steps, including how to access the security deposit held in Court as a result of Justice Schrager's order. After the CCAA proceedings began, we also considered whether the claims for moral damages flowing from the Court of Appeal's judgment could be subject to a Plan of Arrangement under the *CCAA* at all, an analysis which significantly informed our negotiating position.

299. We held countless strategy meetings in which the whole team discussed our options in this regard. Our discussions always came back to one difficult reality, which was that we had nowhere to go outside of the CCAA process that would not add years of litigation and appeals, with no guarantee of success or recovery.

300. Despite our frustration, we committed to making the process work, participating fully and in good faith. We worked hard to build alliances and adopted a reasonable negotiating position, which was maintained consistently and allowed room for an eventual resolution to emerge.

301. This new stage of the litigation involved almost six years of intensive mediation, all of which was strictly confidential. Class members and their families struggled — for good reason — to understand why we were so limited in what we could tell them. People were dying, and as the years went on we heard from more and more families who had lost loved ones while waiting for a resolution to the class actions. We tried to find ways to help expedite the process, occasionally opposing stay extensions, all the while remaining committed to assisting the Mediator in his incredibly complex task. The delays weighed heavily on our entire team.

302. The Fishman Affidavit provides extensive details regarding the work of Quebec Class Counsel during this period. In addition to the team from FFMP, André played a leading role in the process before the CCAA Court, which monopolized nearly all of his working hours for half a decade. Quebec Class Counsel representatives were on the committees that were intensively involved in the negotiation and drafting of the Plans and greatly assisted the Mediator and Monitors in the development of the historic Plans, which in and of themselves are groundbreaking in many ways.

303. Partly as a result of their hard work, the Plans now before the Court for approval are both unprecedented and historic.

A Fair, Efficient, and Non-Adversarial Claims Process

304. The Dandavino Affidavit provides a review of the benefits class members will receive as a result of the Plans. I would like to highlight one issue in particular, which is the nature of the claims process that will result in the event that the Plans are approved by the CCAA Court.

305. Despite the fact that they were resounding victories, and assuming collective recovery against the Tobacco Companies would be possible in practice, the trial and Court of Appeal judgments left the door open to a final existential threat to the litigation — the eventual claims process.

306. While both courts ordered collective recovery, the judgments are essentially silent on the process and framework for distributing those amounts to class members. In Quebec, claims protocols are generally determined as a secondary step following a final judgment. In the case of these class actions, the trial judgment ordered the plaintiffs to submit a detailed proposal for the distribution of all amounts (both punitive and compensatory) to the Court within 60 days of the date of the trial judgment, with a copy to the Tobacco Companies — including provisions for the publication of notices, for time

limits to file claims, for adjudication mechanisms and any other relevant issues, as well as with respect to the treatment of any amounts resulting from provisional execution.[73]

307. While it was and remains our position that the Tobacco Companies would not have had standing to participate in setting the terms of the claims process, their lawyers made it clear that they saw the situation differently, and a debate in this regard would have been inevitable had the companies not sought protection under the *CCAA*.

308. The result would not only have been a complex and lengthy dispute regarding the parameters of the claims process itself, but would also have risked the possibility that the claims protocol approved by the Court would include some form of adversarial process that allowed the Tobacco Companies to contest claimants' eligibility or the amounts awarded.

309. As explained below, our firm has had the experience of representing individual claimants from Quebec in the context of the federal administrative segregation class actions (*Brazeau, Reddock,* and *Gallone*) over the last several years. The claims protocol in that case — which has been the subject of complex amendments, negotiations and debates before the Superior Courts of Quebec and Ontario over the years — sets out a three-track framework for damages claims for victims of unlawful segregation. Some of these cases are as complex as an individual civil trial for damages, and many hundreds more are simplified procedures, nonetheless requiring extensive written submissions from both parties before an expert adjudicator, client consultations, and the review of hundreds or thousands of documents per claimant.

310. While we are proud to represent these claimants, the file has been enormously resource-intensive and caused immense pressure on our small team. If the Court had ultimately ordered a comparable process in the tobacco class actions, it is difficult to imagine that it would have ever come to an end.

311. Indeed, we have every reason to believe that the defendants would have tried to contest every claim possible and exhausted every recourse to prevent claimants from

[73] *Létourneau c. JTI-MacDonald Corp.*, 2015 QCCS 2382, para. 1247.

obtaining compensation. The possible need for medical expertise to prove a diagnosis, the decades-long period covered by the class actions, and the involvement of multiple defendants would also have rendered the process even more burdensome and unwieldy than the one in *Gallone.* The effects of representing thousands of individual claimants in such a context on our firm would have been unfathomable.

312. In light of this issue, one of the most meaningful victories obtained as a result of the CCAA proceedings is the structure of the Quebec Administration Plan, which completely eliminates any adversarial process and leaves no role whatsoever for the Tobacco Companies. Instead, it sets out a simplified process in which each class member will have access to assistance at no additional cost, with a highly involved and specialized administrator. The result is a fair, transparent, and streamlined approach meant to guarantee access to justice for claimants who have waited decades to obtain compensation. The Quebec Administration Plan also ensures that there is no risk of the claims process overloading the justice system or requiring intensive judicial supervision.

313. Providing meaningful access to justice to tens of thousands of individuals who were harmed is an achievement that all participants in the CCAA process can be proud of.

C. Overview of TJL

314. I understand that the affidavit in support of the Motion which immediately follows my own is that of my co-founding partner and dear friend Philippe, who attests to the enormous financial risks and tradeoffs that these class actions have imposed on the entire Quebec Class Counsel team, and in particular on our own law firm, TJL.

315. Even the most committed and principled lawyers cannot take on cases like the class actions discussed herein without some level of confidence that the courts will honour their fee agreements in the event that they are successful, particularly when the case has gone to trial and beyond. The reality is that many of the cases which are the most clearly in the public interest and which serve the most important access to justice functions are also the most difficult, expensive, and risky to pursue.

316. In order to fully appreciate the nature of this dynamic, the following section provides an overview of TJL's philosophy and track record. This context is useful for the Court's understanding of TJL's approach and contributions to the litigation, as well as to its evaluation of the risks assumed in advancing the class actions over the last 26 years. It is meant to complement the Trudel Affidavit, which explains our business model and the financial pressure imposed by the class actions in detail.

317. For over two decades, TJL has acted almost exclusively in the area of plaintiff-side class actions and in public interest matters taken on a *pro bono* basis.

318. The firm's core legal team includes the three founding partners, as well as four new partners (Mathieu Charest-Beaudry, Anne-Julie Asselin, Jean-Marc Lacourcière and Clara Poissant-Lespérance) and three associate-level lawyers (Lex Gill, Jessica Lelièvre and Louis-Alexandre Hébert-Gosselin, soon to be joined by Marie-Laure Dufour) in addition to the management support of Claude Provencher.

319. Each of my colleagues are accomplished trial and appellate litigators. They also have exceptional professional track records of service to the legal community as a whole. The list includes four former Supreme Court of Canada clerks, three adjuncts at the law faculties of McGill University and the Université du Québec à Montréal, numerous authors of key legal texts in the areas of class actions, constitutional law, and public law, board members of leading community organizations, and a former Director General of the Quebec Bar. We also benefit from the advisory support of the environmental expert Laure Waridel and Yves Lauzon, Ad. E., a pioneer of class actions in Quebec.

320. TJL is able to recruit and retain talent of this calibre despite its small size and high-risk business model because the firm has a reputation for excellence and an explicit commitment to litigation in the public interest. We have a track record of taking on — and winning — difficult cases against powerful defendants. Our opposing counsel routinely includes the best public and private sector litigators in the country.

Our Class Actions

321. Almost all of TJL's revenue is generated by plaintiff-side class actions in which we are remunerated on a contingency fee basis, typically a percentage of the recovery we generate on behalf of class members.

322. When lawyers agree to be compensated on a contingency in a class action, four different outcomes are possible:

a. Class counsel may lose the file on the merits, in which case they will receive nothing for the time and resources invested;

b. Class counsel may settle the file for some kind of non-monetary gain such as a change in practice, again without compensation;

c. Class counsel may win the file on the merits or settle the dispute for an amount that generates fees worth less than the market value of their time; or

d. Class counsel may win or settle the case for an amount which generates fees the value of which is greater than the market value of their time.

323. In the first three scenarios, class counsel have no choice but to honour the fee agreement with the representative plaintiff and cover their own losses. The ability to count on the courts' respect for fee agreements in the final case is therefore essential to the survival of plaintiff-side law firms. This is especially true when the case goes to trial and beyond, as class counsel have then fully executed their end of the bargain, fully assumed the risks inherent in the case at the outset, and should be entitled to the benefit of their fee agreement to the extent they have generated value for the class members.

324. Class actions where we bring in more revenue than the market value of what our time would have been worth in a zero-risk scenario make it possible to finance all the others. In other words, we can only take the kind of risks that define our practice — and that led to the unprecedented results in the tobacco litigation — if they can be reliably amortized across the firm's entire portfolio.

325. Our firm's explicit emphasis on social impact and public interest litigation makes this principle even more important. As explained in the Trudel Affidavit, our vision for TJL has always been to build the kind of firm that is truly capable of taking on difficult and meaningful files against powerful actors. We have therefore repeatedly made intentional business choices to prioritize these cases and forego potentially lucrative files where the injustice was limited to a technical breach, or where the case involved "piggybacking" on litigation in other jurisdictions.

326. We also regularly take on cases that we believe are meritorious but that are extremely risky from a business p0erspective. We are proud to take these cases, consider it a professional privilege to do so, and are more than prepared to live with the consequences of those choices. However, they are only realistically possible if we are also able to rely on the principle that our fee agreements will be upheld if we succeed in generating value for the class in high-risk files.

327. Additionally, the vast majority of class actions in Canada settle early in the course of proceedings. By contrast, our firm has distinguished itself by bringing complex class actions to trial and winning them on the merits. In addition to the matters that are the subject of the present affidavit, representative trial judgments include:

e. ***Association pour l'accès à l'avortement v. Attorney General of Quebec***: in which the Quebec government was ordered to pay over $13 million in compensation to women who had been forced to pay out of pocket for access to abortion care;[74]

f. ***Samoisette v. IBM Canada Ltd***.: in which IBM was ordered to pay over $23 million plus interest to compensate class members for its illegal removal of workers' retirement benefits. Following the judgment, the litigation resulted in a settlement worth over $24 million;[75]

[74] No.: 500-06-000158-028 (*Association pour l'accès à l'avortement*).
[75] No.: 500-06-000456-083 (*Samoisette*); see also *Samoisette c. IBM Canada ltée*, 2016 QCCS 2675.

g. ***Bank of Montreal v. Marcotte***: in which the Supreme Court rendered a unanimous judgment against a series of major financial institutions following an extensive and successful trial. Following the judgment, the litigation resulted in settlements worth over $54 million;[76]

h. ***McMullen v. Air Canada***: in which the Superior Court ordered upwards of $200 million to former Air Canada and Aveos employees for Air Canada's failure to maintain overhaul and maintenance centres in Montreal, Winnipeg and Mississauga following Aveos' closure in March 2012 (now on appeal);[77]

i. ***Metellus v. Attorney General of Quebec***: in which the Quebec government was ordered to pay approximately $220 million in compensation to thousands of expropriated former taxi permit owners (now on appeal).[78]

328. No matter how careful our financial planning, a business model like TJL's is characterized by uncertainty. There are years in which we generate millions of dollars in revenue, and others where we bring in hardly any money at all. We have little control over court dates, trial and appeal schedules, or the moment of a settlement, where one is possible and in the interests of class members. Even where a class action represents a victory for members, it can result in a financial loss for class counsel.

Our Public Interest Work

329. Despite periods of intense financial precarity, TJL has maintained a fundamental commitment to public interest work and *pro bono* service. It is not uncommon for our lawyers to spend upwards of 50% of their working hours on unpaid files in a given year. We have made an explicit choice to prioritize *pro bono* matters that have the potential to set important precedents or put an end to harmful practices, but that are too complex, controversial or resource-intensive for most other law firms to take on.

[76] No.: 500-06-000197-034 (*Marcotte*); see also *Bank of Montreal v. Marcotte*, 2014 SCC 55.
[77] No.: 500-06-000814-166 (*McMullen*); see also judgments cited below.
[78] No.: 500-06-000811-16 (*Metellus*); see also *Metellus c. Procureur général du Québec*, 2024 QCCS 2388.

330. To this end, we regularly represent litigants and organizations as parties and party-status interveners at first instance and on appeal. This practice — which is significantly more resource-intensive than a typical appellate non-party intervention — goes back to the early 2000s, a period during which Philippe and I represented one of the applicants (both at trial and on appeal) in *Chaoulli*. The result was a landmark Supreme Court decision regarding access to healthcare and the rights to life and security of the person.[79]

331. Our track record on environmental issues has been particularly significant. In 2014, we obtained a landmark injunction against Energy East, blocking exploratory work on a potential oil tanker port that threatened the survival of the beluga whale, an endangered species, on behalf of the Centre québécois du droit de l'environnement (CQDE), the David Suzuki Foundation, Nature Québec, the Canadian Parks and Wilderness Society (CPAWS).[80] The following year, we obtained an order suspending the deforestation and construction in the Bois de la Commune wetlands, protecting the natural habitat of the Western chorus frog on behalf of the CQDE and Nature Québec.[81]

332. In 2017, we filed an application for judicial review on behalf of CPAWS regarding the Minister of the Environment's failure to report on the protection of critical habitats for the woodland caribou (boreal population).[82] The case settled out of court, resulting in a major change to reporting practices for not only the caribou, but for over 150 species at risk. In 2018, we represented a group of citizens against the Municipality of Sutton in a successful environmental appeal, invalidating amendments to the city's zoning by-laws that would have allowed real estate development in high altitude sectors.[83]

333. Throughout the late-2010s, we led an ambitious judicial review application against the Minister of Foreign Affairs regarding the export of light-armoured vehicles to Saudi Arabia. While ultimately unsuccessful on the merits,[84] the litigation led to significant political and policy changes in the export controls context. Similarly, while a case we filed

[79] *Chaoulli v. Quebec (Attorney General)*, 2005 SCC 35.
[80] *Centre québécois du droit de l'environnement c. Oléoduc Énergie Est ltée*, 2014 QCCS 4398.
[81] *Centre québécois du droit de l'environnement c. La Prairie (Ville de),* 2015 QCCS 3609.
[82] FC No. T-571-17; Announcement of out-of-court settlement, May 7, 2018.
[83] *Benoit c. Ville de Sutton*, 2018 QCCA 1475.
[84] *Turp v. Canada (Foreign Affairs),* 2018 FCA 133.

against the Quebec government for failing to regulate certain private religious schools was dismissed, we lost largely because the litigation had put pressure on the government to correct the problem prior to trial.[85]

334. In early 2021, we obtained an emergency order invalidating the power to fine homeless individuals under Quebec's pandemic-era curfew rules on behalf of the Mobile Legal Clinic.[86]

335. That same year, we again acted as counsel to CPAWS and the CQDE in a successful application for judicial review seeking an order requiring the Minister of Fisheries and Oceans to implement a process to protect the habitat of the copper redhorse, an endangered species of fish unique to Quebec.

336. In 2022, the Social Security Tribunal of Canada ruled in favour of our clients in a section 15 *Charter* challenge to the provisions of the *Employment Insurance Act* that limit the right of mothers to receive Employment Insurance benefits when they lose their jobs during or after maternity leave, a file we took in collaboration with lawyers for the Mouvement Action-Chômage.[87]

337. We also represented the Canadian Civil Liberties Association (CCLA) as a party-status intervener in a 6-week constitutional trial in 2022, successfully invalidating the police power permitting arbitrary and discriminatory roadside stops on the basis that the power contributes to racial profiling.[88] We won that file again on appeal in 2024,[89] and the Attorney General of Quebec is now seeking leave to the Supreme Court.

338. In 2023, our firm agreed to act for an otherwise self-represented respondent before the Supreme Court of Canada, which became one of the most hotly contested and

[85] *Lowen c. Procureure générale du Québec*, 2020 QCCS 4237.
[86] *Clinique juridique itinérante c. Procureur général du Québec*, 2021 QCCS 182.
[87] *L.C. et. al. v. Social Security Tribunal of Canada*, January 10, 2022 (TJL does not represent the organization on appeal).
[88] *Luamba c. Procureur général du Québec,* 2022 QCCS 3866.
[89] *Procureur général du Québec c. Luamba*, 2024 QCCA 1387.

complex *Charter* appeals of the last decade. The result represents a significant civil liberties victory and a key judgment on constitutional remedies.[90]

339. We also regularly represent public interest interveners on appeal. In this capacity, we have acted for the CCLA,[91] Mining Watch Canada,[92] Quebec Native Women,[93] Environnement Jeunesse (ENJEU) and the CQDE,[94] the Association des avocats.es carcéralistes du Québec (the Quebec Prison Lawyers' Association),[95] and the Canadian Internet Policy and Public Interest Clinic,[96] among others.

340. Ultimately, our firm's commitment to the public interest and to access to justice means that wherever possible, we will not refuse a meritorious file that is within our power to win for financial reasons alone. However, the practical realities of running a law firm impose real constraints on our team.

341. There has never been a case that more seriously tested our commitment and our capacity to continue this work than the tobacco litigation. To that end, the Trudel Affidavit provides details about the financial and personal risks we have taken on in order to keep making this work possible.

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[90] *Canada (Attorney General) v. Power*, 2024 SCC 26.
[91] See *Luamba* (above, as a party-status conservatory intervener), as well as *R. v. McColman*, 2023 SCC 8, among other mandates.
[92] *Nevsun Resources Ltd. v. Gize Yebeyo Araya, et al.*, 2020 SCC 5.
[93] *Femmes autochtones du Québec inc. c. Centre intégré de santé et de services sociaux de Lanaudière*, 2024 QCCA 483.
[94] *Volkswagen Group Canada Inc. v. Association québécoise de lutte contre la pollution atmosphérique*, 2019 SCC 53.
[95] *John Howard Society of Saskatchewan v. Government of Saskatchewan (Attorney General for Saskatchewan)*, SCC No. 40608.
[96] *Google LLC v. Canada (Privacy Commissioner)*, 2023 FCA 200; *Reference re Subsection 18.3(1) of the Federal Courts Act*, 2021 FC 723.

AND I HAVE SIGNED

Bruce W. Johnston

Solemnly declared before me by electronic means at Montreal,
Province of Quebec, this 13th day of January 2025

Eléonore Loupforest
Commissioner of Oaths for Quebec
241733

LIST OF SCHEDULES

THIS IS SCHEDULE "A"
TO THE AFFIDAVIT OF BRUCE W. JOHNSTON
(January 13, 2025)

LIST OF REPORTED SUPERIOR COURT JUDGMENTS IN THE QUEBEC CLASS ACTIONS

SWORN BEFORE ME
THIS 13th DAY OF JANUARY 2025

Eléonore Loupforest
Commissioner of Oaths for Quebec

LIST OF PUBLICLY REPORTED (CANLII) SUPERIOR COURT JUDGMENTS IN FILES 500-06-000076-980 (CQTS/BLAIS) AND 500-06-000070-983 (LÉTOURNEAU)

Note that as described in the Affidavit of Bruce W. Johnston, these lists are under-inclusive and do not indicate orders rendered in the minutes of case conferences, in the course of trial, or for certain early hearings which may not be available online. Decisions of administrative bodies (e.g., the Tribunal administratif du Québec, decisions of the Fonds d'aide aux actions collectives) are also not included herein.

	Citation and Hyperlink	Hearing Date(s)
1	*Fortin c. Imperial Tobacco ltée*, 1999 CanLII 10991(QCCS)	February 9, 1999
2	*Fortin c. Imperial Tobacco Ltée*, 1999 CanLII 11199 (QCCS)	July 5, 1999
3	*Québec (Fonds d'aide aux recours collectifs) c. Létourneau*, 2003 CanLII 28680 (QC CS)	March 6, 2003
4	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2005 CanLII 4070 (QC CS)	November 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22 and 23, 2004
5	*Conseil québécois sur le tabac et la santé c. JTI-Macdonald Corp.*, 2005 CanLII 12488 (QC CS)	February 21, 2005
6	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2006 QCCS 1098 (CanLII)	January 23 to 27, 2006
7	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2006 QCCS 7251 (CanLII)	January 22, 23 and 26, 2006
8	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2007 QCCS 645	January 22, 23 and 26, 2007
9	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2007 QCCS 1869	April 2, 2007
10	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2007 QCCS 4503	January 23 to 27, 2006
11	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2008 QCCS 500	January 22, 2008
12	*Létourneau c. JTI-MacDonald Corp.*, 2008 QCCS 2188	April 14, 2008
13	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2008 QCCS 2481	May 12, 2008
14	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2009 QCCS 464	January 27, 2009
15	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2009 QCCS 703	
16	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2009 QCCS 780	February 24, 2009
17	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2009 QCCS 830	February 19, 2009
18	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2009 QCCS 2096	April 30, 2009
19	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2009 QCCS 4755	September 30, 2009
20	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2009 QCCS 5157	October 27, 2009
21	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2009 QCCS 5855	November 25, 2009
22	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2009 QCCS 5862	October 28 and 29, 2009
23	*Conseil québécois sur le tabac et la santé c. JTI-Macdonald Corp.*, 2009 QCCS 5892	December 16, 2009
24	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2010 QCCS 4759	September 29, 2010
25	*Létourneau c. JTI-MacDonald Corp.*, 2011 QCCS 7523	January 19, 2011
26	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 438	September 22, 23, 30, and October 26, 2010

27	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 436	May 20, 21, 25 and October 5, 2010
28	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 435	June 14 to 16, 21 to 22 and November 22 to 24, 2010
29	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 828	
30	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 1965	April 7, 2011
31	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 2279	April 19, 2011
32	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 2376	May 4, 2011
33	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 2897	June 1, 2011
34	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 4090	July 6, 2011
35	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 4085	July 6, 2011
36	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 4084	July 5, 2011
37	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 4981	August 31 and September 1, 2011
38	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 5880	October 18 and 19, 2011
39	*Conseil québécois sur la tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 5875	October 18, 2011
40	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 5879	October 19, 2011
41	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 5881	October 27 and 31, 2011
42	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 5876	October 31, 2011
43	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 6790	November 24, 2011
44	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 469	February 8, 2012
45	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 473	December 8, 2011
46	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 474	January 11, 12 and February 9, 2012
47	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 515	February 2 and 8, 2012
48	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 475	February 15 and 16, 2012
49	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 812	February 29, 2012
50	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 1869	April 17, 2012
51	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 1875	April 17, 2012
52	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 1874	April 17, 2012
53	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 1870	April 5, 2012
54	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 2181	May 15, 2012
55	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 2581	May 17, 2012
56	*Conseil québécois sur le tabac et la santé c. JTI-Macdonald Corp.*, 2012 QCCS 3566	June 21, 2012

57	*Conseil québécois sur le tabac et la santé c. JTI-Macdonald Corp.*, 2012 QCCS 3561	June 21, 2012
58	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 4433	September 4, 2012
59	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2012 QCCS 6665	November 12, 2012
60	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2013 QCCS 20	December 12 and 13, 2012
61	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald*, 2013 QCCS 226	November 12, 2012
62	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2013 QCCS 4903	March 12, 2013
63	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald*, 2013 QCCS 1911	May 1, 2013
64	*Conseil québécois sur le tabac et la santé c. JTI-Macdonald*, 2013 QCCS 1924	April 29, 30 and May 1, 2013
65	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2013 QCCS 1993	April 30, 2013
66	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2013 QCCS 4904	May 1 and 16, 2013
67	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2013 QCCS 4863	August 26, 2013
68	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2013 QCCS 6085	November 11 and 12, 2013
69	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2014 QCCS 2307	May 14, 2014
70	*Létourneau c. JTI-MacDonald Corp.*, 2015 QCCS 2382	253 hearing days: between March 12, 2012, and December 11, 2014
71	*Conseil québécois sur le tabac et la Santé c. JTI-McDonald Corp.*, 2019 QCCS 5830	April 30, 2019

THIS IS SCHEDULE "B"
TO THE AFFIDAVIT OF BRUCE W. JOHNSTON
(January 13, 2025)

LIST OF REPORTED COURT OF APPEAL JUDGMENTS IN THE QUEBEC CLASS ACTIONS

SWORN BEFORE ME
THIS 13th DAY OF JANUARY 2025

Eléonore Loupforest
Commissioner of Oaths for Quebec

LIST OF PUBLICLY REPORTED (CANLII) COURT OF APPEAL JUDGMENTS IN FILES 500-06-000076-980 (CQTS/BLAIS) AND 500-06-000070-983 (LÉTOURNEAU)

Note that as described in the Affidavit of Bruce W. Johnston, these lists are under-inclusive and do not indicate orders rendered in the minutes of case conferences, in the course of trial, or for certain early hearings which may not be available online. Decisions of administrative bodies (e.g., the Tribunal administratif du Québec, decisions of the Fonds d'aide aux actions collectives) are also not included herein.

	Citation and Hyperlink	Hearing Date(s)
1	*Conseil québécois sur le tabac et la santé c. J.T.I.-MacDonald Corp.*, 2000 CanLII 28985 (QC CA)	February 29, 2000
2	*Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2007 QCCA 694 (CanLII)	April 5, 2007
3	*Rothmans, Benson & Hedges inc. c. Conseil québécois sur le tabac et la santé*, 2007 QCCA 691	April 5, 2007
4	*JTI-MacDonald Corp. c. Conseil québécois sur le tabac et la santé*, 2007 QCCA 692 (CanLII)	April 5, 2007
5	*Rothmans, Benson & Hedges inc. c. Létourneau*, 2007 QCCA 690 (CanLII)	April 5, 2007
6	*JTI-MacDonald Corp. c. Létourneau*, 2007 QCCA 695	April 5, 2007
7	*Rothmans, Benson & Hedges inc. c. Létourneau*, 2009 QCCA 796	April 21, 2009
8	*JTI-MacDonald Corp. c. Létourneau*, 2009 QCCA 795	April 21, 2009
9	*JTI-MacDonald Corp. c. Conseil québécois sur le tabac et la santé*, 2010 QCCA 177	January 26, 2010
10	*Imperial Tobacco Canada Ltd. c. Létourneau*, 2010 QCCA 547	March 22, 2010
11	*Imperial Tobacco Canada Ltd. c. Létourneau*, 2010 QCCA 2312	December 14, 2010
12	*Rothmans, Benson & Hedges inc. c. Létourneau*, 2011 QCCA 705	March 30, 2011
13	*Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2011 QCCA 1356	July 6, 2011
14	*Imperial Tobacco Canada Ltd. c. Létourneau*, 2011 QCCA 1614	September 2, 2011
15	*Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2011 QCCA 1714	September 20, 2011
16	*Rothmans, Benson & Hedges inc. c. Létourneau*, 2012 QCCA 73	January 4, 2012
17	*R.A. c. Conseil québécois sur le tabac et la santé*, 2012 QCCA 491	March 12, 2012
18	*R.A. c. Conseil québécois sur le tabac et la santé*, 2012 QCCA 504	March 15, 2012
19	*Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 622	March 27, 2012
20	*Imperial Tobacco Canada ltée c. Canada (Procureur général)*, 2012 QCCA 655	March 27, 2012
21	*Canada (Attorney General) c. Imperial Tobacco Ltd.*, 2012 QCCA 747	April 20, 2012
22	*JTI-MacDonald Corp. c. Létourneau*, 2012 QCCA 810	May 3, 2012
23	*Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 1015	May 11, 2012
24	*Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 1009	May 11, 2012
25	*JTI-MacDonald Corp. c. Létourneau*, 2012 QCCA 1008	May 11, 2012
26	*Imperial Tobacco Canada Ltd. c. Létourneau*, 2012 QCCA 1477	June 27, 2012
27	*Imperial Tobacco Canada Ltd. c. Conseil Québécois sur le tabac et la santé*, 2012 QCCA 1641	January 17, 2012
28	*Imperial Tobacco Canada Ltd. c. Létourneau*, 2012 QCCA 1756	September 28, 2012
29	*Imperial Tobacco Canada Ltd. c. Létourneau*, 2012 QCCA 2013	January 17, 2012
30	*Imperial Tobacco Ltd. c. Conseil québécois sur le tabac et la santé*, 2012 QCCA 1847	August 31, 2012
31	*Rothmans, Benson & Hedges inc. c. Conseil québécois sur le tabac et la santé*, 2012 QCCA 1848	August 31, 2012
32	*Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 2260	December 10 and 14, 2012
33	*Canada (Procureur général) c. Imperial Tobacco Ltd.*, 2012 QCCA 2034	August 9, 2012
34	*Canada (Attorney General) c. JTI-MacDonald Corp.*, 2012 QCCA 2017	August 31, 2012

35	*Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2013 QCCA 545	January 10 and 28, 2013
36	*Imperial Tobacco Canada Ltd. c. Létourneau*, 2013 QCCA 1139	June 10, 2013
37	*Imperial Tobacco Canada Ltd. c. Létourneau*, 2013 QCCA 1887	November 4 and 6, 2013
38	*Imperial Tobacco Canada Ltd. c. Létourneau*, 2014 QCCA 348	February 14, 2014
39	*Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2014 QCCA 520	February 5, 2014
40	*Imperial Tobacco Canada Ltd. c. Létourneau*, 2014 QCCA 944	February 28, 2014
41	*Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1204	July 9, 2015
42	*Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1224	July 9, 2015
43	*Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1737	October 6, 2015
44	*Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1882	November 5, 2015
45	*Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 2056	December 9, 2015
46	*Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 CanLII 88007 (QCCA)	
47	*Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 358	November 21, 22, 23, 24, 25, 30, 2016 + 1 day
48	*Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la Santé*, 2019 QCCA 508	March 25, 2019

THIS IS SCHEDULE "C"
TO THE AFFIDAVIT OF BRUCE W. JOHNSTON
(January 13, 2025)

***CURRICULUM VITAE* OF BRUCE W. JOHNSTON**

SWORN BEFORE ME
THIS 13th DAY OF JANUARY 2025

Eléonore Loupforest
Commissioner of Oaths for Quebec

Bruce W. Johnston

Partner, Trudel, Johnston & Lespérance

PRACTICE

Trudel, Johnston & Lespérance, Founder and Partner	2015 to present
Trudel & Johnston, Founder and Partner	1998-2015
Pinsonnault, Torralbo, Hudon, Associate	1998
Hudon, Gendron, Harris, Thomas, Associate	1997-1998
McMaster Meighen, Associate	1993-1997
McMaster Meighen, Articling Student	1993
McMaster Meighen, Student	1992-1993

EDUCATION

Barreau du Québec, Admitted to the Bar	1993
McGill University, LL.B./B.C.L., Faculty of Law	1993
McGill University, Bachelor of History, Faculty of Arts	1989

RECENT PUBLICATIONS

Bruce W. Johnston, "Liability of Multinational Corporations in Canada for International Human Rights Violations", in *Human Rights Litigation against Multinationals in Practice*, Oxford University Press — 2022

This international collection reviews legal and strategic approaches to holding multinationals to account for human rights abuses in the Global South. The authors are practising lawyers who have led prominent cases in this field. This chapter explores the current state of Canadian law in the area.

Yves Lauzon and Bruce W. Johnston, *Traité pratique de l'action collective,* Montréal, Éditions Yvon Blais — 2021

This book presents a rigorous and objective synthesis of the voluminous case law and doctrine on class actions in Quebec. It is the definitive text on class actions for practitioners and judges in the province.

OTHER SERVICE

Bruce Johnston is a regular university and conference speaker on class actions, civil litigation and human rights issues. He is one of the recipients of the Prix Jean-Pierre-Bélanger, awarded for his work in the tabacco class actions in 2015.

THIS IS SCHEDULE "D"
TO THE AFFIDAVIT OF BRUCE W. JOHNSTON
(January 13, 2025)

***CURRICULUM VITAE* OF ANDRÉ LESPÉRANCE**

SWORN BEFORE ME
THIS 13th DAY OF JANUARY 2025

Eléonore Loupforest
Commissioner of Oaths for Quebec

André Lespérance

Partner, Trudel, Johnston & Lespérance

PRACTICE

Trudel, Johnston & Lespérance, Partner	2015 to present
Lauzon, Bélanger, Lespérance Partner	2009-2015
Attorney General of Canada, Senior General Counsel	2003-2009
Attorney General of Canada, Counsel	1989-2003
Bank of Canada, Economist	1987-1989
Legal Aid Quebec, Counsel	1983-1985

EDUCATION

University of Montreal, M.Sc. Economics	1985-1987
Barreau du Québec, Admitted to the Bar	1983
Université du Québec à Montréal, LL.B., Faculty of Law	1979-1983

RECENT PUBLICATIONS

André Lespérance, "*Questions d'Éthique, la recherche médicale de la naissance à l'âge adulte*", chapitre 11 Les recours collectifs : à qui et à quoi peuvent-ils bien servir ? 193-210, Éditions du CHU Sainte-Justine 2018 — 2018

Catherine Piché et André Lespérance, "*L'action collective comme outil de prévention, d'évitement et de dissuasion, Colloque national sur l'action collective*" Développements récents au Québec, au Canada et aux États-Unis, (Texte intégral – Doctrine) — 2016

André Lespérance, "*Les voies d'accès au système judiciaire au Québec et en Ontario : tendances et tensions*", Développements récents sur les recours collectifs, vol. 278, Cowansville, Éditions Yvon Blais, 231-248 (Article périodique) — 2007

André Lespérance, Les recours collectifs intentés devant la Cour fédérale du Canada, Développements récents sur les recours collectifs, vol. 232, Cowansville, Éditions Yvon Blais, 55-93 (Article périodique) — 2005

OTHER SERVICE

André Lespérance was a Member of the Project Reference Group of the Law Commission of Ontario "*Class Actions Objectives, Experiences and Reforms*" Final report July 2019

André Lespérance is a regular university and conference speaker on class actions, civil litigation and human rights issues. He is one of the recipients of the Prix Jean-Pierre-Bélanger, awarded for his work in the tobacco class actions in 2015.

Court File Nos. 19-CV-615862-00CL
19-CV-616077-00CL
19-CV-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

AFFIDAVIT OF PHILIPPE H. TRUDEL
(sworn January 12, 2025)

I, Philippe H. Trudel, of the City of Montreal, in the Province of Quebec, MAKE OATH AND SAY:

1. I am a founding partner of the law practice of Trudel Johnston & Lespérance ("**TJL**"), a leading Montreal-based law firm specialized in plaintiff-side class actions and public interest litigation.

2. TJL is one of the four law firms designated as Quebec Class Counsel[1] in the Court-Appointed Mediator's and Monitors' *CCAA* Plans of Compromise and Arrangement (each a "***CCAA* Plan**" and collectively the "**Plans**") in respect of (i) Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively "**Imperial**"), (ii) Rothmans, Benson & Hedges Inc. ("**RBH**"), and (iii) JTI-MacDonald Corp. ("**JTIM**") (collectively, the "**Tobacco Companies**" or "**the defendants**" in the actions described below).

[1] As defined in the Plans, "**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., LLP and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P.

3. Quebec Class Counsel represent the members of two class action lawsuits instituted in Quebec in 1998 (the "**Quebec Class Actions**") on behalf of (i) Quebec smokers who developed lung cancer, throat cancer or emphysema as a result of smoking the Tobacco Companies' cigarettes (the "***CQTS/Blais* Class Action**")[2] and (ii) Quebec smokers who became addicted to the nicotine contained in the cigarettes made by the Tobacco Companies (the "***Létourneau* Class Action**")[3] (collectively, the "**Quebec Class Action Plaintiffs**", "**QCAPs**" or "**class members**").[4]

4. It was in direct response to the judgments in the Quebec Class Actions, at first instance (May 27, 2015) and on appeal (March 1, 2019), condemning the Tobacco Companies to pay damages to the QCAPs in excess of $13.5 billion that the Tobacco Companies filed their proceedings in March 2019 (only days following the appeal decision) under the *Companies' Creditors Arrangement Act* ("***CCAA***"), which have now culminated in the $32.5 billion global compromise and settlement set forth in the Plans that are currently before this Honourable Court for approval.

5. I swear this affidavit in support of the Quebec Class Counsel's *Motion for the Approval of the Quebec Class Counsel Fee* (the "**QCAP Fee Motion**"). Pursuant to section 14.9(f) of the Plans, the QCAP Fee Motion is to be dealt with at the Sanction Hearing.

6. I have personal knowledge of the matters to which I depose herein. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

7. Unless otherwise defined herein, all defined terms used in the present affidavit have the same meanings as ascribed to them in the Plans.

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[2] *Jean-Yves Blais and the Conseil québécois sur le tabac et la santé v. Imperial Tobacco Canada Ltd., et al.* (500-06-000076-980).
[3] *Cecilia Létourneau v. Imperial Tobacco Canada Ltd., et al.* (500-06-000070-983).
[4] The eligibility requirements for class members in the *CQTS/Blais* Class Action and the *Létourneau* Class Action are set forth in the judgment of Mr. Justice Brian Riordan J.S.C. and are contained in the definitions of *Blais* Class Members and *Létourneau* Class Members in the Plans.

8. In support of the Motion, this affidavit offer details on the following themes:

a. **Personal Background:** My professional background and the genesis of the class actions;

b. **Involvement in the Class Actions:** The nature and extent of my involvement in the litigation from 1998 to present, as completed by the affidavit of Bruce W. Johnston (the "**Johnston Affidavit**");

c. **Time and Resources Invested by TJL:** The time and other resources invested in relation to the litigation by TJL and its predecessor firms from 1998 to present;

d. **Time and Resources Invested by All Quebec Class Counsel:** A summary of the cumulative hours devoted by all four Quebec Class Counsel law firms and the value of that time;

e. **Financial Risks and Obligations:** The key challenges that rendered the litigation very difficult and high-risk from a financial perspective, the opportunity costs incurred by TJL as a result of our involvement in the litigation, and a summary of the litigation costs and disbursements assumed and to be assumed by Quebec Class Counsel;

f. **Quebec Class Counsel Fee:** Details supporting the amount claimed by Quebec Class Counsel and a calculation of the net amount available to be shared among the Quebec Class Counsel firms;

g. **Specific Risks Unique to TJL:** A summary of our outstanding financial obligations arising from the litigation to be resolved by and/or that are dependent on the approval of the Quebec Class Counsel Fee;

h. **Objections:** An overview of comments and all objections to the Motion received from potential *Blais* Class Members.

9. My affidavit should be read in conjunction with the affidavits sworn by other Quebec Class Counsel lawyers and others in support of the QCAP Fee Motion.

10. In particular, whereas the Johnston Affidavit focuses on the legal and practical risks of the class actions, my affidavit focuses on the challenges that rendered the litigation costly and high-risk from a financial perspective. I also provide some context regarding our firm's history, business model and values in order to help the Court fully evaluate the nature of the risks assumed.

A. Personal Background

11. In this section, I describe my professional background and provide relevant background regarding TJL's business model and the practice of class actions in Quebec.

12. I have attached hereto as **Schedule "A"** my *curriculum vitae* which sets forth my professional background and experience.

13. In summary, I received a B.A. in Political Science from Université Laval in 1986 and a Bachelor of Civil Law (L.L.B.) from Université de Montréal in 1990. I was called to the bar in Quebec in 1993 and have been a member in good standing since that time.

Prior to Founding Trudel & Johnston

14. I completed my articles with a major firm called Godin Raymond Harris & Thomas, which became Hudon Gendron Harris Thomas in 1993. My practice was primarily in commercial and civil litigation.

15. In 1997, a group of litigators from McMaster Meighen (including my future partner, Bruce W. Johnston) joined the firm. Bruce and I quickly became friends, and sought out opportunities to collaborate.

16. The firm encouraged young lawyers to bring in new files, and I had early success in this regard with corporate clients. I also took on less traditional files.

17. One of these files was a mandate for Anne-Marie Péladeau. Anne-Marie is the daughter of Pierre Péladeau (the founder of Quebecor Inc.) and the sister of the businessman and billionaire Pierre Karl Péladeau, who is also the former leader of the Parti Québecois.

18. Anne-Marie needed help with a guardianship that had been imposed upon her as well as an eventual dispute over her share of her father's estate. I saw the case as an opportunity to help someone vulnerable, and a challenge to take on powerful actors. As described in the Johnston Affidavit, this file initially got Bruce and I into some trouble, but also resulted in us meeting our highly valued counsel, Gordon Kugler.

19. Another less traditional file was a *pro bono* case for George Zeliotis, whom I met through Anne-Marie's doctor, Jacques Chaoulli. Dr. Chaoulli was a controversial public figure at that time. He proposed that I represent Mr. Zeliotis as a co-plaintiff in litigation regarding access to health care against the Attorney General of Quebec and Attorney General of Canada. Mr. Zeliotis had lived through excruciating pain while waiting more than a year for hip replacement surgery. Dr. Chaoulli was self-represented, and the case was not moving forward. I agreed to take the file, which raised serious constitutional issues, on a *pro bono* basis, hoping to give it momentum and credibility. The eventual result was the landmark Supreme Court decision in *Chaoulli*.[5] The case is also how Bruce and I first met our future partner André Lespérance, then a senior attorney for Justice Canada and our opponent in that file.

20. While the firm was happy for me to develop new clients, they were less enthusiastic about these two matters. The clients did not pay by the hour, and the cases were somewhat controversial. In retrospect, their reaction in some ways foreshadowed our eventual departure, and the approach that Bruce and I would take to our new firm.

21. Almost as soon as we met, Bruce and I started to develop an interest in class actions. We had no experience in the field and knew no one who practiced in it at the time, and it was still considered a fairly novel area of law. It nonetheless captured our

[5] *Chaoulli v. Quebec (Attorney General),* 2005 SCC 35.

interest. We had worked together on a high-profile coroner's inquest for the family of a woman who died in a hospital corridor without care. This case and *Chaoulli* informed how we thought about class actions in those early days. Patients were dying of cardiac issues while waiting for surgery in Quebec during this period. We considered a class action to put an end to these kinds of delays in the public health care system.

22. At the time, I explained this idea to one of my neighbours named Joseph Mandelman, who was trying to quit smoking. He suggested instead a class action against the tobacco industry, to get at the root of the problems that in his view were overwhelming the public health care system, tobacco illnesses. Joe eventually became one of our original three class representatives.

23. I shared the idea of a class action against the tobacco industry with Bruce in early 1998. His reaction was immediate enthusiasm. We started researching the scientific background and reviewing litigation in other jurisdictions. Bruce read everything ever printed on class actions in Quebec. I dug into the publicly available documents resulting from the constitutional dispute surrounding tobacco advertising — reviewing the procedural history, the expert reports, and the evidence to better understand what we would be up against.

24. We developed a business case for the class action and pitched the partners at the firm shortly after. The Attorneys General of forty-six American states had taken proceedings against the American tobacco industry and a first version of what would eventually become the Master Settlement Agreement had been made public. I had reviewed all of the evidence available from that litigation. While it was of a fundamentally different nature and involved public cost recovery (as opposed to compensation for individual victims), it helped us to convince the partners that the file might have merit.

25. The firm was going through a difficult period of transition, and the partners, perhaps somewhat distracted by other matters, gave us their blessing.

26. From the outset, we knew that it could be an issue that one of the senior partners from McMaster Meighen had worked on the constitutional challenge mounted by the

tobacco industry to the federal advertising ban of tobacco products. Accordingly, the firm set up an ethical wall and took all possible measures to isolate that partner from the file.

27. After countless revisions and a summer of relentless work researching, drafting, and meetings with potential representatives, we filed the initial application for authorization of the class action on September 10, 1998.

28. The motion to disqualify us came quickly thereafter, a chapter that is described in detail in the Johnston Affidavit. The debate on disqualification — and the resources involved to contest it — had a chilling effect on whatever enthusiasm the partners might have had for the file at the outset. The partners believed that our chances of keeping the tobacco file were virtually non-existent, in light of the motion to disqualify us. We began to understand that their intention was to get out of the case.

29. Both Bruce and I were on track to become partners that year. It was nonetheless becoming increasingly clear that if we wanted to keep acting in the tobacco litigation, we would not be able to stay at the firm.

Trudel & Johnston

30. By November 1998, Bruce and I had decided to start our own law firm. We were only five year calls at the time.

31. During this period, one of our primary motivations was to liberate ourselves from the “billable hour” model as a metric of success. While we have enormous respect for colleagues who do excellent work for their clients on this billing model, it did not feel to us like the best way to think about our own time or the outcomes we could obtain for clients.

32. So when we founded Trudel & Johnston in 1998, our goal was to move away from work paid by the hour as quickly as we could, and focus on class actions and public interest litigation instead. Our ultimate goal was to build a practice where we could work exclusively on a contingency fee model, and to take the rest of our files *pro bono*. The idea was to finance the tobacco litigation and our *pro bono* mandates with class actions that could generate some fees. We were not so naïve as to think the tobacco case would

help in this regard. On the contrary, we knew it would constitute a huge drain on resources and that it was very unlikely to yield any financial benefit for a decade or more. Still, we had ideas for other cases, and believed in the plan.

33. We needed start-up funding, but quickly understood that percentage-based fees are not considered an asset for bankers. Only current accounts receivable are considered for financing, and we had none.

34. The Bank of Montreal eventually agreed to give us an $80,000 small business loan (guaranteed by the federal government) to set up our premises. We also managed to obtain a $50,000 line of credit guaranteed by Bruce's father.

35. The tobacco file was our only class action when we first started up. Our business plan forecasted that in 5 years, we would be able to live off the income generated from class actions alone. Our theory was that we could start 5 new cases every year, and that after 5 years, we would have a portfolio of 25 class actions. We thought we could resolve the cases after an average 5 years of effort, either by settlement or by judgment. In the eyes of the banks, this business model was not worth the paper it was written on.

36. However, it did work in part. We have been largely successful with the files we've taken on, and over the past 25 years the firm has developed a considerable reputation for our capacity to win complex class actions at trial and beyond. Where it fell short was on the issue of time. The average lifespan of a class action in Quebec ended up being much longer than we anticipated, and the first few years were difficult.

37. At the beginning, this meant that we had no choice but to pay our bills with the same kind of commercial and civil litigation work that we had been doing at Pinsonnault, Torralbo, Hudon. We were heartened that most of our former clients had asked to transfer their files to our new firm, which allowed us to sustain our operations and survive the first few years as Trudel & Johnston.

38. Gradually though, we started to win trials and settle cases in a way that gave us greater financial independence. Class actions and other contingency files were able to

take up more of our practice. By the mid-2000s there were only a handful of clients that we were billing by the hour.

Trudel Johnston & Lespérance

39. In 2008, André Lespérance left his position as Senior General Counsel to the federal Department of Justice and joined Lauzon Bélanger — a leading firm in plaintiff-side class actions and environmental law — to form Lauzon Bélanger Lespérance ("**LBL**"). As detailed in the affidavit of Marc Beauchemin (the "**Beauchemin Affidavit**") it was Lauzon Bélanger that had initially filed the *CQTS/Blais* class action. Although the firm had initially been our "competitor" in the tobacco case, by 2008 they had become one of our closest collaborators.

40. Following the authorization judgment in 2005, we entered into a series of file-by-file collaboration agreements with their firm, including for both of the tobacco class actions. By 2015, we had assumed all class actions previously led by Lauzon Bélanger & Lespérance, at which point André joined as our third partner to form Trudel Johnston & Lespérance. These collaborations, and the eventual merger of the two teams, have helped us to increase the size and diversity of our class actions portfolio over the years.

41. Experience has nonetheless taught us that it is extremely difficult to project when results will be achieved for a particular file, and when the firm will actually be paid for those results. We have learned that revenue is highly irregular even with a large and diverse litigation portfolio. We have also seen that the number of cases that we can file or resolve does not increase in direct proportion to the number of lawyers that we hire. Instead, it is the size and complexity of the cases (and, as a result, their duration) that tends to increase. Along with them, our fixed costs have risen over the years.

42. We have always tried to take a prudent approach to long-term planning to offset the inherent risk and unpredictability of our model. Major victories in good years are used to pay off debts and increase the number of lawyers at the firm, which has allowed us to increase the number of cases and the pace of our efforts. However, periods of drought, sometimes extending over several years, have been unavoidable. Indeed, as detailed

below, our financial situation has been quite difficult at times, requiring us to resort to costly forms of alternative financing.

43. Of course, some of the financial challenges we have faced are surely attributable to the large volume of *pro bono* work taken on by our firm, as detailed in the Johnston Affidavit. This is an ethical and business choice we are proud to make and that we are more than ready to live with. Similarly, we have developed a specialization in the kinds of files that other firms are reluctant to take on because they are legally untested, complex, and unlikely to settle — files like the tobacco litigation. We have also never been interested in taking "copycat" class actions or large consortium work which piggybacks on the efforts of lawyers in other jurisdictions. The work we do is therefore often more challenging and expensive than other forms of plaintiff-side class actions litigation.

44. These choices also come at an inevitable cost in terms of financial stability. However, they are guided by the same values that motivated us to take on and pursue the tobacco industry over the course of decades, and we are proud to make them.

B. Involvement in the Class Actions

45. I was involved in every step of the litigation to the same degree as Bruce. Rather than provide a step-by-step summary of my involvement in the litigation, I therefore refer the Court to the Johnston Affidavit.

46. From the beginning, Bruce and I took every decision and worked on every part of the file together. Beginning with the initial application for authorization, there is hardly a single letter or motion in the file that we did not draft as a team. I worked on everything from the initial filing and all preliminary motions and examinations prior to authorization, to the authorization hearing, the joinder of the two cases, every debate prior to trial, the process of setting the case down for trial, and the trial itself. I might have missed one or two days of the trial over the course of almost three years.

47. Among other contributions, I was the lead counsel or back up for a long list of key witnesses at trial, including Jean-Louis Mercier, Edmond Ricard, Jacques Woods, Jacques Larivière, Jacques Lacoursière (expert), Marc Lalonde, Pierre Leblond, Michel

Poirier, Peter Hoult, Mary Trudelle, Philippe Cadieux, André Castonguay (expert), Minoo Bilimoria, William Farone, Juan Negrete (expert), Julie Bernier, Robert Perrins (expert), Graham Read, Neil Blanche, Steve Chapman, Raymond Howie, Jeffrey Gentry, Lance Newman, Robert Robitaille, William Kip Viscusi (expert), John Davies (expert), Bertram Price (expert), Stephen Young (expert), David Soberman (expert).

48. On appeal, I was particularly involved in the preparation of the factum and appellate record, which was an enormous undertaking that involved the entire team for many months. I was also actively involved throughout the current CCAA Proceedings, during which I conducted legal research, prepared opinions, and advised other members of the team on issues within my expertise. I also participated in extensive strategic discussions and decision-making processes regarding every aspect of the file.

49. André's extensive and essential involvement in the tobacco litigation is discussed in the Johnston Affidavit, as well as in the Beauchemin Affidavit and the affidavit of Avram Fishman (the "**Fishman Affidavit**").

C. Time and Resources Invested by TJL

50. In this section, I provide details of the number of hours and other resources TJL and its predecessor firms devoted to the Quebec Class Actions and subsequent CCAA Proceedings between 1998 and January 10, 2025.

51. In addition to Bruce, André, and myself, 26 lawyers and articling students worked in the tobacco litigation for Trudel & Johnston and/or TJL over the years. Their names and years of call are as follows:

Anne-Julie Asselin	2015
Michel Bédard	2002
Marie-Michèle Boulanger	2007
Annabel Busbridge	2014
Mathieu Charest-Beaudry	2010
Zoé Christmas	2023
Andrew Cleland	2013
Laurence Cléroux	2016
Anne-Isabelle Cloutier	2021

Marianne Dagenais-Lespérance	2019
Geneviève Douville	2009
Julien Fortier	2013
Gabrielle Gagné	2012
Sébastien Gagné	1999
Isabelle Gagnon	2012
Daniel Gaudreault	2001
Lex Gill	2019
Louis-Alexandre Hébert-Gosselin	2020
Philippe Jolivet	2006
Jean-Marc Lacourcière	2014
Jessica Lelièvre	2019
Julie-Anne Pariseau	2010
Danielle Parizeau	2002
Clara Poissant-Lespérance	2015
Warren Shih	2003
Ophélie Vincent	2023

52. Collectively, the lawyers, articling students and students of our firm dedicated over 89,510 hours in the litigation from 1998 to present. Out of this total, Bruce, André and I devoted at least 68,109 hours to the files, or more than 76% of the total.

53. In addition, more than 6,300 hours have also been docketed by paralegals and other support staff at TJL in connection with communications and other services to our class members over the years. These hours are not included in our calculation of the billing value of our time explained below.

54. Additionally, 10 lawyers and articling students (in addition to André) worked in the tobacco litigation for Lauzon Bélanger and/or LBL over the years. Their names and years of call are as follows:

Yves Lauzon (Ad.E)	1974
Michel Bélanger (Ad.E)	1994
Jean-Philippe Lincourt	2004
Gabrielle Gagné	2012
Francis Hemmings	2012
Careen Hannouche	2005
Gilles Gareau	1997
Isabelle Chvatal	1997
Klara Polom	2012

55. Collectively, Lauzon Bélanger / LBL dedicated at least 61,572 hours in respect of the Quebec Class Actions between 1998 and 2015. From this amount, 44,940 hours were docketed by senior lawyers, namely André, Yves Lauzon (Ad. E) and Michel Bélanger (Ad. E), or approximately 73% of the total.

56. In summary, the lawyers at our firm and its predecessor firms have devoted at least 151,082 hours in the litigation since its inception.

57. The records upon which these numbers are based, for TJL as well as its predecessor firms, will be available at the hearing on the QCAP Fee Motion if the Court wishes to review them, in which case we would ask that they be filed under seal due to the privileged and confidential information contained therein.

58. I will add a note that the numbers above underestimate the time actually spent by Bruce, André and I in these matters. Like most class action lawyers, our business model changes how we think about our time. Our financial viability as an organization depends directly on what we can obtain for our clients and class members. There is no incentive to work unnecessary hours and strong reasons to solve problems efficiently. At the same time, we regularly and unapologetically invest vastly more time in cases than could ever be justified on a billable-hours model because that is what it takes to win.

59. The fact that we are paid on a contingency basis pursuant to fee agreements with our clients and representative plaintiffs means that the minute-by-minute billing practices common in many traditional firms are significantly less relevant to our practice. Our firm does however, record time in order to keep track of the progress of our files. Docketed hours are still one way that we explain the value of our work to clients and that helps, in certain circumstances, courts to evaluate whether our fee agreements are fair and reasonable.

60. That said, the tobacco litigation is an exceptional case. Unlike junior and intermediate lawyers as well students and articling students (collectively, "**Associates**") at our firm, Bruce, André and I have never recorded our time with much detail in this

particular case. In the interests of providing the Court with the most accurate information possible, I have therefore spent a significant amount of time working to review and validate, in the most thorough and conservative manner possible, the details of the hours that Bruce, André and I have spent in the litigation over the last 26 years.

61. With the exception of the years 2017 and 2018 while we were waiting for the judgment of the Quebec Court of Appeal, there has never been a year in which Bruce, André or I did not spend at least 400 hours on issues related to the tobacco litigation. For certain years, these class actions were almost the only thing we worked on at all. During the trial for example, it was common for us to be working between 10 and 15 hours a day, 6 or 7 days a week, for weeks at a time. This was also true for the Associates on the file, and in particular for Gabrielle Gagné.

62. While no records are available for the period that Bruce and I worked on the class action prior to founding our own firm, our best estimate is that during that period, we each spent approximately 800 hours working in the litigation up to our departure from our previous firm in 1998. I have included this estimate in the above total of 151,082 hours as part of Trudel & Johnston's time.

63. From this total, 113,049 hours or 74.8 % are attributable to senior lawyers and the balance to Associates.

D. Time and Resources Invested by All Quebec Class Counsel

64. In this section, I summarize the total time devoted and to be devoted by the four Quebec Class Counsel firms and the billing value of all of such work to the extent that the Court considers such information useful for the approval of the Quebec Class Counsel Fee.

65. As detailed above, as well as in the Kugler Affidavit, the Beauchemin Affidavit and the Fishman Affidavit, the time devoted by all Quebec Class Counsel firms in this matter up to January 10, 2025 is as follows:

Trudel Johnston / Trudel Johnston & Lespérance	89,510 hours
Lauzon Bélanger / Lauzon Bélanger Lespérance	61,572 hours
De Grandpré Chait	11,152 hours
Kugler Kandestin	17,828 hours
Fishman Flanz Meland Paquin	23,787 hours
TOTAL	**203,849 hours**

66. My review of the Quebec Class Counsel records indicates that the time devoted to this matter by senior lawyers of their firms ranges from 73 to 81% of the total number of hours, with the balance of the work being performed by Associates.

67. In addition, Quebec Class Counsel estimate that they will need to devote at least an additional 3,000 hours (2,700 by senior lawyers and 300 by Associates) between January 10, 2025 and the Plan Implementation Date.

68. We will also continue to act extensively on behalf of class members in connection with the claims and distribution process under the Quebec Class Action Administration Plan, which we estimate will require the team to work at least an additional 5000 hours (1,000 by senior lawyers and 4,000 by Associates).

69. Based on the foregoing, the aggregate time already devoted, and estimated to be required going forward by the four Quebec Class Counsel firms in respect of this matter amounts to a total of at least 211,849 hours.

70. I understand that the case law in Canada sometimes considers whether the requested fees would result in an unacceptable windfall for lawyers and thus risk eroding the reputation or the integrity of the legal profession. In our view, no such issue arises in the present litigation — the *sui generis* nature of the Quebec Class Actions, the extraordinary risks undertaken by our teams, the challenges faced in advancing the litigation over 26 years, and the results obtained for class members speak for themselves

in this regard. That said, for completeness, I wish to provide the Court with my calculation of the billing value of the time devoted to the Quebec Class Actions using a hypothetical non-contingency fee metric.

71. As I indicated above, the vast majority of the time devoted by Quebec Class Counsel in these files has been by senior litigators and partners at the respective law firms. These lawyers have numerous years of experience at the bar and they have represented parties at every level of the courts in some of the most important litigation and/or insolvency files in Quebec and Canada.

72. Based on my experience as an active litigator in Montreal since the 1990s, highly regarded senior litigators in Montreal acting in significant litigation and/or complex insolvency mandates charge between $1,150 and $1,500 per hour. These rates are generally billed and paid on a monthly basis and are not subject to any contingency. For the purpose of this exercise, I consider $1,150 per hour (the "**Senior Lawyer Rate**") to be a fair and reasonable proxy for the billing value of the time devoted and yet to be devoted in this matter by senior lawyers at the Quebec Class Counsel firms.

73. With respect to the work of the Associates of the respective Quebec Class Counsel firms, I also consider that an average blended rate of $550 per hour (the "**Associate Rate**") represents a fair and reasonable proxy for the billing value of the time devoted and yet to be devoted by them in this matter.

74. Based on the foregoing, a current straight-line billing value of the aggregate 211,849 hours worked and yet to be performed by Quebec Class Counsel on behalf of the Quebec Class Members in this matter amounts to at least $214,653,500, calculated as follows:

a. In respect of the hours to date, the Senior Lawyer Rate was applied to 75% of the total hours, and the Associate Rate was applied to the remaining 25% of the total hours;

b. In respect of the work required from January 11, 2025 up to the Plan Implementation Date, the Senior Lawyer Rate was applied to 90% of the

estimated hours, and the Associate Rate was applied to the remaining 10% of the estimated hours; and

c. For work following Plan Implementation, the Senior Lawyer Rate was applied to 20% of the estimated hours, and the Associate Rate was applied to the remaining 80% of the estimated hours.

75. This billing value obviously does not take into account any contingency fee risk, the pressures of non-payment for decades, or the personal financial risks and opportunity costs assumed by the members of the Quebec Class Counsel team over the course of 26 years.

The 2% Addition in the CQTS Amended Retainer Agreement

76. As detailed in the affidavit of Dr. André-H Dandavino, the president of the board of directors of the CQTS, the CQTS retainer agreement signed in 1998 was amended in March 2017 (as amended, the "**CQTS Retainer Agreement**"). The amendment took into account the anticipated additional costs and challenges that would arise if the Tobacco Companies sought insolvency protection in the event of a judgment of the Quebec Court of Appeal upholding the Riordan Judgment.

77. When it agreed to the amendment, the CQTS was aware of the amount of damages that had been awarded to class members in the trial judgment but agreed that an additional percentage of up to 2% should be made available to Quebec Class Counsel to allow class members to benefit from the support of firms specialized in insolvency matters in the next phase of the file which was expected to be extremely complex. As detailed in the Fishman Affidavit, the length and complexity of the CCAA Proceedings have been indeed extraordinary, exceeding even what we had foreseen in 2017.

78. FFMP have acted as our primary insolvency lawyers in connection with the recovery efforts on behalf of the QCAPs and are one of the core members of the Quebec Class Counsel team. They have performed extensive work on behalf of the QCAPs since 2013, docketing 23,787 hours as at January 10, 2025, and have received no payments whatsoever during that entire time.

79. Taking into account the contingency fee amounts due to FFMP as well as Chaitons LLP and the past and future fees of Raymond Chabot (Proactio) whose services have been required as a result of the CCAA proceedings, the aggregate of these amounts exceeds $90 million, which is more than 2% of the $4.119 billion recovery in respect of the *Blais* Class Action, such that Quebec Class Counsel are entitled to seek the full 22% contingency fee percentage provided for in the CQTS Retainer Agreement.

80. The CQTS, as well as Lise Boyer Blais, the wife and heir of the late Jean-Yves Blais, the designated *Blais* Class Member, each of whom has been a first-hand witness to the professional commitment of Quebec Class Counsel on their behalf, support the approval of a 22% fee to Quebec Class Counsel in conformity with the CQTS Retainer Agreement.

E. Financial Risks and Obligations

81. To our knowledge, there has never been any class action in Canada that is even marginally comparable in terms of risk, complexity, effort or duration. The pressures — logistically, administratively, financially, and practically — that these files have placed on our firm in particular have been enormous and unrelenting.

82. The Tobacco Companies made full use of their virtually unlimited financial resources to make these proceedings as difficult, expensive, complicated and lengthy as possible. In his 2015 trial judgment, Justice Riordan was frank about the weight of this charge, writing to explain his order of provisional execution that it was high time that we receive "some relief from the gargantuan financial burden of bringing them to justice after so many years".[6]

83. As described below, the extreme risk inherent in this kind of file meant that no traditional source of funding was available to us. The financing available through the Fonds d'aide aux actions collectives (the "**FAAC**") was very limited.

[6] *Létourneau c. JTI-MacDonald Corp.,* 2015 QCCS 2382, para. 1200.

84. As a result, we relied on a patchwork combination of revenue generated from other files, regular bank financing secured against personal assets, high-interest loans, personal debts, debts secured against personal assets, litigation financing, deferred payment agreements and contingency-based deals with suppliers and advisers of all kinds.

85. The lack of predictable revenue — profoundly exacerbated by the fact that the class actions to which we devoted the most hours by far over the last 26 years has never paid — is felt in countless ways. It has both direct costs and indirect consequences. As described below, we have had to become extremely creative in managing our fixed costs and our financial situation, and have taken on a number of high-interest and high-risk forms of financing to keep the firm operational.

Risks Related to Recovery

86. In addition to the uncertainty about the duration and outcome of the litigation, we also worked with no guarantee that we would ever receive payment as a result of our work, even in the event of a complete and final victory on the merits. In other words, it was possible that we could win on every issue, every time, and still lose from a financial point of view.

87. The risk that the claims of class members would ultimately be unrecoverable came very close to materializing, given that litigation resulted in some of the largest and most complex insolvency proceedings in Canadian history. Indeed, as detailed in the Johnston and Fishman affidavits, the complex multinational corporate structure of the Tobacco Companies, their expected recourse to insolvency proceedings, the systematic transfer of their profits to their parent corporations, and efforts by one of the companies to render itself creditor-proof meant that recovery of any substantial amount was always uncertain. Additionally, the Tobacco Companies and other creditors took the position that we had lost the right to claim the money held as security pursuant to the Court of Appeal's order prior to the commencement of the applications under the *CCAA*.

88. This risk is one of the reasons these files cannot be fairly compared to class actions involving government defendants, for example, whose ability to pay is ultimately secured by taxpayers.

The Fonds d'aide aux actions collectives

89. In Quebec, representatives in class actions are eligible to receive a limited degree of financing from the FAAC. The FAAC has a mandate to provide financial assistance in the form of repayable loans to parties wishing to bring a class action and to help promote access to justice by enabling Quebec residents to assert their rights before the courts.

90. At the outset of the litigation, the FAAC refused to finance either of the two Quebec Class Actions against the tobacco industry.

91. The CQTS had submitted an application for financial assistance in June 1998, well before its class action was filed. As detailed in the other affidavits in support of the Motion, Bruce and I had filed the *Létourneau* action first, in September of that year. However, we only submitted an application for financial assistance with the FAAC in July of 2000. Following the Court of Appeal's decision to let the two class actions proceed jointly, lawyers for both class actions were summoned to a joint hearing before the FAAC in February 2001.

92. The following month, the FAAC rendered a decision refusing the funding applications in *both* cases, essentially on the basis that it saw no reasonable prospect of success. Its reasons included the following considerations [translation]:

> WHEREAS the representations made by counsel do not show any likelihood that one of the class actions will be authorized to the exclusion of the other action; and
>
> WHEREAS it would be idle for the Fund to speculate on how a Superior Court judge might exercise his discretion and the likelihood of success of either of the motions for authorization;

> WHEREAS there is great uncertainty as to the legal outcome of these two motions for authorization, and even as to the viability of either or both of these motions, given the groups that the applicants wish to represent;"[7]

93. The fact that the FAAC saw little prospect of success is a good indicator of the enormous risks that Quebec Class Counsel faced when embarking on these class actions, against adversaries that we knew would fight us every step of the way and never back down.

94. Counsel for both class actions sought administrative review and were ultimately successful in having the decision reversed.[8] However, by the time a final decision in the matter was rendered by the Superior Court, it was five years after the class actions had been filed, and the only thing we had "won" was an order remitting our initial funding application to the FAAC for reconsideration. Though our initial business plan had relied on this support, we ultimately received very little financing in those early years.

95. Over time, the FAAC did provide some financing for the Quebec Class Actions. While compared to the average class action these amounts were significant, they were small when compared to the actual costs of the litigation over the last 26 years.

96. The total financing obtained from the FAAC for the two class actions over the last 26 years amounted to $6,849,961.41. From the insurance settlements described in the Fishman Affidavit, an amount of $5,002,084.94 was repaid to the FAAC in accordance with a judgment issued by Justice Riordan on June 4, 2019, leaving a balance owing to them of **$1,847,876.47**, which must be repaid from the Quebec Class Counsel Fee on a priority basis.

97. The FAAC financing was nowhere near sufficient to cover all costs, therefore in order to obtain required services and support, Quebec Class Counsel have made arrangements with various third-parties, as described below, to accept payment on a contingency basis for services rendered by them in furtherance of the Quebec Class

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[7] *Létourneau c. Fonds d'aide aux recours collectifs*, 2002 CanLII 55254 (QC TAQ); *Conseil québécois sur le tabac et la santé c. Fonds d'aide aux recours collectifs*, 2002 CanLII 55255 (QC TAQ).
[8] *Létourneau c. Fonds d'aide aux recours collectifs*, 2002 CanLII 55254 (QC TAQ); *Conseil québécois sur le tabac et la santé c. Fonds d'aide aux recours collectifs*, 2002 CanLII 55255 (QC TAQ).

Actions. These amounts will be paid only in the event that the Quebec Class Counsel Fee is approved.

98. At the time their services were required, we would not have been able to pay any of these parties out-of-pocket nor secure any form of traditional financing to do so. In each case, our only option was to bank on our personal relationships, asking each of these parties to bet on the future of the litigation to carry out very significant amounts of work.

Contingent Expenses for Past Services

99. The amounts owed in this category total approximately **$5,731,275.24** (depending on the exchange rate at time of payment to one of our creditors). They include:

a. $287,437.50 to Visard Solutions Inc., for the creation and maintenance of the database used to manage evidence, without which we would have had no technical system to review or analyze the millions of pages of documents we received in the course of discovery;

b. $1,791,708.84 to three consultants for extensive research and advisory support over the course of many years in the areas of public health and the history of the tobacco industry, including statistical analysis, drafting, review of documents, memoranda and other key internal resources;

c. £240,139 (representing $431,303.57 CAD on December 15, 2024) in legal fees for Leigh Day, the U.K. law firm who assisted Quebec Class Counsel in relation to the rogatory commission in London prior to trial;

d. $1,251,681.38 in legal fees to a retired judge who was instrumental in advising our team in our preparations for the Court of Appeal hearing;

e. $43,690.50 in legal fees to Miller Thomson, for services rendered in relation to a trust fund management matter;

f. $6,898.50 to a Université de Montréal professor for a legal opinion on the Quebec civil law of successions for the purpose of clarifying the rights of heirs in the Plans;

g. $21,845.25 to OXO Innovation for the French translation of the Plans;

h. $53,170.60 to Public strategies et conseils, a boutique communications agency retained to help communicate with class members about their rights and inform the public about the class actions and the Plans; and

i. $1,843,539.10 (as of September 2024) to Chaitons LLP.

Quebec Class Counsel Past Expenses

100. Quebec Class Counsel's firms have also had to absorb an amount of **$4,409,327.88** in costs and disbursements, including experts costs, in relation to these matters since 1998.

Future Expenses

101. As set out in the Plans, the Quebec Class Counsel Fee is inclusive of legal fees as well as all disbursements and costs. This includes both past and future costs incurred and to be incurred in respect of the services provided by Raymond Chabot (Proactio), both before and after the Plan Implementation Date. Proactio has been retained by Quebec Class Counsel to facilitate the administration of the claims process for *Blais* Class Members.

102. I would note that even before the approval of the Plans, this undertaking has required extensive investment. Since the announcement on October 17, 2024, the volume of inquiries fielded by Proactio from Quebec Class Members (and also from other Canadian tobacco-victims) and their loved ones has been unprecedented.

103. They have received calls and emails from potential class members as well as countless individuals who do not meet the criteria of the *CQTS/Blais* class action,

including individuals who would fall within the PCC Compensation Plan and estates of tobacco victims deceased prior to November 20, 1998.

104. While they had expected an important surge in calls and emails following this announcement, it has been even greater than anticipated. Proactio informs us that the media campaign led by Quebec Class Counsel has resulted in approximately 20,000 calls and more than 22,000 emails between October 17, 2024, and late December 2024.

105. This volume of communications required a swift doubling and tripling of the number of agents assigned to the tobacco class actions, and a revision to anticipated costs.

106. Pursuant to the budget and contract with Proactio in respect of the claims administration process, the revised estimate of anticipated future expenses amounts to **$34,551,703** plus taxes, all of which will be paid from the Quebec Class Counsel Fee. This amount includes all expenses related to personnel, the QCAP Website, the database, security and compliance costs, the call centre, mail campaigns and other communications, file preparation, managing, drafting and reporting.

107. There are also a series of other anticipated future expenses in relation to the Quebec Class Actions, totalling approximately **$58,743.45**, including:

a. $30,000.00 to Public strategies et conseils, for future public relations work in connection with the Quebec Class Action Administration Plan; and

b. $28,743.75 to OXO Innovation in additional translation services in relation to the Plans and communications with class members.

F. Quebec Class Counsel Fee

108. Quebec Class Counsel are entitled to a fee of $906,180,000, representing 22% of $4.119 billion recovered in respect of the Claims related to the Blais Class Action.

109. Because $5,002,085 was previously paid to the FAAC from the proceeds of the insurance settlement in order to reimburse them for litigation costs they financed (the costs of which Quebec Class Counsel have agreed to assume), Quebec Class Counsel

shall request this Honourable Court to deduct this amount from the $906,180,000, and to order the CCAA Plan Administrators to make payment of a Quebec Class Counsel Fee in the amount of $901,177,915.

110. From the amount of $901,177,915, an amount of at least $46,598,926 will be assumed by Quebec Class Counsel in respect of the past and future costs or disbursements referenced above, namely:

a. $1,847,876, which is the balance of financing owed to the FAAC[9];

b. $5,731,275.24, in respect of past services rendered on a contingent basis[10];

c. $4,409,327.88, in respect of costs and disbursements, including experts costs[11];

d. $34, 551,704, plus taxes, in connection with the services of Proactio[12]; and

e. $58,743.45, in respect of anticipated future costs for public relations and translation services[13].

As a result of the assumption of these costs, a net amount of $854,578,989 will remain to be shared by the Quebec Class Counsel firms in accordance with the agreements between them.

G. Specific Obligations of TJL

Amounts owed to TJL Associates and New Partners

111. Even at the associate level, a choice to work at TJL involves considerable opportunity costs and risks. As detailed in the Johnston Affidavit, the associates and new partners at our firm are some of the most accomplished lawyers in their respective cohort. They have many prestigious options available to them, and it would not be possible to

[9] Described in paragraph 96 hereof.
[10] Described in paragraph 99 hereof.
[11] Described in paragraph 100 hereof.
[12] Described in paragraph 106 hereof
[13] Described in paragraph 107 hereof.

recruit and retain litigators capable of handling matters like the tobacco class actions without competitive compensation. However, the need to minimize our fixed costs and carefully manage the firm's cash flow means that we are simply not in a position to offer the kinds of salaries that our lawyers would make at other law firms, in the private sector, or even in government.

112. The compromise is a compensation package for associates (which applied to our four new partners until last year) with a low base salary but a generous bonus program which operates as a kind of deferred salary. Combined, the two allow us to offer dollar-figure compensation similar to that of our opposing counsel in larger corporate firms, albeit on a high-risk basis and on an unpredictable payment schedule.

113. The base salary at TJL in 2024 was approximately $70,000. Every lawyer makes this base amount, regardless of whether they are a partner with 15 years of experience or an associate just called to the bar. This is the only amount a lawyer working at our firm is guaranteed to receive in a given year. It is roughly equivalent to the starting salary of an entry-level legal aid lawyer in Montreal. Taking on this kind of opportunity cost is not an easy choice given the demographics of our associate-level lawyers and new partners, all of whom are under 40, during a period of life where they are buying their first homes and starting families.

114. Under the current policy, bonuses are payable on a priority basis when money comes in. The amount each lawyer is entitled to receive increases based on a schedule determined by year of call. Importantly, any unpaid amount in a given year rolls over and remains due the following year on a cumulative basis to ensure that lawyers are not treated inequitably depending on the fiscal year in which fees are collected.

115. In part due to the financial pressure of the tobacco litigation, these amounts have accumulated significantly over the years. As of December 31, 2024, the firm owes a combined $3,539,233 to ten past and current salaried lawyers which will be paid out of TJL's share of the Quebec Class Counsel Fee.

Debt to Financial Institutions and Other Third Parties

116. Given the inability to cover the costs of the litigation through the FAAC alone and from the revenues generated by our files, TJL has had to seek out other sources of financing.

117. Ordinary banks will not generally lend on the basis of work in progress or payments subject to a contingency fee agreement. Firms like ours have the potential to bring in large amounts of revenue but have no accounts receivable that could secure a line of credit. This has been an issue since we founded the firm in 1998, at which time we could only obtain a government-backed loan for small businesses.

118. The firm was able to obtain a line of credit with the Bank of Montreal in the following years. Between 1999 and 2007, it gave us access to $50,000 in credit. That amount increased to $200,000 between 2008 and 2014, and $400,000 from 2014 onward. The limit on that line of credit is now $2,500,000 and has been at its limit several times over the last three years.

119. Over the years, Bruce and I were gradually able to set aside a bit of money (amounting to 10% of annual net revenue) to act as a safety net (and eventual pension fund) in our personal company. We used some of this money to purchase commercial condominiums in an Old Port building, and gradually converted most of it into office space for the firm. The line of credit of TJL is fully secured by a mortgage on the real estate owned by 3876829 Canada Inc., our personal holding company.

120. The firm's financial situation became particularly challenging in 2009, when expected revenues from one of our class actions did not materialize. To keep the firm operational during this period, Bruce and I liquidated almost all of our RRSPs. The equity in our real estate assets was insufficient to finance the firm, as the buildings were already heavily mortgaged. We obtained an increase to the line of credit, but all of our personal assets were and still are pledged as security for the repayment of our debts.

121. We had to find alternative sources of financing. In April 2010, we obtained litigation funding from Lexfund, tied to the Marcotte[14] class actions for an amount of $540,540 with interest of 36% annually, and compounding monthly. In return for this high return in the event of success, Lexfund assumed the risk of losing its capital in the event that the file was unsuccessful.

122. In 2011, we obtained additional funding with Therium (UK) Holdings Limited, a UK company specialising in litigation funding, under which Therium funded the cases up to £600,000 (CAD $956,400 on signing). This agreement was amended in November 2013 to increase the funding to a total of £890,000 ($1,479,714). In exchange for a return of three times its invested capital in the event of success, Therium agreed to run the risk of losing the invested capital in the event of failure. In addition to a guarantee on the fees in Marcotte, Therium also obtained a secondary guarantee on the tobacco files.

123. These amounts were repaid in full following our success in the Marcotte case in the Supreme Court in 2014 and the approval of our fees in the file shortly after. When approving our fees, the Superior Court also agreed that our financing fees, which totalled $7,335,862.23, should be paid out of the funds we made available for class members.[15]

124. Throughout this entire period, we were in the lead-up to the tobacco trial and facing the trial itself. While the financings with Lexfund and Therium were secured largely against the Marcotte file, the financial pressure on the firm during this era was mostly due to the enormous and simultaneous resource drain of the tobacco class actions.

125. Since the aftermath of the Marcotte file, TJL has again had to resort to litigation financing from third parties on several occasions in order to enable it to continue handling cases on a contingency-fee basis, including the Quebec Class Actions.

[14] *Bank of Montreal v. Marcotte*, 2014 SCC 55.
[15] *Marcotte c. Banque de Montréal*, 2015 QCCS 1915.

H. Objections

126. The fairness and reasonableness of the Quebec Class Counsel Fee is of course in part informed by the perspectives of class members themselves.

127. Class members were informed of the QCAP Fee Motion, as follows:

a. on December 13, 2024, when all potential class members for whom Proactio has contact information, representing more than 65,000 people (the "**Contact List**"), were informed by way of an email and/or text message notice of the upcoming hearing on the motion for fee approval and of Quebec Class Counsel; and

b. On December 23, 2024, when all persons on the Contact List were provided with a copy of the formal notice approved by the Court (the "**QCAP Notice**") by email and/or text message, in accordance with the QCAP Notice Protocol Order issued by the Court

128. In addition, and in also accordance with the QCAP Notice Protocol Order, a copy of the QCAP Notice, in English and French, was filed with the *Registre des actions collectives,* and on posted on the QCAP Website.

129. The QCAP Notice informed class members and the public of Quebec Class Counsel's intention to request the approval of their legal fees, calculated on the basis of the CQTS Retainer Agreement, representing a total amount of $906,180,000, plus applicable taxes, as well as the possibility for class members to oppose such request by filling an objection in writing. The QCAP Website further provides a specific form for class members register a formal objection to the Quebec Class Counsel Fee to the CCAA Court.

130. Proactio has advised us that 106 class members responded favourably to the announcement of the QCAP Fee Motion. I am attaching, as **Schedule "B"**, a sample of correspondence summarized in a chart prepared by Proactio, which reflects these victims' recognition of the exceptional work carried out by Quebec Class Counsel. The following

are a selection of particularly thoughtful and moving messages we have received (translations):

- *your revenue is a testament to your determination to fight the deadly and insidious poison that is cigarettes; I believe in you all and thank you for your dedication.*
- *I accept the fees of the lawyers in this case and I thank them for all the good work they have done for all this time for all of us with professionalism and determination so that this project succeeds, thank you again*
- *I want to start by thanking you for fighting for all of us, for holding the fort against all odds and defeating the tobacco giants for us. I've read your email about the details of your fees, which I think you richly deserve. You've been fighting since 1998, believing in it more than we do... bravo.*

131. We also received a few emails from class members expressing their concerns or questions regarding the amount of the fees requested in the Motion. André or I have personally reached out to each of these individuals in order to answer their questions and respond to their concerns.

132. As of today, there are six remaining unresolved objections. Out of these six, three had no issue with the amount of fees sought, but indicated that the fees should not be paid from the QCAP Allocation. In one of these cases, the objector indicated that the tobacco companies or the provinces should pay the fees. Two objectors have not explained why they are opposing. A chart summarizing these six objections is attached to the present affidavit as **Schedule "C"**.

I. Concluding Remarks

133. Our business model is unorthodox for a law firm. It involves huge risks but allows us to take on meritorious and challenging files against some of the most powerful actors in the world. It is difficult to imagine work that better lives up to this mission than class actions against "big tobacco" - an industry which benefits from unlimited resources and the best representation.

134. Despite the challenges we faced over the years, Quebec Class Counsel were successful in fielding a team that could more than hold its own, with a fraction of our

opponents' resources. The results of our work are not only tangible and significant for class members on a personal level, they are also historic. We have the proud distinction of achieving a victory never accomplished by any group of tobacco victims anywhere else in the world.

135. Most of the class members we represent are well aware of the challenges that we confronted on their behalf, and many have gone out of their way to share their support regarding the amounts sought.

136. Considering these unique circumstances, we believe that our contingency fee percentage of 22% is fair and reasonable even if it translates, in absolute terms, in an unprecedented fee amount.

137. The current case is certainly not one where lawyers make a windfall profit following the rapid settlement of a class action – far from it. Rather, our team devoted 26 years of our professional careers, to obtaining a historic judgment that was then confirmed by another historic judgment on appeal, all culminating with the most complex insolvency restructuring in Canadian history and an outstanding recovery for our class members.

138. We were prepared to pursue this case because we believed that the cause was just and that our clients deserved access to justice. We knew that it would be the battle of our lives and we were very proud to take it on.

AND I HAVE SIGNED, THIS 12th DAY OF JANUARY, 2025.

Philippe H. Trudel

Solemnly declared before me at Montreal,
Province of Québec, this 12th day of January, 2025

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

Commissioner of Oaths for the Province of Québec

LIST OF SCHEDULES

"A" *Curriculum vitae* of Philippe H. Trudel

"B" Chart of select correspondence from potential *Blais* Class Members

"C" Chart of all outstanding objections from potential *Blais* Class Members

DOCUMENTS AVAILABLE TO THE COURT UPON REQUEST

1. Timesheets in relation to the Quebec Class Actions for the law firm of Trudel Johnston & Lespérance and predecessor firms

2. Accounting of disbursements in relation to the Quebec Class Actions for the law firm of Trudel Johnston & Lespérance and predecessor firms

THIS IS SCHEDULE "A"
TO THE AFFIDAVIT OF PHILIPPS H. TRUDEL

CV OF PHILIPPE H. TRUDEL

SWORN BEFORE ME ON THIS 12TH DAY OF JANUARY 2025

Commission of Oaths for Quebec

Philippe H. Trudel

Partner, Trudel, Johnston & Lespérance

PRACTICE

Trudel, Johnston & Lespérance, Founder and Partner	2015 to present
Trudel & Johnston, Founder and Partner	1998-2015
Pinsonnault, Torralbo, Hudon, Counsel	1998
Hudon, Gendron, Harris, Thomas, Counsel	1993-1998
Hudon, Gendron, Harris, Thomas, Articling Student	1992
Godin Raymond Harris Thomas, Student	1989-1991

EDUCATION

Barreau du Québec, Admitted to the Bar	1993
Montreal University, LL.B, Faculty of Law	1990
Laval University, Bachelor of Art, Political Science	1986

OTHER SERVICE

Philippe Trudel is a regular university and conference speaker on class actions, civil litigation and human rights issues. He is one of the recipients of the Prix Jean-Pierre-Bélanger, awarded for his work in the tobacco class actions in 2015. He was also a member of the Barreau du Québec Expert Committee on Class Actions from 2014 to 2023.

THIS IS SCHEDULE "B"
TO THE AFFIDAVIT OF PHILIPPE H. TRUDEL

CHART OF SELECT CORRESPONDENCE FROM POTENTIAL *BLAIS* CLASS MEMEBERS

SWORN BEFORE ME ON THIS 12TH DAY OF JANUARY 2025

Commission of Oaths for Quebec

#	Date of email	Initials	Original language of email	Original content, if email sent in French	Translation into English or original email, if sent in English
1	2025-01-02	B.P.	French	Dans ce cas je souhaite de tout mon coeur que vous pouviez enfin vous payer chacun vos vacacances de reves ..et vous aller enfin aussi etre mieux credites dans vos emploies et avec le.mieux enfin des salaires de millionnaires que vous meriter tous.. Parce que si ca serait moi Qui y serait plonges du matin aux soir et meme parfois la nuit. Je.voudrai etre payer a ma juste valeur...Et vous le.valez..Et moi J'espere m'en tirer avec un pas pire montant respectable selon toute les defaites et horreurs que ce maudits bout de gazon brun peu faire sur l'ensemble de nos vies ravages-detruites... Se n'en ai meme pas.croyable.. Merci Infiniement malgres mes commentaires parfois deseperes.. Je pense qu'en restant positif Vous allez tous etre aux soleil Pour aux.moins la Saint-Valentin... Felicitations pour tout ces multiples facettes ,complexe a avoir muticulusement accomplies.!!.!..Bravo.A Tous.!.!.!. Patiente Engagement Integrites Implications Profonds Et Des Dizaines D'Autres.	In this case, I hope with all my heart that you'll each be able to afford your dream vacation and that you'll finally be able to get more credit and acknowledgement for your work and millionaires salaries that you all deserve. Because if it were me who was immersed in it from morning to evening and even sometimes at night, I would want to be paid what I'm worth... And you're worth it. And as for me, I hope to get away with a not so bad respectable amount for all the defeats and horrors that this damned piece of brown grass can do to all of our ravaged-destroyed lives. It's unbelievable. Thank you very much despite my sometimes desperate comments. I think that by staying positive you will all be in the sun for at least St-Valentine's Day... Congratulations for all these multiple facets, complex [case] to have meticulously accomplished.!!!. Bravo to All.!.!.!. Patience, Commitment, Integrities, Deep Implications, And Dozens of others.
2	2025-01-02	F.O.	French	Bonjour à Vous tous et toutes, Je veux dans un premier temps vous REMERCIER d'avoir lutter pour nous tous et toutes ,d'avoir envers et contre tous, *Tenu le Fort* et d'avoir *Vaincu pour Nous* les magnats du tabac . J'ai lu votre courriel sur les détails de vos honoraires, qui sont pour ma part, vous sont largement mérités. Depuis 1998 que vous vous battez en y croyant plus que nous...BRAVO. Permettez moi en mon nom et en celui de mon fils,(...), Une Bonne et Heureuse Année 2025, Bonne Santé, Prospérité. Paix et Amour pour les Vôtres et Toute votre Équipe... Affectueusement Vôtre	Hello to all of you, I want to start by thanking you for fighting for all of us, for holding the fort against all odds and defeating the tobacco giants for us. I've read your email about the details of your fees, which I think you richly deserve. You've been fighting since 1998, believing in it more than we do... bravo. Allow me, on my behalf of myself and my son, (...), A Happy New Year for 2025, Good Health, Prosperity, Peace and Love for Yours and Your Entire Team... Yours affectionately
3	2025-01-02	C.M.	French	J'accepte la demande d'approbation des honoraires.	I accept the request for approval of fees.
4	2024-12-26	M.G.	French	À qui de droit, [...] Vous comprendrez ma réaction, on débat ce cas depuis 1998 et il y a toujours des rebondissements négatifs pour les dites membres (anciens fumeurs qui sont malades). Mais Si l'équipe Proactio, en collaboration avec Trudel Johnston & Lespérance, avec l'aide des autres remportent cette cause, Wow! cela renforcera votre crédibilité à vie et votre engagement à aller au bout des choses fera de vous les cabinets à aller demander de l'aide pour des recours. Votre réussite pour cette cause de défendre les gens témoignerait et mettrait à votre actif la plus grande et haute "Mention d'honneur" à vie d'avoir fait partie des gagnants de cette grande cause de recours collectifs et surtout que vous, vous accordez de l'importance à vos clients. En plus je lis que votre demande est de 22 % en frais de cette cause. 22% est juste et équitable pour tous. Bravo pour cette autre grand geste raisonnable de % pour votre travail. Veuillez agréer l'expression de mes salutations.	To whom it may concern, [...] You will understand my reaction, we have been debating this case since 1998 and there are always negative twists for the said members (former smokers who are ill). But if the Proactio team, in collaboration with Trudel Johnston & Lespérance, with the help of others, wins this case, Wow! It will strengthen your credibility for life and your commitment to seeing things through will make you the firm to go to for help with legal issues. Your success in this case in defending people would be testimony and will add to your credit the greatest and highest "Honorable Mention" for life for having been among the winners of this great class action case and, above all, that you value your clients. In addition, I read that your request is for 22% in costs for this case. 22% is fair and equitable for all. Bravo for this other great reasonable gesture of % for your work. Yours sincerely

#	Date of email	Initials	Original language of email	Original content, if email sent in French	Translation into English or original email, if sent in English
5	2024-12-26	R.T.	French	je suis avec vous . Pour vous aujourd'hui et tout ce qui peut advenir dans. Jusqu'a la Fin de la cause que Je definie de mission accomplie dans mon VISUEL Vos DEBOURS sont pas seulement MONAITAIRE IL A Aussi un Tout L'Aspect d'Avoir Pris SOINS De Nous et De MOI Surtout Comme un Bon Père de FAMILLE	i'm with you. For you today and all that may come in. Until the end of the file that I define as mission accomplished in my VISUAL Your FEES are not only MONETARY IT HAS ALSO A WHOLE Aspect OF HAVING TAKEN CARE OF US AND OF ME Especially Like a Good FAMILY Father
6	2024-12-24	B.G.	French	Merci beaucoup, et merci pour cet immense travail que vous avez fait toutes ses années.	Thank you very much, and thank you for all the hard work you have done all these years.
7	2024-12-23	D.F.	French	Merci infiniment encore une fois pour votre bon travail et surtout pour votre transparence en nous donnant toujours l'information concernant ce gigantesque dossier que vous traiter merveilleusement bien encore une fois merci pour votre bon travail	Thank you very much once again for your good work and above all for your transparency in always giving us information concerning this gigantic file which you handled marvelously well, once again thank you for your good work.
8	2024-12-23	F.G.	French	Merci pour les informations t le bon travail effectué dans ce dossier.	Thank you for the information and the good work done in this file.
9	2024-12-23	J.O.	French	Merci beaucoup Pour vos informations qui me sécurise	Thank you very much for your information which reassures me
10	2024-12-23	L.R.	French	Merci l pour votre bon travail et ... votre patience.	Thank you for your good work and ... your patience.
11	2024-12-23	S.B.	French	Je dit oui pour les honoraires	I say yes to the fees
12	2024-12-23	S.M.	French	Merci infiniment pour vous avoir dédié à cette enquête.	Thank you so much for dedicating yourself to this case.
13	2024-12-19	Y.B.	French	Bonjour, Merci pour le travail acharné et le résultat incroyable que vous avez obtenu.J'ai une question concernant vos honoraires amplements mérités. Est-ce que les gouvernements auraient pu contribuer pour diminuer la charge des victimes du tabac.	Hello, Thank you for your hard work and the incredible results you have achieved. I have a question about your well-deserved fees. Could governments have contributed to lessen the burden on tobacco victims?
14	2024-12-18	S.B.	French	Je veux vous confirmer que je m'oppose pas à ce que les avocats soient payé merci	I want to confirm that I am not opposed to lawyers being paid, thank you.
15	2024-12-16	M.M.	French	j'accepte les honnoraires des avocats en cette cause et je less remercient remercient pour tous le bon travail qu"il ont fait depuis tous ce temps pour tous nous autres avec professionnaliste et déterminéa ce que ce projet réusise merci encore	I accept the fees of the lawyers in this case and I thank them for all the good work they have done for all this time for all of us with professionalism and determination so that this project succeeds, thank you again
16	2024-12-15	P.F.	French	Merci pour le beau travail	Thank you for the beautiful work
17	2024-12-14	C.	French	Vous méritez votre salaire...prenez ce qu'il vous devient.....bonne job...	You deserve your salary...take what is your share....good job...
18	2024-12-14	F.O.	French	A TOUS LES AVOCATS ET PROACTIO VOUS MÉRITEZ BIEN CES INDEMNISATIONS DEPUIS SI LONGTEMPS ET J'EN SUIS RECONNAISSANT ET J'APPROUVE A 100%. BONNE CHANCE	TO ALL THE LAWYERS AND PROACTIO YOU DESERVE THIS COMPENSATION FOR SO LONG AND I AM GRATEFUL AND I APPROVE 100%. GOOD LUCK
19	2024-12-14	H.D.	French	Bonjour, J'ai lu le document d'information détaillé et le communiqué de presse dont les liens apparaissent dans l'Infolettre du tabac. Cependant, même si je comprends le texte qui concerne la rémunération des avocats, que j'approuve par ailleurs, une question subsiste. (...) Je vous remercie pour ces éclaircissements, et pour votre travail. Quelle persévérance! Cordialement,	Hello, I have read the detailed information document and the press release, the links to which appear in the Tobacco Newsletter. However, even though I understand the text concerning lawyers' remuneration, which I otherwise approve of, one question remains. (...) I thank you for these clarifications, and for your work. What perseverance! Best regards,
20	2024-12-14	J.S.	French	C'est normal que les avocats soit payé s pour leurs travail	It's normal for lawyers to be paid for their work.
21	2024-12-14	M.R.	French	Vos revenus témoignent de votre détermination à combattre ce poison mortel et sournois qu'est la cigarettes. Je crois en vous tous et merci pour votre dévouement.	Your revenue is a testament to your determination to fight the deadly and insidious poison that is cigarettes; I believe in you all and thank you for your dedication.
22	2024-12-14	M.D.	English		I have read the two documents: Executive Summary of the Motion for approval of the Quebec Class Counsel Fee prepared by Quebec Class Counsel for class members and the Press; and Notice of the Hearing and Motion to approve the Quebec Class Counsell Fee. I have no objection to the motion by the Quebec Class Counsel for their fees [...].
23	2024-12-14	R.T.	French	Je vous Aprouve. A 100% ,En Espérant que vous Approuvez ma Réclamation A.100%	I agree with you 100%, I hope you approve my claim a 100%.
24	2024-12-13	C.	French	Je suis d'accord avec vos honoraires, vous avez travaillés si fort..Merci	I agree with your fees, you've worked so hard..Thank you!

#	Date of email	Initials	Original language of email	Original content, if email sent in French	Translation into English or original email, if sent in English
25	2024-12-13	J.L.	English		Hello, I have just finished reading your very thorough report and I am sitting here crying because my husband didn't live to read it himself. I am grateful for all the efforts put in by the Class Counsel and their various support staffers and I know my husband would have been too. The amounts are enormous but I am wondering how the tobacco companies will be forced to pay up. It is one thing to win a judgement, but quite another to actually obtain the compensation from the Tobacco companies. Do you believe that they will pay up? If they decide to just dissolve the companies can the former executives be held personally responsible? Thank you for any insight you can provide.
26	2024-12-13	M.P.	French	Oui chose que japprecie jai confiance en vous	Yes, one thing I appreciate, I have confidence in you
27	2024-12-13	N.M.	French	Bonjour, dans mon cas c'est ok, personnes ne travaille pour rien	Hello, in my case it's ok, no one is working for nothing.
28	2024-12-13	D.F.	French	Merci beaucoup pour ce partage d'informations très apprécié vous faites un excellent travail	Thank you very much for sharing this information, it is very much appreciated, you're doing an excellent job.
29	2024-12-13	D.R.	French	D’accord	I agree
30	2024-12-13	H.G.	French	Je suis en accord	I agree
31	2024-12-13	R.G.	French	Bonjour Merci pour le suivi en espérant que la demande d'approbation sera acceptée.	Hello Thank you for the follow-up Hopefully the request for approval will be accepted.

THIS IS SCHEDULE "C"
TO THE AFFIDAVIT OF PHILIPPE H. TRUDEL

CHART OF OUTSTANDING OBJECTIONS FROM POTENTIAL *BLAIS* CLASS MEMBERS

SWORN BEFORE ME ON THIS 12TH DAY OF JANUARY 2025

Commission of Oaths for Quebec

Chart of all outstanding objections from Potential Blais Class Members

Schedule "C"

#	Date of Email	Initials	Language of the opposition	Please briefly explain the reasons for your objection to the motion to approve the Quebec Class Counsel Fee	Translation from French to English
1	2025-01-03	D.R.	French	Bonjour Mme, M,. Concernant L'opposition Je trouve exagérer les honoraires des Avocats de 30% pour un total de 906.180,000 Millions et qui plus est plus taxes??? J'espère ne pas être seul à défendre cette opposition.	Hello, Mrs., Mr., With regard to the opposition, I find the lawyers' fees exaggerated by 30% for a total of $906,180,000 million and what's more plus taxes??? I hope I'm not alone in defending this opposition.
2	2024-12-28	L.E.	French	ce sont les avocats qui ont pris l'initiative de faire cette requête. Pourquoi enlever l'argent qui appartient aux personnes victime de cancer et toutes sorte de maladie relier au tabagiste. Mon conjoint est décédé en mai 2024 après une longue bataille de 14 ans avec le cancer, il ne voulait pas mourir mais c'est nous les victimes là dedans et non les avocats et c'est nous qui sont avec les morts jusqu'à leur dernier souffle .C'est pas les avocats qui souffre de la perte de leur conjoint ou conjointe. C'est nous les survivants que nous souffrons du départ de l'être aimé. Moi sa m'en rage de voir qui font ça pour récolter de l'argent sur le dos des mourants et de ceux qui sont décédé.	The lawyers are the one who took the initiative to make this request. Why take away money that belongs to people who are victims of cancer and all kinds of illnesses related to smoking. My spouse died in May 2024 after a long 14-year battle with cancer, he didn't want to die but we are the victims in this and not the lawyers. We are the ones who are with the dead until their last breath. It is not the lawyers who suffer from the loss of their spouse. It is we, the survivors, who suffer from the loss of our loved ones. It infuriates me to see people doing this to make money on the backs of the dying and those who have died.
3	2024-12-27	M.V.	French	J'ai lu dans un precedent document que 175000 heures avaient necessaires pour cette action. Si on ajoute un 25000 heures pour la distribution des montants, on en vient a une remuneration de 4500 $/hre. (900 MM$ /200000 hre) Je fais pleinement confiance aux juges pour leur decision en comparant leur salaire horaire a la demande de remuneration en tenant compte de tous les arguments soumis par tous les bureaux d'avocats. Je fais confiance aux bureaux d'avocats que ma presente demande n'aura aucun impact sur l"analyse de mon dossier.	I read in a previous document that 175,000 hours were required for this action. If we add 25,000 hours for the distribution of the amounts, we come to a fee of $4,500/hour ($900 million / 200,000 hours). I have full confidence in the judges to make their decision by comparing their hourly wage with the fees requested, taking into account all the arguments submitted by all the law firms. I trust the law firms that my present request will have no impact on the analysis of my file.
4	2024-12-17	R.M.	French	Je suis à préparer un argumentaire s'opposant au montant demandé comme honoraires. Avant de le transmettre, je souhaiterais parler avec un avocat du recours.	I am preparing an argument opposing the amount requested as fees. Before submitting it, I would like to speak with a lawyer about the action.
5	2024-12-24	R.L.	French	Je suis d'accord pour les honoraires mais ne doivent pas etre pris dans le fond de 4 119. Ce qui contriburait considerablement les sommes qui doivent etre versees	I agree with the [requested] fees but they should not be taken from the funds of 4.119 This would contribute considerably to the sums to be paid.
6	2024-12-15	S.R.	French	J'ai eu une lobectomie en 2008 en plus de 16 Traitement de chimiothérapie. Une réhabilitation depuis plus de six mois. J'estime avoir assez souffert des conséquences de l'usage tu tabac après avoir développé une véritable addiction à la nicotine en pensant que c'était sans réelles implications pour ma santé. Je ne devrais pas avoir à payer les honoraires par dessus le marché. Le montant initial entendu était de 180 000$, il a été ensuite réduit à 100 000 $, et maintenant je devrais donner près de 25 000 $ en frais de d'avocat, ce qui est totalement inacceptable. Je vais vivre avec une épée de Démoclès sur la tête pour le restant de ma vie, par la firme d'avocats.	I had a lobectomy in 2008 in addition to 16 chemotherapy treatments. Rehab for over six months. I feel I have suffered enough from the consequences of smoking after developing a full-blown nicotine addiction thinking it had no real implications for my health. I should not have to pay the fees on top of that. The initial amount agreed upon was $180,000, it was later reduced to $100,000, and now I have to pay nearly $25,000 in attorney fees, which is totally unacceptable. I'll be living with a sword of Damocles hanging over my head for the rest of my life, courtesy of the law firm.

Certification

Document translated: 2025-01-09 - Dandavino - Final

I, the undersigned, G. Andrea Winterhalter, Certified Translator, (membership no. 7729) certify that the translation into English of the above document contains the same information and, in all material respects, has the same semantic meaning and expressive value as the source text.

The translation was completed in accordance with the *Règles de pratique professionnelle de l'Ordre des traducteurs, terminologues et interprètes agréés du Québec (OTTIAQ)*. Under those rules, the certified translator is required to comply with OTTIAQ's code of ethics and to follow a rigorous process when completing and revising the translation to provide reasonable assurance that the translation is an appropriate equivalent to the source text.

This certification is valid provided that no changes are made to the translation without my prior approval.

Client's responsibility regarding the translation process

The client is responsible for drafting the source text and ensuring the accuracy of its content.

The client must ensure that the certified translator has access to relevant, up-to-date and reliable resource materials, as well as contact persons who could provide any additional information required.

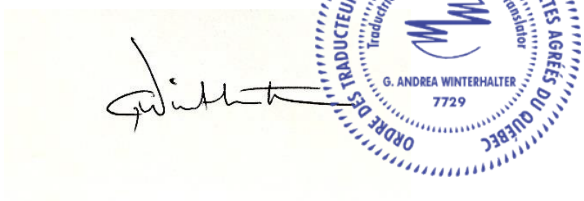
The client is also responsible for ensuring that the certified translator is provided the time and conditions necessary to perform the translation in accordance with professional standards and to certify its accuracy.

Certified translator's responsibility regarding the translation

The certified translator is responsible for analyzing the information and message of the source text and transferring them into the translated document in a way that ensures the semantic and expressive equivalence of the two versions. The translator is not responsible for verifying the information contained in the source text.

Professional translation involves using procedures that ensure that the information contained in the translated document has the same content and meaning as in the source text. The certified translator is free to choose what procedures to use, particularly those that ensure that the translated text expresses the same meaning and is adapted for the appropriate target audience.

Certification signed and sealed in Saint-Lazare on the 10th day of January, 2025.



Court File Nos. 19-CV-615862-00CL
19-CV-616077-00CL
19-CV-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**
Applicants

SWORN STATEMENT OF ANDRÉ-H. DANDAVINO
(January 9, 2025)

I, the undersigned, André-H. Dandavino, of the city of Saint-Jean-sur-Richelieu, in the province of Quebec, solemnly declare the following:

1. I am a family physician, coroner and Chair of the Conseil québécois sur le tabac et les santé [Quebec Council on Tobacco and Health] (the "**CQTS**"). I am also the President of the Association des coroners du Québec [Quebec Association of Coroners] and member of the Steering Committee of the Université Laval's Cerebral Palsy Research Chair as a representative of the Association de paralysie cérébrale du Québec [Quebec Cerebral Palsy Association].

2. The CQTS is a non-profit organization whose mission since 1976 has been to make Quebec tobacco free.

3. I joined the CQTS as a director on June 5, 1997, and have been Chair of the CQTS Board of Directors since June 15, 2011. My current role is to ensure the sound

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governance of the organization by steering the work of the Board of Directors to achieve organizational compliance and manage resources transparently. As Chair of the Board of Directors, I also work with other members and executive leadership, engaging in strategic planning and establishing the organization's overarching priorities.

4. This affidavit was prepared in support of the *Motion for the Approval of the Quebec Class Counsel Fee* submitted to the Court by our lawyers, Trudel Johnston & Lespérance, De Grandpré Chait, Kugler Kandestin and Fishman Flanz Meland Paquin (the "**Motion**").

5. I have personal knowledge of the matters to which I depose herein. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

6. This affidavit should be read in conjunction with the other sworn statements made in support of the Motion.

7. In support of the Motion, the following sections of this affidavit provide detailed information on the following topics:

a. The CQTS and its mandate;

b. The role of the CQTS in the class actions;

c. The risks and challenges faced by the CQTS;

d. The impact and significance of the class action and of the Plans;

e. The lawyers' professional fees.

A. The CQTS and its Mandate

8. The CQTS has been involved in the fight against tobacco since 1976. Initially, the CQTS was simply a group of individuals united by their desire to tackle the smoking crisis. They had no premises or budget to speak of, but were armed with a determination to

affect change that has not wavered since. The organization, backed by a solid team of communications facilitators and smoking prevention and cessation professionals, is now recognized by governments and its partners as a leader in the fight against smoking.

9. The CQTS is a bold instigator of change. As reflected by the organization's many initiatives, the fight against tobacco takes many forms. At the CQTS, efforts include helping people to quit nicotine, preventing the use of tobacco and vaping products in schools and communities, and raising awareness about the dangers of smoking.

10. Ongoing CQTS projects are outlined below:

a. The I QUIT NOW online help tool: An online platform to support and accompany people who want to quit smoking or vaping;

b. LIBAIR: An app for 12- to 17-year-olds who want to quit vaping;

c. LIBAIR GROUPS: Support groups for 12- to 17-year-olds who want to quit vaping;

d. Plan génération sans fumée [Plan for a Smoke-Free Generation]: Tailored guidance for high schools on how to implement prevention activities and create a school environment that promotes a smoking- and vaping-free lifestyle;

e. Turnkey activities: Turnkey tools to help schools and community groups implement prevention activities;

f. Training for professionals: Theme-based webinars and podcasts to educate school staff and community workers;

g. EPAV media: Online vaping information and prevention platform and online communication campaign;

h. Parlons-en maintenant [Talk About It Now]: Vaping prevention campaign geared toward parents;Alliés sans fumée [Smoke-Free Allies] (in partnership

with M361): Tailored guidance for manufacturing companies on how to implement cessation activities and create a work environment that promotes a smoking- and vaping- free lifestyle;

i. Brise l'illusion [Break the Illusion] (in partnership with the Réseau du sport étudiant du Québec): A vaping prevention media campaign geared toward young athletes;

j. Week for a Tobacco-Free Quebec: A major advertising and media campaign to raise awareness about the dangers of tobacco;

k. Tobacco-Free Quebec online portal: A portal to information on the fight against tobacco and vaping in Quebec.

11. The CQTS provides documentation and practical tools for both professionals and parents looking to discuss these issues with their children. Those continued efforts, along with a commitment to continuous learning, have cemented the organization's credibility. The CQTS uses an approach that drives engagement to support the health and well-being of the entire population.

12. In addition, the CQTS strives to maintain a sense of urgency among the public and political authorities, encouraging concerted and determined action against the tobacco industry. The CQTS regularly publicly campaigns for stricter regulation of the tobacco and vaping industry. For example, the organization recently contributed to the effort to ban flavours in vaping products.

13. The CQTS frequently participates in media events to comment on tobacco- and vaping-related news. Its outreach efforts aim to educate the public about the dangers of those products and share information on consumer trends.

14. The CQTS is also a representative in the two class actions against JTI-MacDonald Corp. ("**JTIM**"), Imperial Tobacco Canada Ltd. ("**Imperial**" or "**ITL**") and Rothmans, Benson & Hedges Inc. ("**RBH**") (the "**Tobacco Companies**").

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15. I have personally supported the executive leadership of the CQTS in this class action for nearly 15 years. I participated in major decisions regarding the case in collaboration with our lawyers all through that period. Many other key CQTS representatives have also been involved in the class action over the years, including:

a. Dr. Marcel Boulanger, a pioneer in the fight against smoking in Quebec and the first Chair of the Board of Directors of the CQTS, who remained in office until 2010;

b. Mario Bujold, the first Executive Director of the CQTS, who served from 1996 to 2017;

c. Marc Drolet, Executive Director of the CQTS, who served from 2017 to 2019;

d. Sylvie Poissant, Interim Executive Director of the CQTS, who served in 2019;

e. Annie Papageorgiou, Executive Director of the CQTS, who served from 2019 to 2024.

B. The Role of the CQTS in the Class Actions

16. In this section, I describe the nature, extent and complexity of the work done by the CQTS and its representatives on the class action between 1997 and today.

17. Minutes of the meetings of the CQTS Board of Directors and Executive Committee were reviewed to supplement these sections. Those documents are available at the request of the Court.

Initiator Prior to the Filing of the Application for Authorization

18. In 1997, inspired by another person's suggestion to sue the Tobacco Companies, Mr. Bujold contacted the law firm Lauzon Bélanger, which specialized in class actions and environmental law, to explore the feasibility of such an initiative. During a meeting held on July 15, 1998, the CQTS officially decided to take the

appropriate steps to act as the applicant in a class action on behalf of tobacco victims.[1]

19. The members of the Board of Directors were asked to select the designated member for the class action. Ultimately, Dr. Andrée Gervais asked one of her patients, Mr. Jean-Yves Blais.

20. Mr. Blais, who suffered from lung cancer, was the perfect example of someone who, at a young age, at a time when he was not aware of the risks associated with smoking, found himself caught in the grip of nicotine addiction. Despite his desire to quit smoking, he never succeeded — a clear indication of the hold nicotine addiction has on people. At a meeting held on July 15, 1998, the Board of Directors resolved that the CQTS would name Jean-Yves Blais as the designated member for the purposes of the class action.[2]

21. On September 22, 1998, the Board of Directors resolved to move forward and file the application for authorization of the class action as a client of the law firm Lauzon Bélanger.[3]

22. The CQTS played a crucial role in the process from the beginning, helping the lawyers to prepare the application for authorization of the class action, which was filed in November 1998. Over the next 26 years, the CQTS regularly worked with our lawyers and actively participated in all stages of the class action.

[1] Minutes of the meeting of the CQTS Board of Directors held on July 15, 1998.
[2] Minutes of the meeting of the CQTS Board of Directors held on July 15, 1998.
[3] Minutes of the meeting of the CQTS Board of Directors held on September 22, 1998.

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Member Records

23. In its early days, the law firm Lauzon Bélanger did not have sufficient resources to manage members' records. The CQTS therefore volunteered to take on that responsibility itself. The number of members involved was limited at first, but it increased dramatically as critical milestones were reached.

24. From the outset, the Tobacco Companies pursued a strategy that involved obtaining the medical records of the designated member — and subsequently of other class members — in an attempt to individualize the issues in dispute. Members of the public also asked for help obtaining their medical records for a variety of reasons, including to find out whether they belonged to the class.

25. Managing those records came with many challenges. The CQTS had to develop expertise in document management and devote considerable internal resources to the effort. Given the sensitive nature of the personal and medical information involved, confidentiality was paramount.

26. In addition, the number of requests from members could be particularly high during critical times, such as after a press conference. Requests came through various channels, including by telephone, email and fax. Many members, however, came directly to the CQTS office, meaning that CQTS staff had to put in substantial hours, while offering undivided attention and kindness. That far exceeds the normal duties of a representative in a class action.

27. The CQTS was also in charge of keeping members informed of developments in the case and milestones reached by regularly sending communications.

28. The CQTS additionally developed the first member database and managed member records until 2008, when the law firm Trudel & Johnston (Trudel Johnston & Lespérance) took over the mandate and contracted it out to Raymond Chabot Grant Thornton (now Proactio, a division of Raymond Chabot) in 2020. The CQTS kept the

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physical records of members until 2020.

Public Relations

29. At every major stage of the legal process, the CQTS was careful to keep the public informed by issuing press releases and holding press conferences and media campaigns. Below is a list of several key moments when the CQTS undertook public relations efforts and held press conferences:

a. **November 19, 1998**: Announcement regarding the filing of the application for authorization of the class action;

b. **September 30, 2005:** Announcement regarding the filing of the originating application for a class action;

c. **February 22, 2005**: Announcement regarding the judgment authorizing the class action;

d. **June 1, 2015:** Announcement regarding the trial judgment;

e. **March 1, 2019:** Announcement regarding the judgment rendered by the Court of Appeal;

f. **March 8, 2019:** Announcement regarding the authorization of the Tobacco Companies' applications under the CCAA;

g. **October 18, 2024:** Announcement regarding the Plans of Arrangement and the impact on members.

30. In addition to those key moments, numerous official statements were issued to the media between 1998 and 2012 regarding the Tobacco Companies' multiple preliminary exceptions and their many appeals before the Court of Appeal, long before the trial began.

31. Those media events were always a great success, attracting all major media outlets and generating hundreds of reports in the media over the years. In addition to

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helping inform class members of developments in the case, media coverage always resulted in the enrollment of new members.

32. Meanwhile, the CQTS remained available at all times to answer questions from journalists throughout the proceedings, a testament to its transparency and commitment.

33. During the period that the Tobacco Companies were under CCAA protection, interactions with the media were much more limited, because the negotiations were confidential. The CQTS nonetheless regularly answered questions from journalists, within the limits imposed by the Court to ensure that the process under the CCAA ran smoothly.

C. Risks and Challenges Faced by the CQTS

34. The CQTS and its lawyers often felt that they played the role of “David” against the “Goliath” that the tobacco industry - an industry with colossal resources - represents. For the CQTS’s Board of Directors and its executive leadership, this case has been a constant backdrop over the past 26 years. The inherent complexity of the case, the power of the industry that the CQTS was fighting, the constant commitment to defend the victims and the critical importance of the case all placed a tremendous burden on leadership.

35. The case became even more complex during the proceedings before the CCAA Court. At that time, the debates and representations were transferred to Ontario and all negotiations were conducted in English, under stringent confidentiality rules.

36. Keeping information confidential was a major challenge throughout the process. Doing so not only involved protecting the members’ records, but also managing sensitive information by distinguishing between what could be shared and what needed to be kept confidential. Even before the confidentiality order under the CCAA, we had to be very careful to avoid sharing privileged information with the media or class members, while still keeping them as informed as possible of developments in the case.

37. During the years when the Tobacco Companies were under the CCAA process,

the CQTS took a particularly proactive approach to maintaining a sense of urgency in order to expedite the compensation process for the victims. Preventing the interests of victims from being overshadowed by legal complexities and creditor pressures required constant vigilance. Despite the adversity, our lawyers never failed in their commitment to achieve those goals.

38. While our lawyers repeatedly insisted on the fact that the length of the CCAA proceedings was having a devastating impact on class members, the uncertainty around a possible resolution became increasingly challenging to deal with for our organization. We are deeply relieved that this lengthy process is finally coming to an end.

D. The Impact and Significance of the Class Actions and of the Plans

39. In this section, I describe the outcome of the case and the time, resources and effort we put into it for class members and the public.

40. First, it must be noted that the Quebec Class Counsel team has achieved something unprecedented. When the class action was filed in 1998, no individual smoker had ever been successful against a tobacco company anywhere in the world. Thanks to the efforts of the CQTS and their lawyers, tens of thousands of class members will share billions of dollars in compensation, if the Plans are approved. Nowhere else in the world have the victims of the tobacco industry received direct compensation as a class.

41. If the Plans are approved, the Tobacco Companies will pay their creditors $32.5 billion.

42. This amount includes $4.119 billion to directly compensate class members (as well as their successions and the successions of their successions, as the case may be).

43. The Plans will also benefit smokers who are not directly compensated by the Quebec Administration Plan or the Pan-Canadian Claimant Compensation Plan, as they include the creation of a billion-dollar public interest foundation to fund research, initiatives and programs aimed at improving outcomes for people with smoking-related illnesses.

44. This is not only a win for Quebec class members. The fact that the Quebec Class Counsel won against the Tobacco Companies is what triggered the entirety of the CCAA Proceedings, which will result in payments totaling $28.25 billion to provincial and territorial governments and other victims across Canada. The CQTS expects that the Quebec government will use a significant portion of the funds it will receive to bolster its programs to reduce and prevent smoking and nicotine addiction, as many other provinces have done.

45. With regard to other individual victims across Canada, i.e., the Pan-Canadian Claimants, tens of thousands of persons will receive significant amounts, for a total of $2.5 billion, thanks to the success of Quebec lawyers.

46. The dollar amounts allocated to the members of the *Blais/CQTS* class action under the Plans were estimated with the goal that the victims would receive 100% of the capital amount awarded by the Superior Court of Quebec judgment, as shown below:

	For victims of tobacco who started smoking before January 1, 1976	For victims of tobacco who started smoking on or after January 1, 1976
Lung cancer	Up to $100,000	Up to $80,000
Throat cancer	Up to $100,000	Up to $80,000
Emphysema or COPD (GOLD Grade 3 or 4)	Up to $30,000	Up to $24,000

47. The amounts were determined based on a statistical estimate of the number of people who would be entitled to make a claim, using the best data available to Quebec Class Counsel at the time of the negotiations. Should the amounts provided be insufficient to pay the maximum compensation amounts to individuals having made a valid claim, compensation will be prorated.

48. The amounts obtained for class members are significant, both for the class and for

each individual class member. For many of them, the compensation they will receive from this case will be the largest sum they will ever receive in their lifetimes.

49. Considering that all the provinces and territories have claims totaling more than $1 trillion, the lawyers for the CQTS consider that the $4.25 billion was the maximum amount that the members could have collectively been allocated.

50. In addition, the claims process for members was considerably better in several respects than what would have otherwise been possible following the decision of the Court of Appeal.

51. The Quebec Administration Plan will govern the claims process and will be approved by the Court. Thereafter, the Superior Court of Quebec and the Superior Court of Ontario will have joint jurisdiction over the supervision and implementation of the claims process.

52. The Tobacco Companies will not be involved in the claims process, which has been designed to be simple, efficient and non-adversarial and to avoid the need for members to testify or hire their own lawyers. The process will take only 12 months, and the lawyers have, at their own expense, retained the services of Proactio to assist class members with their claims. The result is an efficient process that will ensure meaningful access to justice for each eligible claimant, without overwhelming the justice system.

53. The Quebec Administration Plan also allows for compensation to be paid to heirs, as well as to heirs of heirs (successions of successions), which would not have been possible otherwise than under the Plans, helping to mitigate the tragic consequences of the extremely lengthy proceedings in those cases. For many deceased members, the compensation that their heirs will receive will constitute a large part or even all of what they will bequeath.

54. The claims process for Canadian victims who are not members of the *Blais/CQTS* and *Létourneau* class actions covers the same illnesses, but over a different time period, and awards different compensation amounts, as shown in the following table:

	For victims of tobacco who started smoking before January 1, 1976 (60% of amounts awarded to Quebec Class Action Plaintiffs "QCAPs")	For victims of tobacco who started smoking on or after January 1, 1976 (60% of amounts awarded to QCAPs)
Lung cancer	Up to $60,000	Up to $48,000
Throat cancer	Up to $60,000	Up to $48,000
Emphysema or COPD (GOLD Grade 3 or 4)	Up to $18,000	Up to $14,400

55. The outcome of the class action has profound moral and social significance for the class members, their families and heirs, as well as for the general public in Quebec and Canada. In addition to the jurisprudence created by the sums awarded, the judgments rendered by the Quebec courts tell the truth about what the tobacco industry has done to class members, their families and society in general in the name of profit. The fact that it was even possible to bring those cases before the courts and that they were won is a huge success for the Quebec and Canadian justice systems, for our legal institutions, and for the rule of law in Canada. It shows that no company is too big or too powerful to be held accountable by our courts.

56. The response of the public, civil society groups and class action members to the Plans has been overwhelmingly positive in recent months.

57. To inform class members of their rights and keep them informed of the next steps, the lawyers retained the services of Public stratégies et conseils, a communications firm that had worked with the CQTS in the past.

58. When the Plans were first publicly announced, on October 18, 2024, the CQTS and its lawyers held a press conference during which CQTS spokesperson Annie

Papageorgiou celebrated the 26 years of fighting for justice, the 26 years of relentless efforts by a dozen lawyers who never gave up, and the 26 years of struggle and suffering endured by our victims.[4] She was astounded that such a story was finally coming to an end. She called it "historic" that victims would finally be compensated by the industry, adding that such a result had never before been seen anywhere in the world, and that she hoped it would set more things in motion.[5]

59. Dominique Claveau, Interim Executive Director of the CQTS, also commented, saying that for more than 50 years, Imperial Tobacco, Rothmans Benson & Hedges and JT MacDonald had consistently lied, hidden the truth and minimized and trivialized the dangers of tobacco. She added that after more than 25 years of legal proceedings, the tobacco companies would finally have to compensate the many victims of tobacco in Quebec and Canada.[6]

60. Public strategies et conseils prepared a detailed summary of the media's coverage of the Plans after the first announcement was made on October 18, 2024, which can be found in **Schedule "A"** of this statement. I would like to highlight some of the reactions contained in those articles and interviews for the Court.

61. Martin Blais, son of the designated member Jean-Yves Blais, described the announcement of the Plans as a moment of great relief. He explained to the media that it would not bring his father back, but that it did restore some kind of justice and was a balm on their wounds. He added that it was like winning their own Stanley Cup.[7] His mother, Mr. Blais' widow, said that she had certainly been discouraged at times, but that she had

[4] Règlement avec les géants du tabac : une victoire pour les familles, Radio Canada, October 18, 2024.
[5] Géants du tabac: 32,5 milliards aux victimes de la cigarette et aux provinces, TVA Nouvelles, October 18, 2024.
[6] Les victimes du tabac se partageront 6,75 milliards, les provinces 24,8 milliards, *La Tribune* (Presse canadienne), October 18, 2024.
[7] Règlement avec les géants du tabac : une victoire pour les familles, Radio Canada, October 18, 2024.

always said that she would see things through, that her husband had suffered tremendously, and that she wished he were still here.[8]

62. Raymond F. Wagner, one of the lawyers representing Canadian victims outside of Quebec, called the Plans "historic," adding that but for the Quebec legal team's efforts, victims outside the province would never have been entitled to compensation.[9]

63. Jessica Buckley, President and CEO of the Lung Health Foundation, called the outcome "a meaningful first step in recognizing decades of harm," even though she believes that financial compensation can never fully make up for the harm caused by the tobacco industry.[10]

64. Even groups that had criticized the Plans or felt that they did not go far enough to end smoking in Canada had very positive responses to the outcome for class members. For example, the groups Smoking & Health, Physicians for a Smoke-Free Canada and the Quebec Coalition for Tobacco Control—who were very critical of the Plans—described the compensation for victims as "the only positive component of this deal."[11]

65. Academics have also pointed out that the outcome will have positive impacts on consumers and public health in general. For example, Jacob Shelley, co-director of the Health Ethics, Law & Policy Lab at Western University in London, Ontario, said that the case has far-reaching implications for industries other than the tobacco industry that make food or beverages that can cause harm.[12]

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[8] Les victimes du tabac se partageront 6,75 milliards $, les provinces 24,8 milliards $, *L'Actualité*, October 18, 2024.
[9] 'I wish my father was here': Tobacco victims hail bittersweet $32.5-billion deal, *Times Colonist* (Canadian Press), October 18, 2024.
[10] "A meaningful first step in acknowledging decades of harm": Lung Health Foundation Applauds Landmark $ 32.5 Billion Legal Settlement Against Tobacco Companies, October 18, 2024.
[11] Tobacco firms to pay $23.6bn in proposed Canada settlement, *BBC News*, October 18, 2024.
[12] Les entreprises de tabac seraient peu susceptibles de changer leur modèle d'affaires, *L'Hebd* (Presse canadienne), October 18, 2024.

E. Lawyers' Professional Fees

66. On October 30, 1998, the CQTS and the lawyers representing the members of the *CQTS/Blais* class action agreed that the lawyers would only be remunerated should they be successful, and in that event, that they would receive 20% of the amounts collected for the benefit of the members, plus applicable taxes. The percentage was less than the professional fees typically charged in class actions at the time. A copy of the agreement is filed as **Schedule "B"** to this affidavit.

67. The agreement provided that from the sums or benefits collected or savings realized by the lawyers for the CQTS, the designated member or class members, as the case may be, extrajudicial legal fees should be withheld in an amount equal to twenty percent (20%) of the sums or benefits collected or savings realized in connection with the litigation, from any source whatsoever, whether by transaction or following a judgment

68. This percentage also included fees and disbursements, as the agreement stipulated that neither the CQTS nor the class members would have to pay any additional professional fees, expenses or disbursements other than those stipulated in the paragraph setting the fees at 20%.

69. After the judgment authorizing the class action in 2005, the lawyers in the *CQTS/Blais* and *Létourneau* class actions worked more closely and ultimately reached a formal agreement regarding both cases, with the result that the four law firms (Trudel & Johnston, Lauzon Bélanger Lespérance, De Grandpré Chait, and Kugler Kandestin) ended up jointly representing the CQTS and the members in both class actions. Subsequently, Trudel & Johnston acquired the entirety of Lauzon Bélanger Lespérance's cases to form Trudel Johnston & Lespérance.

70. Further to the judgment rendered by Justice Riordan in 2015 ordering the Tobacco

Companies to pay up to $13.4 billion, it became clear that the Tobacco Companies might well resort to insolvency proceedings. As such, there was a risk that even if the lawyers were successful on the merits, there would be no assets left with which to compensate the class members. It became obvious that if the Tobacco Companies decided to go that route, it would be extremely costly and complex to continue to represent the class members, and the result would be years of additional time to achieve an outcome.

71. On March 16, 2017, the CQTS and the lawyers representing the members agreed to amend the original fee agreement (Schedule "B") to increase the above-mentioned 20% fee.

72. The amendment was intended in particular to account for the complexity and slow pace of the case, as well as the possibility that the lawyers representing the members would have to hire firms specializing in insolvency, given the real possibility that the Tobacco Companies would file proceedings under the CCAA. A copy of the amended agreement is filed as **Schedule "C"** to this affidavit.

73. The amendment specifically stipulates:

> [Translation] In addition to the percentage of twenty percent (20%) mentioned in paragraph 1, the CQTS agrees for additional deductions of a maximum of two percent (2%) to be retained from the sums or benefits received or the savings realized in connection with this class action, from any source whatsoever, through a settlement or further to a judgment, solely for the services of firms specializing in bankruptcy, insolvency and arrangements under the CCAA;

74. I believe it appropriate to quote the preamble to the amendment dated March 16, 2017:

> [Translation] CONSIDERING the scope of the case to be handled by TJL and the defendants' chosen strategy of continually delaying the proceedings and rendering them more cumbersome and more complex;
>
> CONSIDERING that the defendants have clearly expressed their intention to institute legal proceedings in order to suspend the execution of any judgment that may be rendered against them, in particular proceedings under the

Bankruptcy and Insolvency Act (hereinafter referred to as the "BIA") or the *Companies' Creditors Arrangement Act* (hereinafter referred to as the "CCAA");

CONSIDERING that TJL believes it to be possible, even likely, that such proceedings will be brought before not only the Superior Court of Québec but also that of Ontario;

CONSIDERING that it is in the interest of the members that TJL retain the services of firms specializing in bankruptcy, insolvency and arrangements under the CCAA in Montréal and in Toronto to protect the rights of the members;

CONSIDERING the significant resources that TJL will have to immediately invest to counter any attempts by the defendants to suspend the effects of a favourable judgment;

CONSIDERING that there is good reason to amend the fee agreement;

The professional fees incurred to date and to be incurred by firms specializing in bankruptcy, insolvency and arrangements under the CCAA exceed $90 million, i.e., approximately 2.18% of the sum of $4.119 billion, as described in other sworn statements made in support of the Motion. $4.119 billion is the sum collected for the members of the *CQTS/Blais* class action as part of the Plans of Arrangement under the CCAA, in accordance with the current agreement (Schedule "B").

75. It is therefore the case that all of the additional 2% agreed to in 2017 will have been required in order to ensure that the members benefit from the assistance of firms specializing in bankruptcy and insolvency during the critical phase which began in 2019, when the Companies put themselves under CCAA protection

76. The CQTS therefore supports the Motion of the lawyers for the *CQTS/Blais* class action and consents, for the benefit of the class members, that the CCAA Court approve the fee agreement concluded in 1998 and amended in 2017.

77. In the 26 years of the class action, the CQTS and its directors never received any funding or benefit whatsoever to support their efforts at any stage in the process. CQTS

leadership, employees and directors willingly put in thousands of hours of work without any funding.

78. Ultimately, the 26-year battle waged by the CQTS and its lawyers against the tobacco industry is an extraordinary and unprecedented victory for the victims and their families. We see it as a significant step towards a tobacco-free world, and we hope it will serve as a model for activists and advocates around the world.

AND I HAVE SIGNED, ON JANUARY 9, 2025

Dr. André-H. Dandavino

Oath administered by myself through a technological means,
in Montréal on January 9, 2025

Commissioner for Oaths for Quebec

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LIST OF SCHEDULES

"A"	Detailed summary of the media's coverage of the Plans after the first announcement was made on October 18, 2024 (Public Strategies and Consulting)
"B"	Fee agreement, original version (1998) between the CQTS and its lawyers (Quebec Class Counsel) and translation thereof
"C"	Fee agreement, current version (2017) between the CQTS and its lawyers (Quebec Class Counsel) and translation thereof

LIST OF OTHER DOCUMENTS AVAILABLE

1.	Minutes of the meetings of the CQTS Board of Directors and Executive Committee in which the class actions were discussed

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Court File Nos. 19-CV-615862-00CL
19-CV-616077-00CL
19-CV-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**
Applicants

DÉCLARATION SOUS SERMENT DE ANDRÉ-H. DANDAVINO
(le 9 janvier 2025)

Je soussigné André-H. Dandavino, de la ville de Saint-Jean-sur-Richelieu, dans la province de Québec, déclare solennellement ce qui suit :

1. Je suis un médecin de famille, coroner et président du Conseil québécois sur le tabac et la santé (le « **CQTS** »). Je suis également le Président de l'Association des coroners du Québec et membre du comité directeur de la chaire de recherche en paralysie cérébrale de l'Université Laval à titre de représentant de l'Association de paralysie cérébrale du Québec.

2. Le CQTS est un organisme sans but lucratif qui depuis 1976 a pour mission un Québec sans tabac.

3. Je suis Président du conseil d'administration du CQTS depuis le 15 juin 2011. J'ai pris la présidence après avoir rejoint le CQTS à titre d'administrateur le 5 juin 1997. Mon rôle actuel est de m'assurer de la saine gouvernance de l'organisme en pilotant les travaux du conseil d'administration visant la conformité de l'organisation ainsi que la gestion transparente des ressources. De plus, comme président du conseil

d’administration, je collabore avec les autres membres et la direction générale à la planification stratégique et à la définition des grandes orientations de l’organisation.

4. Cette déclaration a été préparée à l’appui de la demande pour approbation des honoraires (*Motion for the Approval of the Quebec Class Counsel Fee*) soumise à la Cour par nos avocats, Trudel Johnston & Lespérance, De Grandpré Chait, Kugler Kandestin et Fishman Flanz Meland Paquin (la « **Demande** »).

5. J'ai une connaissance personnelle des sujets abordés dans la présente déclaration. Dans les cas où je me suis fié à d'autres sources d'information, j'ai identifié les sources et je les crois véridiques.

6. Cette déclaration sous serment devrait être lue conjointement avec les autres déclarations sous serment à l'appui de la Demande.

7. À l'appui de la Demande, les sections suivantes de la présente déclaration sous serment présentent des informations détaillées sur les thèmes suivants :

a. Le CQTS et son mandat;

b. Le rôle du CQTS dans les actions collectives;

c. Les risques et les défis rencontrés par le CQTS;

d. L’impact et l’importance de l’action collective et des Plans;

e. Les honoraires des avocats.

A. Le CQTS et son mandat

8. Le CQTS est engagé dans la lutte contre le tabac depuis 1976. D’abord composé d’un groupe de citoyens unis par la conviction d’agir sur la problématique du tabagisme, s’impliquant sans local, sans budget, mais armés d’une volonté de changement qui n’a jamais vacillé depuis, le CQTS est devenu un organisme qui peut compter sur une équipe solide de professionnels en prévention, cessation tabagique et communication lui

permettant de s’imposer comme un leader de la lutte auprès de ses partenaires et des gouvernements.

9. Le CQTS est un audacieux instigateur de changements. Comme le reflète sa multitude de projets, la lutte contre le tabagisme revêt différentes formes. Au CQTS, les efforts englobent la cessation nicotinique, la prévention de la consommation de produits de tabac et de vapotage en milieu scolaire et communautaire ainsi que la sensibilisation aux méfaits du tabagisme.

10. Les projets présentement actifs au CQTS sont décrits sommairement ici :

a. L’aide en ligne J’ARRÊTE : Plateforme virtuelle de soutien et d’accompagnement pour les personnes qui veulent cesser de fumer ou de vapoter;

b. LIBAIR : Application pour les jeunes de 12-17 ans qui veulent cesser de vapoter;

c. LES GROUPES LIBAIR : Groupes de soutien pour les jeunes de 12-17 ans qui veulent cesser de vapoter;

d. Plan génération sans fumée : Accompagnement adapté pour les écoles secondaires visant à mettre en place des activités de prévention et un environnement scolaire favorisant une vie sans tabac ni vapotage;

e. Activités clé en main : Outils clé en main pour guider le milieu scolaire et communautaire dans la réalisation d’activité de prévention;

f. Formation des professionnels : Webinaires thématiques et baladodiffusion pour former les intervenants du réseau scolaire et communautaire;

g. EPAV médias : Plateforme virtuelle d’information et de prévention du vapotage avec campagne de communication virtuelle;

h. Parlons-en maintenant : Campagne de prévention du vapotage auprès des parents;

i. Alliés sans fumée (en partenariat avec M361) : Accompagnement adapté pour les entreprises manufacturières visant à mettre en place des activités de cessation et un environnement de travail favorisant une vie sans tabac ni vapotage;

j. Brise l'illusion (en partenariat avec le Réseau du sport étudiant du Québec) : Campagne médiatique de prévention du vapotage pour les jeunes sportifs;

k. Semaine pour un Québec sans tabac : Campagne publicitaire et médiatique de grande envergure visant à sensibiliser sur les méfaits du tabac;

l. Portail Québec sans tabac : Portail d'information sur la lutte contre le tabac et contre le vapotage au Québec.

11. Le CQTS propose des outils théoriques et pratiques destinés aux intervenants, ainsi qu'aux parents qui souhaitent parler de ces problématiques avec leurs enfants. Ce sont ces efforts constants, combinés à une volonté d'en apprendre toujours davantage, qui ont cimenté sa crédibilité. Son approche, axée sur la mobilisation, vise le bien-être et la santé de l'ensemble de la population.

12. De plus, le CQTS s'attache à maintenir un sentiment d'urgence auprès du public et des instances politiques, incitant ainsi à une action concertée et déterminée contre l'industrie du tabac. Le CQTS prend position régulièrement dans l'espace public afin de réclamer un encadrement plus strict de l'industrie du tabac et du vapotage. À titre d'exemple, l'organisation s'est récemment mobilisée dans le dossier de l'interdiction des saveurs dans les produits de vapotage.

13. Ainsi, le CQTS participe fréquemment à des activités médiatiques pour commenter l'actualité liée au tabac et au vapotage. Ces interventions visent à informer le public sur les méfaits de ces produits et à partager les tendances de consommation.

14. Le CQTS est également un des représentants dans les deux actions collectives contre JTI-MacDonald Corp (« **JTIM** »), Imperial Tobacco Canada ltée (« **Imperial** » ou « **ITL** ») et Rothmans, Benson & Hedges Inc (« **RBH** ») (les « **compagnies de tabac** »).

15. J'ai personnellement accompagné la direction générale du CQTS dans ce litige depuis près de 15 ans. J'ai participé aux décisions importantes en lien avec le dossier en collaboration avec nos avocats pendant toute cette période. Il y a aussi eu plusieurs autres représentants clés du CQTS dans le cadre de ce litige au fil des ans, incluant :

a. Le Dr Marcel Boulanger, pionnier de la lutte contre le tabagisme au Québec. Il a été le premier président du conseil d'administration du CQTS et l'est demeuré jusqu'en 2010;

b. Mario Bujold, le premier directeur général du CQTS. Il a été en poste de 1996 à 2017;

c. Marc Drolet, directeur général du CQTS de 2017 à 2019;

d. Sylvie Poissant, directrice générale par intérim du CQTS en 2019;

e. Annie Papageorgiou, directrice générale du CQTS de 2019 à 2024.

B. Le rôle du CQTS dans les actions collectives

16. Dans cette section, je décris la nature, le volume et la complexité du travail effectué dans le cadre des actions collectives par le CQTS et ses représentants entre les années 1997 et aujourd'hui.

17. Les procès-verbaux des réunions du conseil d'administration et du conseil exécutif du CQTS ont été consultés afin de compléter ces sections. Ces documents sont disponibles à la demande de la Cour.

Rôle d'initiateur : Avant le dépôt de la demande d'autorisation

18. En 1997, inspiré par l'idée d'un citoyen de poursuivre les compagnies de tabac, Monsieur Bujold a approché le cabinet d'avocats Lauzon Bélanger, spécialisé en actions

collectives et en droit de l'environnement, pour explorer la faisabilité d'une telle démarche. C'est lors de la réunion du 15 juillet 1998 que le CQTS prend officiellement la décision d'entreprendre les démarches appropriées pour agir comme requérant d'une action collective au nom des victimes du tabac[1].

19. Afin d'identifier un membre désigné de l'action collective, les membres du conseil d'administration ont été sollicités. C'est finalement le Dr Andrée Gervais qui a approché l'un de ses patients, Monsieur Jean-Yves Blais.

20. Monsieur Blais, atteint d'un cancer des poumons, incarnait parfaitement la situation d'une personne piégée très jeune par la dépendance à la nicotine, à une époque où il n'était pas informé des risques associés au tabagisme. Malgré son désir d'arrêter de fumer, il n'y est jamais parvenu, illustrant ainsi l'emprise de cette dépendance. Le conseil d'administration a donc résolu lors de la réunion du 15 juillet 1998 que le CQTS nomme Jean-Yves Blais comme membre désigné pour les fins de l'action collective[2].

21. Le 22 septembre 1998, le conseil d'administration a résolu d'aller de l'avant et de déposer la demande d'autorisation de l'action collective en tant que client du cabinet Lauzon Bélanger[3].

22. Le CQTS a joué un rôle crucial dans cette démarche dès le début, accompagnant les avocats dans la préparation de la demande d'autorisation de l'action collective, qui a été déposée en novembre 1998. Au cours des 26 années qui ont suivi, le CQTS était en communication régulière avec nos avocats et a participé activement à toutes les étapes du litige.

Dossiers des membres

23. À ses débuts, le cabinet Lauzon Bélanger ne disposait pas des ressources nécessaires pour assurer la gestion des dossiers des membres. Le CQTS s'est donc proposé d'assumer cette responsabilité lui-même. Si le nombre de membres impliqués

[1] Procès-verbal de la réunion du conseil d'administration du CQTS du 15 juillet 1998.
[2] Procès-verbal de la réunion du conseil d'administration du CQTS du 15 juillet 1998.
[3] Procès-verbal de la réunion du conseil d'administration du CQTS du 22 septembre 1998.

était initialement restreint, il a rapidement connu une augmentation significative à mesure que des étapes cruciales étaient franchies.

24. Dès le départ, les compagnies de tabac ont adopté une stratégie visant à obtenir les dossiers médicaux du membre désigné — et éventuellement d'autres membres du groupe — afin de tenter d'individualiser les questions en litige. Les membres du public ont également demandé de l'aide pour obtenir leurs dossiers médicaux pour diverses raisons, notamment pour savoir s'ils appartenaient au groupe.

25. La gestion de ces dossiers s’accompagnait de nombreux défis. Il a fallu que le CQTS développe une expertise en matière de gestion documentaire et consacre des ressources internes considérables à cet effort. La confidentialité des informations constituait une exigence primordiale, compte tenu de la nature sensible des données personnelles et médicales.

26. Par ailleurs, le volume de demandes pouvait atteindre des niveaux particulièrement élevés lors de périodes critiques, notamment à la suite d’une conférence de presse. Les sollicitations parvenaient par divers canaux, tels que le téléphone, le courriel et le fax. Cependant, un nombre considérable de membres se présentaient directement au bureau du CQTS, nécessitant un investissement en temps conséquent ainsi qu’une approche empreinte de bienveillance et d’écoute attentive. Ce travail dépasse de loin les activités normales d'un représentant d'un groupe dans le cadre d'une action collective.

27. Le CQTS avait aussi la responsabilité de tenir les membres informés de l’évolution des procédures ainsi que des étapes charnières par l’envoi régulier de communications.

28. Le CQTS a également conçu la première base de données des membres et assuré la gestion de leurs dossiers jusqu’en 2008, date à laquelle le bureau d’avocats Trudel & Johnston (Trudel Johnston & Lespérance) a repris cette mission pour ensuite la sous-contracter à Raymond Chabot Grant Thornton (maintenant Proactio, une division de Raymond Chabot) en 2020. Le CQTS a conservé les dossiers physiques des membres jusqu’en 2020.

Relations publiques

29. À chaque étape majeure du processus judiciaire, le CQTS a pris soin de communiquer avec le public en publiant des communiqués de presse, en organisant des conférences de presse et en menant des tournées médiatiques. Ici sont listés plusieurs moments clés où le CQTS a déployé des efforts de relations publiques et a organisé des conférences de presse :

a. **19 novembre 1998** : Annonce en lien avec le dépôt de la demande d'autorisation de l'action collective;

b. **30 septembre 2005** : Annonce en lien avec le dépôt de la demande introductive d'instance de l'action collective;

c. **22 février 2005** : Annonce en lien avec le jugement d'autorisation;

d. **1er juin 2015** : Annonce en lien avec le jugement du procès;

e. **1er mars 2019** : Annonce en lien avec le jugement de la Cour d'appel;

f. **8 mars 2019** : Annonce en lien avec l'autorisation des demandes des compagnies de tabac en vertu de la *LACC*;

g. **18 octobre 2024** : Annonce en lien avec les Plans d'arrangement et l'impact sur les membres.

30. À ces moments clés s'ajoutent plusieurs communications médiatiques officielles entre 1998 et 2012 concernant les multiples moyens préliminaires des compagnies de tabac ainsi que plusieurs appels devant la Cour d'appel bien avant que le procès ait commencé.

31. Ces événements médiatiques ont toujours été un véritable succès, attirant la présence de tous les médias importants et générant des centaines de parutions dans les médias au cours des années. En plus d'informer les membres de l'action collective, ces retombées médiatiques nous ont toujours permis d'inscrire de nouveaux membres.

32. En parallèle, le CQTS est demeuré constamment disponible pour répondre aux questions des journalistes tout au long des procédures, témoignant de sa transparence et de son engagement.

33. Durant la période où les compagnies de tabac étaient sous la protection de la *LACC*, la confidentialité des négociations a fait en sorte que les interactions avec les médias étaient beaucoup plus limitées. Le CQTS avait tout de même répondu régulièrement à des questions des journalistes, dans les limites imposées par la Cour pour garantir le bon déroulement du processus en vertu de la *LACC*.

C. Les risques et les défis rencontrés par le CQTS

34. Le CQTS et ses avocats ont souvent eu l'impression d'incarner un « David » contre le « Goliath » que représente l'industrie du tabac, une industrie dotée de moyens colossaux. Pour le conseil d'administration du CQTS et sa direction générale, ce litige a toujours constitué une toile de fond omniprésente au cours des 26 dernières années. La complexité inhérente à ce dossier, la puissance de l'industrie contre laquelle le CQTS se battait, l'engagement constant à défendre les victimes, ainsi que l'importance cruciale de cette cause, ont engendré une charge considérable pour les dirigeants.

35. Cette complexité s'est accrue durant les procédures devant la Cour de la *LACC*. À ce moment, les débats et représentations ont été transférés en Ontario et toutes les négociations étaient menées en anglais dans le cadre d'une stricte confidentialité.

36. La confidentialité a représenté un défi majeur tout au long du processus. D'une part, il s'agissait de protéger les dossiers des membres, et d'autre part, de gérer les informations sensibles en veillant à distinguer celles qui pouvaient être transmises de celles qui devaient demeurer confidentielles. Même avant l'ordonnance de confidentialité prévue par la *LACC*, nous avons dû faire preuve de beaucoup de prudence pour éviter de communiquer des informations privilégiées aux médias ou aux membres du groupe, tout en souhaitant les informer au maximum de l'évolution du litige.

37. Pendant les années où les compagnies de tabac étaient sous le processus de la *LACC*, le CQTS a adopté une approche particulièrement proactive pour maintenir un

sentiment d'urgence afin d'accélérer le processus de dédommagement des victimes. Cela impliquait une vigilance constante pour ne pas laisser les intérêts des victimes s'effacer dans les complexités légales et dans les pressions des autres créanciers. Malgré l'adversité, nos avocats n'ont jamais failli à leur engagement dans la poursuite de ces objectifs.

38. Alors que nos avocats ont insisté à plusieurs reprises sur l'impact dévastateur des délais pour les membres du groupe dans le cadre du processus sous la *LACC*, l'incertitude quant à une résolution potentielle est néanmoins devenue de plus en plus difficile pour notre organisation. Nous sommes profondément soulagés que ce long processus arrive enfin à son terme.

D. L'impact et l'importance de l'action collective et des Plans

39. Dans cette section, je décris les résultats et l'importance du temps, des ressources et des efforts investis dans ce litige pour les membres du groupe et le public.

40. Premièrement, il faut reconnaître que les résultats obtenus par les avocats des membres du groupe du Québec sont sans précédent. Lorsque l'action collective a été déposée en 1998, aucun fumeur individuel n'avait jamais obtenu gain de cause contre une compagnie de tabac, où que ce soit dans le monde. Grâce aux efforts du CQTS et de leurs avocats, des dizaines de milliers de membres du groupe se partageront, si les Plans sont approuvés, des milliards de dollars d'indemnités. Par ailleurs, nulle part ailleurs dans le monde les victimes de l'industrie du tabac n'ont-elles reçu de compensation directe sur une base collective.

41. Si les Plans sont approuvés, les fabricants de tabac paieront 32,5 milliards de dollars à leurs créanciers.

42. Ce montant comprend 4,119 milliards de dollars destinés à indemniser directement les membres du groupe (ainsi que leurs successions et, si applicable, les successions de leurs successions).

43. De plus, les Plans profitent aux fumeurs qui ne sont pas directement indemnisés par le Plan d'administration du Québec ou le Plan d'indemnisation des demandeurs pancanadien, en créant une fondation d'intérêt public d'un milliard de dollars pour financer la recherche, les initiatives et les programmes axés sur l'amélioration des résultats pour les personnes atteintes des maladies liées au tabagisme.

44. Au-delà des résultats pour les membres du groupe du Québec, c'est la victoire des avocats des membres du groupe du Québec contre les compagnies de tabac qui a déclenché les procédures en vertu de la *LACC* dans leur ensemble. Cela se traduira par des paiements totalisant 28,25 milliards de dollars pour les gouvernements provinciaux et territoriaux et pour d'autres victimes à travers le Canada. Le CQTS s'attend à ce que le gouvernement du Québec utilise une partie significative des sommes qu'elle recevra, comme l'ont fait plusieurs autres provinces, afin d'appuyer et renforcer ses politiques de réduction et de prévention tabagique et de dépendance nicotinique.

45. En ce qui concerne les autres victimes individuelles à travers le Canada, les demandeurs pancanadiens, des dizaines de milliers de personnes recevront des montants importants, totalisant 2,5 milliards de dollars, grâce au succès obtenu par les avocats du Québec.

46. Les sommes que les Plans allouent aux membres de l'action collective *Blais/CQTS* ont été estimées avec l'objectif que les victimes reçoivent 100% du capital accordé par le jugement de la Cour supérieure du Québec, soit les montants suivants :

	Pour les victimes du tabac ayant commencé à fumer avant le 1er janvier 1976	Pour les victimes du tabac ayant commencé à fumer le ou après le 1er janvier 1976
Cancer du poumon	Jusqu'à 100 000 $	Jusqu'à 80 000 $
Cancer de la gorge	Jusqu'à 100 000 $	Jusqu'à 80 000 $

Emphysème ou MPOC (grades 3 ou 4 de GOLD)	Jusqu'à 30 000 $	Jusqu'à 24 000 $

47. Ces sommes ont été déterminées en fonction d'une prévision statistique quant au nombre de personnes qui pourront présenter une réclamation, sur la base des meilleures données dont disposaient les avocats du groupe au moment des négociations. Dans l'éventualité où les sommes prévues étaient insuffisantes pour payer le montant maximum des indemnités aux personnes ayant présenté une réclamation valide, les indemnités seront ajustées au *prorata*.

48. Les montants obtenus pour les membres du groupe sont significatifs, à la fois dans l'ensemble et pour chaque membre individuel du groupe. Pour de nombreux membres du groupe, l'indemnisation qu'ils recevront à la suite du présent litige représentera la somme la plus importante qu'ils recevront au cours de leur vie.

49. Considérant que l'ensemble des provinces et territoires ont des créances qui totalisent plus de 1000 milliards de dollars, les avocats du CQTS estiment que le montant de 4,25 milliards de dollars constituait la somme maximale que les membres pouvaient collectivement se voir octroyer.

50. En plus, la procédure de réclamation présente à plusieurs égards des améliorations considérables pour les membres par rapport à ce qui aurait été possible à la suite de la décision de la Cour d'appel.

51. Le Plan d'administration des actions collectives québécoises régira la procédure de réclamation et sera approuvé par la Cour. Par la suite, la Cour supérieure du Québec et la Cour supérieure de l'Ontario seront conjointement compétentes en ce qui concerne la supervision et la mise en œuvre de la procédure de réclamation.

52. Les compagnies de tabac ne seront pas impliquées dans le processus de réclamation, qui a été conçu pour être simple et efficace, non contradictoire et sans obligation pour les membres de témoigner ni d'engager des avocats. Le processus durera

seulement 12 mois et les avocats ont retenu les services de la firme Proactio à leurs frais pour aider les membres du groupe à faire leurs réclamations. Le résultat est un processus efficace qui garantira un accès significatif à la justice pour chaque demandeur éligible sans surcharger le système judiciaire.

53. Le Plan d'administration du Québec permet également d'accorder des indemnités aux héritiers, ainsi qu'aux héritiers des héritiers (successions des successions), ce qui n'aurait pas été possible autrement que dans le cadre des Plans, et qui contribue à atténuer les conséquences tragiques des délais extraordinairement longs qui ont caractérisé ces dossiers. Dans le cas de nombreux membres décédés, l'indemnisation que leurs héritiers recevront constituera une grande partie, voire la totalité de la succession.

54. La procédure de réclamation pour les victimes canadiennes qui ne sont pas membres des recours *Blais/CQTS* et *Létourneau* couvre les mêmes maladies, mais pour une période différente et accorde des indemnités différentes, représentées dans le tableau suivant :

	Pour les victimes du tabac ayant commencé à fumer avant le 1er janvier 1976 (60% des montants accordés aux membres QCAPs)	Pour les victimes du tabac ayant commencé à fumer le ou après le 1er janvier 1976 (60% des montants accordés aux membres QCAPs)
Cancer du poumon	Jusqu'à 60 000 $	Jusqu'à 48 000 $
Cancer de la gorge	Jusqu'à 60 000 $	Jusqu'à 48 000 $
Emphysème ou MPOC (grades 3 ou 4 de GOLD)	Jusqu'à 18 000 $	Jusqu'à 14 400 $

55. Enfin, l'issue du litige a une profonde signification morale et sociale pour les membres du groupe, leurs familles et leurs héritiers, ainsi que pour le grand public au

Québec et au Canada. Au-delà des montants accordés qui font jurisprudence, les jugements des tribunaux québécois disent la vérité sur ce que l'industrie du tabac a fait subir aux membres des groupes, à leurs familles et à la société en général au nom du profit. Le fait que ces dossiers aient pu être portés devant les tribunaux et gagnés constitue un énorme succès pour le système judiciaire du Québec et du Canada, pour nos institutions juridiques et pour le respect de l'État de droit au Canada, démontrant qu'il n'y a pas d'entreprise trop grande ou trop puissante pour ne pas être tenue responsable par nos tribunaux.

56. La réception des Plans par le public, les groupes de la société civile et les membres des actions collectives a été extrêmement positive au cours des derniers mois.

57. Afin d'informer les membres du groupe de leurs droits et de les tenir au courant des prochaines étapes, les avocats ont fait appel aux services d'une firme de communication ayant déjà travaillé avec le CQTS dans le passé, Public stratégies conseils.

58. Lorsque les Plans ont été annoncés publiquement pour la première fois, le 18 octobre 2024, le CQTS et ses avocats ont tenu une conférence de presse, lors de laquelle Annie Papageorgiou, porte-parole du CQTS, reconnaissait « les 26 ans de bataille pour le CQTS, [les] 26 ans de bataille pour une dizaine d'avocats qui n'ont jamais baissé les bras, [les] 26 ans de bataille et de souffrance pour nos victimes[4] ». Elle a expliqué qu'elle était « estomaquée qu'une histoire comme celle-là puisse finalement aboutir. Que les victimes de cette industrie soient finalement indemnisées par cette industrie, c'est historique, ça ne s'est vu nulle part dans le monde. J'espère que ça va faire bouger les choses[5] ».

59. Dominique Claveau, directrice générale du CQTS par intérim, a également commenté que « Imperial Tobacco, Rothmans Benson & Hedges, JT Macdonald ont, pendant plus de 50 ans, menti, dissimulé la vérité, minimisé et banalisé de manière

[4] Règlement avec les géants du tabac : une victoire pour les familles, Radio Canada, 18 octobre 2024.
[5] Géants du tabac : 32,5 milliards aux victimes de la cigarette et aux provinces, TVA Nouvelles, 18 octobre 2024.

systématique les dangers liés au tabac. […] Après plus de 25 ans de démarches judiciaires, les cigarettiers vont enfin devoir compenser les nombreuses victimes du tabac au Québec et au Canada[6] ».

60. Public stratégies conseil a préparé un résumé détaillé de la couverture médiatique des Plans à la suite de la première annonce du 18 octobre 2024, qui figure à l'**annexe « A »** de la présente déclaration. Je voudrais souligner certaines des réactions contenues dans ces articles et interviews pour la Cour.

61. Martin Blais, fils du membre désigné Jean-Yves Blais, a décrit l'annonce des Plans comme « un grand moment de soulagement pour moi ». Il a expliqué aux médias que « ça ne nous retournera pas mon père, mais ça rétablit un peu la justice, c'est un baume sur nos plaies » et que « c'est un peu notre coupe Stanley[7] ». Sa mère, la veuve de M. Blais, a dit que « c'est sûr qu'on se décourage, mais moi j'ai toujours dit que j'irais jusqu'à la fin. […] Mon mari a souffert beaucoup, énormément. J'aimerais bien qu'il soit là encore[8] ».

62. Raymond F. Wagner, un des avocats qui représente les victimes canadiennes hors Québec, a qualifié ces Plans comme étant « historiques », en ajoutant que sans les efforts de l'équipe juridique québécoise, les victimes en dehors de la province n'auraient jamais droit à une indemnisation[9].

63. Bien que la compensation aux victimes ne puisse jamais réparer entièrement les dommages causés par l'industrie du tabac, Jessica Buckley, présidente-directrice générale de la Lung Health Foundation, a qualifié le résultat de « première étape significative dans la reconnaissance de décennies de dommages[10] ».

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[6] Les victimes du tabac se partageront 6,75 milliards, les provinces 24,8 milliards, La Tribune (Presse canadienne), 18 octobre 2024.
[7] Règlement avec les géants du tabac : une victoire pour les familles, Radio Canada, 18 octobre 2024.
[8] Les victimes du tabac se partageront 6,75 milliards $, les provinces 24,8 milliards $, L'Actualité, 18 octobre 2024.
[9] 'I wish my father was here': Tobacco victims hail bittersweet $32.5-billion deal, Times Colonist (Canadian Press), 18 octobre 2024.
[10] "A meaningful first step in acknowledging decades of harm": Lung Health Foundation Applauds Landmark $32.5 Billion Legal Settlement Against Tobacco Companies, 18 octobre 2024.

64. Même les groupes qui ont critiqué les Plans ou estimé qu'ils n'allaient pas assez loin pour mettre fin au tabagisme au Canada se sont montrés très positifs quant aux résultats pour les membres du groupe. Par exemple les groupes Smoking & Health, Physicians for a Smoke-Free Canada et le Quebec Coalition for Tobacco Control — qui ont été très critiques à l'égard des Plans — ont qualifié l'indemnisation des victimes de « seul élément positif de cet accord[11] ».

65. Les universitaires ont également souligné les impacts positifs du résultat pour les consommateurs et la santé publique en général. Par exemple, Jacob Shelley, codirecteur du laboratoire d'éthique, de droit et de politique de la santé à l'Université Western de London, en Ontario, a déclaré que cette affaire a de vastes implications pour d'autres industries au-delà du tabac qui fabriquent des aliments ou des boissons qui peuvent causer des dommages[12] ».

E. Les honoraires des avocats

66. Le 30 octobre 1998, le CQTS et les avocats représentant les membres du recours *CQTS/Blais* ont convenu que ceux-ci acceptaient de n'être rémunérés qu'en cas de succès et que dans un tel cas, ils recevraient 20% des montants perçus au bénéfice des membres, plus les taxes applicables. Ce pourcentage était en deçà des honoraires habituellement demandés dans le cadre d'actions collectives à cette époque. Copie de l'entente est produite comme l'**annexe « B »** de cette déclaration.

67. L'entente prévoit donc qu'il soit retenu sur les sommes ou bénéfices perçus ou économies réalisées par les avocats pour le compte du CQTS, le membre désigné ou pour les membres du groupe, s'il y avait lieu, des honoraires extrajudiciaires d'un montant égal à vingt pour cent (20 %) de la somme ou des bénéfices perçus ou des économies réalisées en relation au litige, de quelque source que ce soit, par transaction ou à la suite d'un jugement.

[11] Tobacco firms to pay $23.6bn in proposed Canada settlement, BBC News, 18 octobre 2024.
[12] Les entreprises de tabac seraient peu susceptibles de changer leur modèle d'affaires, L'Actualité, 18 octobre 2024.

68. Le pourcentage comprend également les frais et débours, étant donné que l'entente stipule que ni le CQTS ou les membres du groupe n'auront à payer des honoraires, frais ou déboursés autres que ceux prévus dans le paragraphe fixant les frais à 20 %.

69. Suite au jugement d'autorisation en 2005, les avocats dans les actions collectives *CQTS/Blais* et *Létourneau* ont collaboré de plus en plus étroitement, et ont éventuellement conclu une entente formelle en lien avec les deux dossiers, ce qui faisait que les quatre cabinets (Trudel & Johnston, Lauzon Bélanger Lespérance, De Grandpré Chait, et Kugler Kandestin) représentaient conjointement le CQTS et les membres dans les deux actions collectives. Plus tard, les dossiers de Lauzon Bélanger Lespérance ont été entièrement acquis par Trudel & Johnston pour former le cabinet Trudel Johnston & Lespérance.

70. À la suite du jugement rendu en 2015 par le juge Riordan condamnant les compagnies de tabac à payer un montant pouvant aller jusqu'à 13,4 milliards de dollars, il est devenu clair que les compagnies de tabac pourraient éventuellement avoir recours à des procédures d'insolvabilité. Il y avait donc un risque que, même si les avocats obtenaient gain de cause sur le fond, il ne resterait plus d'actifs pour compenser les membres du groupe. Il s'avérait donc évident que si les compagnies de tabac décidaient d'emprunter cette voie, il serait extrêmement coûteux et complexe de continuer à représenter les membres du groupe, et que cela entraînerait des années de délais supplémentaires.

71. Le 16 mars 2017, le CQTS et les avocats représentant les membres ont donc convenu d'amender la convention d'honoraires originale (annexe « B ») pour majorer le pourcentage de 20% mentionné plus haut.

72. Cet amendement visait notamment à tenir compte de la complexité et de la lourdeur du dossier ainsi que de l'éventualité que les avocats représentant les membres doivent engager des firmes spécialisées en insolvabilité, vu la réelle possibilité que les compagnies de tabac déposent des procédures en vertu de la *LACC*. Copie de cette entente amendée est produite comme l'**annexe « C »** de cette déclaration.

73. L’amendement prévoit spécifiquement ce qui suit :

> En sus du pourcentage de vingt pour cent (20%) mentionné au paragraphe 1, le CQTS consent à ce qu'un maximum de deux pour cent (2%) additionnels soit retenu à même les sommes ou bénéfices perçus ou économies réalisées en relation au présent recours collectif, de quelque source que ce soit, par transaction ou à la suite d'un jugement, uniquement pour les services de bureaux spécialisés en matière de faillite, insolvabilité et arrangements en vertu de la LACC;

74. Il est utile de rappeler les considérants de l’amendement du 16 mars 2017 :

> CONSIDÉRANT l'ampleur du dossier à piloter par TJL et la stratégie adoptée par les défenderesses de continuellement retarder, alourdir et complexifier les procédures;
>
> CONSIDÉRANT que les défenderesses ont clairement manifesté leur intention de prendre des procédures judiciaires afin de suspendre l'exécution de tout jugement qui serait prononcé contre elles, notamment des procédures suivant la Loi sur la faillite et l'insolvabilité (ci-après « LFI ») ou la Loi sur les arrangements avec les créanciers des compagnies (ci-après « LACC »);
>
> CONSIDÉRANT que TJL considère qu'il est possible, voire probable que de telles procédures soient intentées devant non seulement la Cour supérieure du Québec, mais aussi celle de l'Ontario;
>
> CONSIDÉRANT qu'il est dans l’intérêt des membres que TJL s'adjoigne les services de bureaux spécialisés en matière de faillite, insolvabilité et arrangements en vertu de la LACC à Montréal et à Toronto afin de protéger les droits des membres;
>
> CONSIDÉRANT l'importance des ressources que TJL devra immédiatement déployer pour contrer toutes tentatives des défenderesses de suspendre les effets d'un jugement favorable;
>
> CONSIDÉRANT qu'il y a lieu d'amender la convention d'honoraires;

75. Les honoraires encourus à ce jour et à venir par des firmes spécialisées en faillite, insolvabilité et arrangements en vertu de la *LACC* excèdent la somme de 90 millions de dollars, soit près de 2,18% de la somme de 4,119 milliards de dollars, telle que détaillée dans les autres déclarations sous serment au soutien de la Demande. Le montant de 4,119 milliards de dollars est la somme perçue pour le compte des membres du recours

CQTS/Blais dans le cadre des Plans d'arrangement de la *LACC* suivant l'entente en vigueur (l'annexe « B »).

76. Il appert donc que le 2% supplémentaire consenti en 2017 aura été pleinement requis afin de permettre que les membres bénéficient du soutien de firmes spécialisées en faillite et insolvabilité pendant l'étape cruciale qui a commencé en 2019, lorsque les compagnies se sont placées sous la protection de la *LACC*.

77. Le CQTS supporte donc la demande des avocats du recours *CQTS/Blais* et consent, au bénéfice des membres de l'action collective, à ce que sa convention d'honoraires conclue en 1998 et amendée en 2017 soit approuvée par la Cour de la *LACC*.

78. Au cours des 26 années qu'a duré l'action collective, à aucune étape de ce processus, le CQTS et ses administrateurs n'ont reçu de financement ou avantage quel qu'il soit pour soutenir leur travail. Tout le temps investi par la direction générale, le personnel et les administrateurs a été offert sans financement particulier, représentant des milliers d'heures de travail.

79. En fin de compte, la bataille de 26 ans menée par la CQTS et ses avocats contre l'industrie du tabac représente une victoire extraordinaire et sans précédent pour les victimes et leurs familles. Nous la considérons comme une étape importante vers un monde sans tabac et nous espérons qu'elle servira de modèle aux militants et avocats à travers le monde.

ET J'AI SIGNÉ, LE 9 JANVIER 2025

André-H. Dandavino (Jan 9, 2025 13:12 EST)

Dr André-H. Dandavino

Serment reçu par moi par un moyen technologique,
à Montréal ce 9 janvier 2025

Eléonore Loupforest

Eléonore Loupforest
Commissaire à l'assermentation pour le Québec, 241733

Éléonore Loupforest
241733
COMMISSAIRE À
L'ASSERMENTATION
Pour le Québec
Québec

LISTE DES ANNEXES

« A » Résumé détaillé de la couverture médiatique des Plans à la suite de la première annonce du 18 octobre 2024 (Public stratégies conseil)

« B » Convention d'honoraires, version originale (1998) entre le CQTS et ses avocats (Quebec Class Counsel) et traduction

« C » Convention d'honoraires, version en vigueur (2017) entre le CQTS et ses avocats (Quebec Class Counsel) et traduction

LISTE DES AUTRES DOCUMENTS DISPONSIBLES

1. Procès-verbaux des réunions du conseil d'administration et du conseil exécutif du CQTS en lien avec les actions collectives

THIS IS SCHEDULE "A"
TO THE AFFIDAVIT OF DR. ANDRÉ-H. DANDAVINO
(January 9, 2025)

DETAILED SUMMARY OF THE MEDIA'S COVERAGE OF THE PLANS AFTER THE FIRST ANNOUNCEMENT WAS MADE ON OCTOBER 18, 2024 (PUBLIC STRATEGIES AND CONSULTING)

SWORN BEFORE ME
THIS 9th DAY OF JANUARY 2025

Eléonore Loupforest
Commissioner of Oaths for Quebec

Titre	Emission et média	Lien URL
Tobacco giants would pay out $32.5 billion to provinces, smokers in proposed deal	Nanaimo News NOW	https://nanaimonewsnow.com/2024/10/17/tobacco-giants-would-pay-out-32-5-billion-to-provinces-smokers-in-proposed-deal/
More details expected on proposed deal that would see tobacco giants pay billions	Chronicle Journal	https://www.chroniclejournal.com/news/national/more-details-expected-on-proposed-deal-that-would-see-tobacco-giants-pay-billions/article_32c7e65f-520d-5645-abb2-433fe7fcc8c4.html
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	Chronicle Journal	https://www.chroniclejournal.com/news/national/tobacco-giants-would-pay-out-32-5b-to-provinces-smokers-in-historic-proposed-deal/article_5e5dcf37-9926-5e67-9ca4-831b1eba8202.html
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	Barrie 360	https://barrie360.com/tobacco-giants-provinces-smokers/
QCTH-Blais Class Action against the Tobacco Companies : A plan of arrangement allowing compensation to be paid to tobacco victims has finally been filed	Yahoo Finance	https://ca.finance.yahoo.com/news/qcth-blais-class-action-against-211500737.html
Big Tobacco proposing $32.5 billion settlement for smoking related harms	Calgary Herald	https://calgaryherald.com/news/canada/tobacco-proposed-settlement-canada/wcm/3a83b6d0-df9e-4e80-bd16-f8cb433dd18d
I wish my father was here': Tobacco victims hail bittersweet $32.5-billion deal	Calgary Herald	https://calgaryherald.com/news/national/more-details-expected-on-proposed-deal-that-would-see-tobacco-giants-pay-billions/wcm/f56f17fa-6b58-4b4a-ba9c-2cb2f622e73f
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	Shafaqna	https://canada.shafaqna.com/EN/AL/2698042
More details expected on proposed deal that would see tobacco giants pay billions	Canoe.Com	https://canoe.com/news/national/more-details-expected-on-proposed-deal-that-would-see-tobacco-giants-pay-billions/wcm/a3a1c87c-3eef-4f40-a93d-2b92d402599f
Court-Appointed Mediator Proposes CCAA Plan to Resolve Tobacco Product-Related Claims and Litigation in Canada, by @businesswire	CEO.ca	https://ceo.ca/@businesswire/court-appointed-mediator-proposes-ccaa-plan-to-resolve
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	Check News	https://cheknews.ca/tobacco-giants-would-pay-out-32-5b-to-provinces-smokers-in-historic-proposed-deal-1219509/
"A meaningful first step in acknowledging decades of harm": Lung Health Foundation Applauds Landmark $32.5 Billion Legal Settlement Against Tobacco Companies	Financial Post	https://financialpost.com/globe-newswire/a-meaningful-first-step-in-acknowledging-decades-of-harm-lung-health-foundation-applauds-landmark-32-5-billion-legal-settlement-against-tobacco-companies
Big tobacco firms near settlement in Canada smoking risk cases	Financial Post	https://financialpost.com/news/big-tobacco-settle-canada-smoking-risk-cases
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	Globalnews.ca	https://globalnews.ca/news/10817283/canadian-tobacco-payout-proposed/
Here are the key numbers in the deal proposed by three tobacco giants	Halifax News	https://halifax.citynews.ca/2024/10/17/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants/
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	Halifax News	https://halifax.citynews.ca/2024/10/17/tobacco-giants-would-pay-out-32-5-billion-to-provinces-smokers-in-proposed-deal/
More details expected on proposed deal that would see tobacco giants pay billions	Halifax News	https://halifax.citynews.ca/2024/10/18/more-details-expected-on-proposed-deal-that-would-see-tobacco-giants-pay-billions/
Tobacco companies set to pay $32.5-billion in landmark Canadian legal settlement	Pleasemod	https://headtopics.com/ca/tobacco-companies-set-to-pay-32-5-billion-in-landmark-60461224
Recours contre les géants du tabac : jusqu'à 100 000 $ par fumeur (CQCT)	Radio-Canada RDI D'abord l'info	https://ici.radio-canada.ca/info/videos/1-10200650/recours-contre-geants-tabac-jusqu-a-100-000-$-par-fumeur
Recours contre les géants du tabac : les victimes québécoises recevraient 4,3 milliards $	Radio-Canada	https://ici.radio-canada.ca/nouvelle/2113136/tabac-cigarette-recours-collectif-restructuration
Règlement avec les géants du tabac : une victoire pour les familles	Radio-Canada	https://ici.radio-canada.ca/nouvelle/2113319/tabac-reglement-cigarette-accord-quebec
La santé publique a-t-elle été sacrifiée dans l'entente sur le tabac?	Radio-Canada	https://ici.radio-canada.ca/nouvelle/2113393/tabac-cigarette-recours-collectif-restructuration
Les victimes québécoises du tabac se partageront près de 4,3 milliards	Radio-Canada C'est encore mieux l'après-m	https://ici.radio-canada.ca/ohdio/premiere/emissions/c-est-encore-mieux-l-apres-midi/segments/rattrapage/1882639/victimes-quebecoises-tabac-se-partageront-pres-43-milliards
Entrevue Florie Doucas salue le travail des avocats pour indemnisation des victimes	Radio-Canada Midi Info	https://ici.radio-canada.ca/ohdio/premiere/emissions/midi-info/episodes/947147/rattrapage-vendredi-18-octobre-2024
Indemnisations aux victimes du tabac : Entrevue avec Me André Lespérance	Radio-Canada Estrie Par ici l'info	https://ici.radio-canada.ca/ohdio/premiere/emissions/Par-ici-l-info/segments/rattrapage/1882014/indemnisations-aux-victimes-tabac-entrevue-avec-me-andre-lesperance
Entrevue : Entente entre les géants du tabac et les victimes québécoises	Radio-Canada Première Tout un matin	https://ici.radio-canada.ca/ohdio/premiere/emissions/tout-un-matin/segments/rattrapage/1881723/entrevue-entente-entre-geants-tabac-et-victimes-quebecoises
Les géants du tabac doivent payer 32,5 milliards $	RDI Zone économie	https://ici.radio-canada.ca/rdi/zone-economie/site/videos/10201418/geants-tabac-doivent-payer-325-milliards-
18h25	Radio-Canada Téléjournal	https://ici.radio-canada.ca/tele/le-telejournal-18h/site/episodes/980137/episode-du-18-octobre-2024
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	Indigenous Health Today	https://ihtoday.ca/tobacco-giants-would-pay-out-32-5b-to-provinces-smokers-in-historic-proposed-deal-cbc/

Titre	Emission et média	Lien URL
Les géants du tabac paieraient 32,5 milliards $ aux provinces et aux fumeurs malades	Le Nord-Côtier	https://lenord-cotier.com/2024/10/18/les-geants-du-tabac-paieraient-325-milliards-aux-provinces-et-aux-fumeurs-malades/
Tobacco giants propose paying $32.5B to provinces, smokers	National Post	https://nationalpost.com/news/canada/tobacco-proposed-settlement-canada
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	CTV Toronto	https://toronto.ctvnews.ca/tobacco-giants-would-pay-out-32-5b-to-provinces-smokers-in-historic-proposed-deal-1.7077966
More details expected on proposed deal with big tobacco	Toronto Sun	https://torontosun.com/news/national/more-details-expected-on-proposed-deal-that-would-see-tobacco-giants-pay-billions
Tobacco giants would pay out $32.5B to provinces, smokers in deal	Toronto Sun	https://torontosun.com/news/national/tobacco-giants-would-pay-out-32-5b-to-provinces-smokers-in-historic-proposed-deal
Tobacco settlement will not prevent addiction: Advocates	Toronto Sun	https://torontosun.com/news/national/tobacco-settlement-will-not-protect-future-generations-from-addiction-advocates
Tobacco giants would pay out $32.5 billion to provinces, smokers in proposed deal	Vernon Matters	https://vernonmatters.ca/2024/10/17/tobacco-giants-would-pay-out-32-5-billion-to-provinces-smokers-in-proposed-deal/
More details expected on proposed deal that would see tobacco giants pay billions	Vernon Matters	https://vernonmatters.ca/2024/10/18/more-details-expected-on-proposed-deal-that-would-see-tobacco-giants-pay-billions/
Five things on proposed landmark $32.5-billion tobacco deal	Winnipeg Sun	https://winnipegsun.com/pmn/five-things-on-proposed-landmark-32-5-billion-tobacco-deal
Tobacco settlement will not protect future generations from addiction: advocates	Winnipeg Sun	https://winnipegsun.com/pmn/tobacco-settlement-will-not-protect-future-generations-from-addiction-advocates
Les cigarettiers devront verser des milliards aux familles des victimes du tabac (D. Claveau)	957 KYK Saguenay	https://www.957kyk.com/audio/654680/les-cigarettiers-devront-verser-des-milliards-aux-familles-des-victimes-du-tabac
«Cette entente-là, elle privilégie les victimes»	98,5 Lagacé le matin	https://www.985fm.ca/audio/654544/cette-entente-la-elle-privilegie-les-victimes
Victoire historique contre les fabricants de tabac	98,5 La Commission Ferrandez	https://www.985fm.ca/audio/654635/victoire-historique-contre-les-fabricants-de-tabac
Here are the key numbers in the deal proposed by three tobacco giants -AuroraToday.ca	Aurora Today	https://www.auroratoday.ca/national-news/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants-9674431
Baystreet.ca - Big Tobacco Companies Offer $32.5 Billion To Settle Canadian Lawsuits	BayStreet.ca	https://www.baystreet.ca/stockstowatch/19290/Big-Tobacco-Companies-Offer-325-Billion-To-Settle-Canadian-Lawsuits
The Daily Chase: Big settlement for Big Tobacco	BNN Bloomberg	https://www.bnnbloomberg.ca/business/economics/2024/10/18/the-daily-chase-big-settlement-for-big-tobacco/
More details expected on proposed deal that would see tobacco giants pay billions	Brandon Sun	https://www.brandonsun.com/business/2024/10/18/more-details-expected-on-proposed-deal-that-would-see-tobacco-giants-pay-billions
Tobacco settlement will not protect future generations from addiction: advocates	Brandon Sun	https://www.brandonsun.com/business/2024/10/18/tobacco-settlement-will-not-protect-future-generations-from-addiction-advocates
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	Burnaby Now	https://www.burnabynow.com/the-mix/tobacco-giants-would-pay-out-325b-to-provinces-smokers-in-historic-proposed-deal-9674034
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	CBC News	https://www.cbc.ca/news/canada/tobacco-giants-would-pay-out-32-5b-to-provinces-smokers-in-historic-proposed-deal-1.7355704?cmp=rss
How the proposed deal between provinces, smokers and tobacco companies would work	CBC News	https://www.cbc.ca/news/health/tobacco-compensation-payment-canada-provinces-smokers-1.7356282?cmp=rss
Proposed tobacco deal 'inadequate,' Canadian Cancer Society analyst says	CBC	https://www.cbc.ca/player/play/video/9.6539521
Tobacco companies could pay billions to provinces, smokers in proposed deal	CBC.ca Toronto	https://www.cbc.ca/player/play/video/9.6539627
Tobacco giants agree to pay out over $29B following Quebec lawsuits	CHCH	https://www.chch.com/tobacco-giants-agree-to-pay-out-over-29b-following-quebec-lawsuits/
Five things on proposed landmark $32.5-billion tobacco deal	Chronicle Journal	https://www.chroniclejournal.com/news/national/five-things-on-proposed-landmark-32-5-billion-tobacco-deal/article_97645aa0-c912-53e8-86cb-10c712550463.html
Here are the key numbers in the deal proposed by three tobacco giants	Chronical Journal	https://www.chroniclejournal.com/news/national/tobacco-giants-would-pay-out-32-5b-to-provinces-smokers-in-historic-proposed-deal/article_5e5dcf37-9926-5e67-9ca4-831b1eba8202.html
Tobacco settlement will not protect future generations from addiction: advocates	Chroniclejournal.com	https://www.chroniclejournal.com/news/national/tobacco-settlement-will-not-protect-future-generations-from-addiction-advocates/article_15045af2-5602-5286-88f0-44c5ba2524a2.html
Tobacco giants would pay out $32.5B to provinces, smokers in ‘historic’ proposed deal	980 CJME	https://www.cjme.com/2024/10/17/tobacco-giants-would-pay-out-32-5-billion-to-provinces-smokers-in-proposed-deal/
Here are the key numbers in the deal proposed by three tobacco giants	Cochrane News	https://www.cochraneeagle.ca/national-news/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants-9674431
Toronto, Canada & Global Breaking News	CP24	https://www.cp24.com/news/sheldon-keefe-out-as-maple-leafs-head-coach-1.6879967

Titre	Emission et média	Lien URL
Briefing on Proposed $24B Settlement from Big Tobacco – October 18, 2024	CPAC.ca	https://www.cpac.ca/headline-politics/episode/briefing-on-proposed-24b-settlement-from-big-tobacco--october-18-2024?id=9c050577-436a-46e6-972e-1225bdea2df2
8h00 CTV	CTV Montréal Your Morning's	https://www.ctv.ca/shows/ctv-your-morning/friday-october-18-2024-s9e42
Tobacco giants would pay $32.5 billion in deal	CTV News	https://www.ctvnews.ca/canada/tobacco-giants-would-pay-out-32-5-billion-to-provinces-smokers-in-proposed-deal-1.7077770
Tobacco settlement won't solve problem in Canada: advocates	CTV News	https://www.ctvnews.ca/canada/tobacco-settlement-will-not-protect-future-generations-from-addiction-advocates-1.7078716
Tobacco companies propose $25B payout	CTV News	https://www.ctvnews.ca/video/c3013379-tobacco-companies-propose--25b-payout
Tobacco payout: What are the next steps?	CTV News	https://www.ctvnews.ca/video/c3013477-tobacco-payout--what-are-the-next-steps-?playlistId=1.7078252
CTV National News: $32B tobacco settlement	CTV Montreal Now	https://www.ctvnews.ca/video/c3013901-ctv-national-news---32b-tobacco-settlement?playlistId=1.7078252
Les géants du tabac paieraient 32,5 milliards aux provinces et aux fumeurs malades	EnBeauce.com	https://www.enbeauce.com/actualites-nationale/les-geants-du-tabac-paieraient-325-milliards-$-aux-provinces-et-aux-fumeurs-malades/25938
Géants du tabac: 32,5 milliards $ aux victimes de la cigarette et aux provinces	JDM	https://www.journaldemontreal.com/2024/10/17/geants-du-tabac-325-milliards-aux-victimes-de-la-cigarette-et-aux-provinces
La caricature d'Ygreck en vidéo: 32,5 milliards $ aux victimes du tabac	JDM	https://www.journaldemontreal.com/2024/10/18/la-caricature-dygreck-en-video-325-milliards--aux-victimes-du-tabac
Victoire contre les multinationales du tabac: personne n'est au-dessus de la loi québécoise!	JDM	https://www.journaldemontreal.com/2024/10/19/victoire-contre-les-multinationales-du-tabac-personne-nest-au-dessus-de-la-loi-quebecoise
Les géants du tabac paieraient 32,5 milliards $ aux provinces et aux fumeurs malades	Le Haute Côte-Nord	https://www.journalhcn.com/2024/10/18/les-geants-du-tabac-paieraient-325-milliards-aux-provinces-et-aux-fumeurs-malades/
Les géants du tabac paieraient 32,5 milliards $ aux provinces et aux fumeurs malades	Le Guide	https://www.journalleguide.com/nouvelles-nationales/les-geants-du-tabac-paieraient-325-milliards-aux-provinces-et-aux-fumeurs-malades/
Five things on proposed landmark $32.5-billion tobacco deal	Kelownadailycourier.ca	https://www.kelownadailycourier.ca/news/national_news/article_25bfc646-23d7-5440-bb58-14fe5040dabe.html
Tobacco settlement will not protect future generations from addiction: advocates	Kelownadailycourier.ca	https://www.kelownadailycourier.ca/news/national_news/article_29c083c7-6247-5c05-8d49-f1ac1184ead4.html
Here are the key numbers in the deal proposed by three tobacco giants	Kelowna Daily	https://www.kelownadailycourier.ca/news/national_news/article_4d43edae-3689-5e3f-9201-52fa87d9471d.html
Des cigarettiers proposent de payer 32,5 milliards aux provinces et aux fumeurs malades	La Presse	https://www.lapresse.ca/actualites/2024-10-18/action-collective/vers-des-indemnisations-historiques-de-victimes-du-tabac.php
Victimes du tabac | Vers des indemnisations importantes au Québec	La Presse	https://www.lapresse.ca/actualites/2024-10-18/victimes-du-tabac/vers-des-indemnisations-importantes-au-quebec.php
Les géants du tabac paieraient 32,5 milliards aux provinces et aux fumeurs malades	La Tribune	https://www.latribune.ca/actualites/2024/10/17/les-geants-du-tabac-paieraient-325-milliards-aux-provinces-et-aux-fumeurs-malades-LGRUKAU43ZDZZLL6DOGMKNFSDU/
Les géants du tabac paieraient 32,5 milliards aux provinces et aux fumeurs malades	La Voix de l'Est	https://www.lavoixdelest.ca/actualites/2024/10/17/les-geants-du-tabac-paieraient-325-milliards-aux-provinces-et-aux-fumeurs-malades-LGRUKAU43ZDZZLL6DOGMKNFSDU/
Les géants du tabac paieraient 32,5 milliards aux provinces et aux fumeurs malades	La Voix de l'est	https://www.lavoixdelest.ca/actualites/2024/10/17/les-geants-du-tabac-paieraient-325-milliards-aux-provinces-et-aux-fumeurs-malades-LGRUKAU43ZDZZLL6DOGMKNFSDU/
Les géants du tabac paieraient 32,5 milliards $ aux provinces et aux fumeurs malades	Le Charlevoisien	https://www.lecharlevoisien.com/2024/10/18/les-geants-du-tabac-paieraient-325-milliards-aux-provinces-et-aux-fumeurs-malades/
Trois géants du tabac proposent de payer 32,5 milliards aux provinces et aux fumeurs malades ou à leurs héritiers	Le Devoir	https://www.ledevoir.com/societe/justice/821930/geants-tabac-paieront-plus-32-milliards
Les géants canadiens du tabac devront dédommager les victimes du tabagisme	Le Devoir	https://www.ledevoir.com/societe/justice/821996/victimes-tabac-seront-dedommages
Les géants du tabac paieraient 32,5 milliards $ aux provinces et aux fumeurs malades	Le Manic	https://www.lemanic.ca/2024/10/18/les-geants-du-tabac-paieraient-325-milliards-aux-provinces-et-aux-fumeurs-malades/
Les géants du tabac paieraient 32,5 milliards aux provinces et aux fumeurs malades	Le Quotidien	https://www.lequotidien.com/actualites/2024/10/17/les-geants-du-tabac-paieraient-325-milliards-aux-provinces-et-aux-fumeurs-malades-LGRUKAU43ZDZZLL6DOGMKNFSDU/
Les géants du tabac paieraient 32,5G$ aux provinces et aux fumeurs malades	Les Affaires	https://www.lesaffaires.com/dossiers/assurances-collectives-reduire-le-cout-du-stress-financier/les-geants-du-tabac-paieraient-325g-aux-provinces-et-aux-fumeurs-malades/#:~:text=Trois%20g%C3%A9ants%20du%20tabac%20proposent,par%20une%20longue%20bataille%20juridique.

Titre	Emission et média	Lien URL
Here are the key numbers in the deal proposed by three tobacco giants MooseJawToday.com	Moose Jaw Today	https://www.moosejawtoday.com/national-business/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants-9674393
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	MSN	https://www.msn.com/en-ca/money/topstories/tobacco-giants-would-pay-out-32-5b-to-provinces-smokers-in-historic-proposed-deal/ar-AA1ssEaI
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	MSN	https://www.msn.com/en-ca/news/canada/tobacco-giants-would-pay-out-32-5b-to-provinces-smokers-in-historic-proposed-deal/ar-AA1ssPNP
Tobacco giants to pay $32.5B to Canadian provinces, smokers in 'historic' proposed deal	National Observer	https://www.nationalobserver.com/2024/10/18/news/tobacco-giants-325b-canadian-provinces-smokers-deal
Here are the key numbers in the deal proposed by three tobacco giants	New West Record	https://www.newwestrecord.ca/the-mix/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants-9674373
Les entreprises de tabac seraient peu susceptibles de changer leur modèle d'affaires	Noovo Info	https://www.noovo.info/nouvelle/les-entreprises-de-tabac-seraient-peu-susceptibles-de-changer-leur-modele-daffaires.html
Les géants du tabac paieraient 32,5 milliards $ aux provinces et aux fumeurs malades	Noovo Info	https://www.noovo.info/nouvelle/les-geants-du-tabac-paieraient-32-5-milliards-aux-provinces-et-aux-fumeurs-malades.html
Les victimes du tabac se partageront 6,75 milliards $, les provinces 24,8 milliards $	Noovo Info	https://www.noovo.info/nouvelle/les-victimes-du-tabac-se-partageront-6-75-milliards-les-provinces-24-8-milliards-.html
17h00	Noovo Bulletin de nouvelles	https://www.noovo.info/nouvelle/les-victimes-du-tabac-se-partageront-6-75-milliards-les-provinces-24-8-milliards-.html
Here are the key numbers in the deal proposed by three tobacco giants	PelhamToday.ca	https://www.pelhamtoday.ca/national-news/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants-9674431
More details expected on proposed deal that would see tobacco giants pay billions	Pentictonherald.ca	https://www.pentictonherald.ca/news/national_news/article_1bd633bc-2198-5610-a78e-9fc1294f6134.html
Décès, cancer du poumon: les victimes de l'industrie du tabac peuvent être compensées monétairement !	QUB Radio	https://www.qub.ca/radio/balado/benoit-dutrizac?audio=1099313894
Big Tobacco proposes nearly $24 bln payment to settle Canada lawsuits	Reuters	https://www.reuters.com/business/court-mediator-proposes-236-bln-settlement-by-philip-morris-bat-jti-units-canada-2024-10-18/
Here are the key numbers in the deal proposed by three tobacco giants	Bow Valley News	https://www.rmoutlook.com/national-news/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants-9674431
Here are the key numbers in the deal proposed by three tobacco giants	St. Catherines Standard	https://www.stcatharinesstandard.ca/business/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants/article_a96c270d-721f-5956-a9c0-7d8627380d7e.html
Tobacco companies set to pay $32.5-billion in landmark Canadian legal settlement	The Globe and Mail	https://www.theglobeandmail.com/canada/article-tobacco-companies-set-to-pay-325-billion-in-landmark-canadian-legal/
QCTH-Blais Class Action against the Tobacco Companies : A plan of arrangement allowing compensation to be paid to tobacco victims has finally been filed	The Globe and Mail	https://www.theglobeandmail.com/investing/markets/markets-news/Newswire.ca/29094334/qcth-blais-class-action-against-the-tobacco-companies-a-plan-of-arrangement-allowing-compensation-to-be-paid-to-tobacco-victims-has-finally-been-filed/
Here are the key numbers in the deal proposed by three tobacco giants	The Record	https://www.therecord.com/business/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants/article_aba7e4b8-591e-53cb-b4a5-d5d4b4c9550a.html
I wish my father was here': Tobacco victims hail bittersweet $32.5-billion deal	Hamilton Spectator	https://www.thespec.com/business/i-wish-my-father-was-here-tobacco-victims-hail-bittersweet-32-5-billion-deal/article_2697d426-e5ab-5173-b1ec-0aac26bdcabe.html
Tobacco settlement will not protect future generations from addiction: advocates	Hamilton Spectator	https://www.thespec.com/business/tobacco-settlement-will-not-protect-future-generations-from-addiction-advocates/article_9c027437-7e79-5c59-857a-8b47fd57a7aa.html
Here are the key numbers in the deal proposed by three tobacco giants	The Star	https://www.thestar.com/business/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants/article_23ce2b3b-49c3-5c98-a798-7f33c478d74f.html
Tobacco giants would pay out $32.5B to provinces, smokers in 'historic' proposed deal	The Star	https://www.thestar.com/business/tobacco-giants-would-pay-out-32-5b-to-provinces-smokers-in-historic-proposed-deal/article_670f4925-4607-5ae0-bcda-65c9d5e8c8c9.html
Géants du tabac: 32,5 milliards $ aux victimes de la cigarette et aux provinces	TVA Nouvelles	https://www.tvanouvelles.ca/2024/10/17/geants-du-tabac-325-milliards-aux-victimes-de-la-cigarette-et-aux-provinces
Entrevue Annie Papageorgiou - 9h30	TVA Salut Bonjour	https://www.tvaplus.ca/tva/salut-bonjour/saison-37/salut-bonjour-740250297
More details expected on proposed deal that would see tobacco giants pay billions Vancouver Is Awesome	Vancouver Sun	https://www.vancouverisawesome.com/national-business/more-details-expected-on-proposed-deal-that-would-see-tobacco-giants-pay-billions-9675314
Here are the key numbers in the deal proposed by three tobacco giants	Western Investor	https://www.westerninvestor.com/national-business/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants-9674381

Titre	Emission et média	Lien URL
Here are the key numbers in the deal proposed by three tobacco giants	Winnipeg Free Press	https://www.winnipegfreepress.com/business/2024/10/17/here-are-the-key-numbers-in-the-deal-proposed-by-three-tobacco-giants
Tobacco giants would pay out $32.5B to provinces, smokers in ‘historic’ proposed deal	Winnipeg Free Press	https://www.winnipegfreepress.com/business/2024/10/17/tobacco-giants-would-pay-out-32-5-billion-to-provinces-smokers-in-proposed-deal
Tobacco Firms Close to $23.6 Billion Settlement to Compensate Smokers in Canada	Wall Street Journal	https://www.wsj.com/business/tobacco-firms-close-to-23-6-billion-settlement-to-compensate-smokers-in-canada-490c4798
6 entrevues -	Radio-Canada Régions	À venir
L'épreuve des faits - Samedi 19 octobre	Radio-Canada Première	À venir
11h45 Isabelle Richer	Radio-Canada RDI Isabelle Richer	À venir
15h45	LCN Nouvelles À vos affaires	
13h00 Philippe Vincent-Foisy	LCN Nouvelles	
14h20	Global News national broadcast	
17h35	CJAD 800 On Air	
	Bloomberg Melissa Shein	

THIS IS SCHEDULE "B"
TO THE AFFIDAVIT OF DR. ANDRÉ-H. DANDAVINO
(January 9, 2025)

FEE AGREEMENT, ORIGINAL VERSION (1998) BETWEEN THE CQTS AND ITS LAWYERS (QUEBEC CLASS COUNSEL) AND TRANSLATION THEREOF

SWORN BEFORE ME
THIS 9th DAY OF JANUARY 2025

Eléonore Loupforest
Commissioner of Oaths for Quebec

RECOURS COLLECTIF

MANDAT PROFESSIONNEL ET
CONVENTION D'HONORAIRES EXTRAJUDICIAIRES

Je, soussigné, **Monsieur Marcel Boulanger**, président du **Conseil québécois sur le tabac et la santé** (ci-après nommé le **Conseil**), dûment autorisé par résolution du conseil exécutif du **Conseil**, tenue le 15 juillet 1998, mandate, par les présentes, *LAUZON BÉLANGER* (ci-après nommé: le procureur) pour intenter, au nom du **Conseil,** un recours collectif, en désignant comme membre désigné pour les fins du recours, Monsieur Jean-Yves Blais, pour le compte des membres du groupe ci-après décrit.

Le groupe peut être décrit et désigné comme suit:

> «*Toutes les personnes qui sont ou ont été victimes d'un cancer du poumon, du larynx ou de la gorge après avoir inhalé de la fumée de cigarettes sur une période de temps prolongée ;*
>
> *Ainsi que les ayants droit et/ou héritiers des personnes décédées qui autrement auraient fait partie du groupe ;*
>
> *Exception faite des personnes qui auraient été exposées sur une période de temps significative à des produits ou matières contenants de l'amiante, de l'uranium, du radon, du chrome ou de l'arsenic».*

1. Je consens à ce qu'il soit retenu sur les argents ou bénéfices perçus ou économies réalisées par mon procureur pour le compte du **Conseil**, le membre désigné ou pour les membres du groupe, s'il y a lieu, des honoraires extrajudiciaires d'un montant égal à vingt pour cent (20%) de la somme ou bénéfices perçus ou économies réalisées en relation au présent recours collectif, de quelque source que ce soit, par transaction ou à la suite d'un jugement. Ces honoraires extrajudiciaires s'étendent aux sommes perçues pour et au nom de tout le groupe visé par le présent recours collectif, et sont en sus des honoraires judiciaires qui pourraient être attribués audit procureur et payés par la partie adverse. Ces honoraires sont sujets à approbation par le tribunal.

2. Je mandate également mon procureur pour présenter une demande d'aide financière au FONDS D'AIDE AUX RECOURS COLLECTIFS pour le paiement des déboursés judiciaires et extrajudiciaires, des frais d'expert, des dépens et partie des honoraires extrajudiciaires et m'engage à collaborer avec lui aux fins de cette demande d'aide financière et de toute demande d'aide financière additionnelle pendant toute la durée du présent recours collectif.

3. Il est également convenu que ni le soussigné, ni le **Conseil** ou les membres du groupe, n'auront, à la fin du recours collectif, à payer des honoraires, frais ou déboursés autres que ceux prévus au paragraphe 1 de la présente convention.

4. Dans l'éventualité où le FONDS D'AIDE AUX RECOURS COLLECTIFS refuserait d'attribuer une aide financière à quelque étape du recours collectif, les parties pourront modifier le présent mandat, sans que le soussigné, le **Conseil** et les membres du groupe n'aient à débourser quelque argent que ce soit.

5. Les parties s'engagent à aviser par écrit le Fonds d'aide aux recours collectifs de toute modification à la présente convention.

SIGNÉ, À MONTRÉAL,
LE 20 octobre 1998

Marcel Boulanger c.q.

Marcel Boulanger prés.
Pour le Conseil québécois sur le tabac te la santé

Lauzon Bélanger

LAUZON BÉLANGER

I certify the following two pages to be an accurate translation of a digital copy of the French-language agreement entitled "Recours collectif – Mandat professionnel et convention d'honoraires extrajudiciaires," shown below.

Translated by Margaret Sankey, C. Tr., Member No. 29300 of the Ordre des traducteurs, terminologues et interprètes agréés du Québec (OTTIAQ), on Sunday, January 12, 2025.

CLASS ACTION

PROFESSIONAL MANDATE AND
AGREEMENT ON EXTRAJUDICIAL FEES

I, the undersigned, **Mr. Marcel Boulanger**, Chair of the **Conseil québécois sur le tabac et la santé** [Quebec council on tobacco and health], hereinafter referred to as the **Council**, duly authorized by a resolution of the executive committee of the **Council**, held on July 15, 1998, hereby mandate LAUZON BÉLANGER, hereinafter referred to as the attorney, to institute a class action on behalf of the **Council**, by designating Mr. Jean-Yves Blais as the designated member for the purposes of the action, on behalf of the members of the class described below.

The class can be described and designated as follows:

> *All persons who have or have had lung, larynx or throat cancer after having inhaled cigarette smoke over a prolonged period of time;*
>
> *As well as the beneficiaries and/or heirs of deceased persons who would otherwise have been part of the class;*
>
> *Except for persons who have been exposed over a significant period of time to products or materials containing asbestos, uranium, radon, chromium or arsenic.*

1. I consent to the deduction from the monies or benefits received or the savings realized by my attorney on behalf of the **Council**, the designated member or the members of the class, if any, of extrajudicial fees in an amount equal to twenty percent (20%) of the sum or benefits received or savings realized in connection with this class action, from any source whatsoever, through a settlement or further to a judgment. These extrajudicial fees extend to the sums collected for and on behalf of the entire class covered by this class action, and are in addition to the legal fees which may be awarded to said attorney and paid by the opposing party. These fees are subject to approval by the court.

2. I also mandate my attorney to submit an application for financial assistance to the FONDS D'AIDE AUX RECOURS COLLECTIFS [class action assistance fund] for the payment of judicial and extrajudicial disbursements, experts' fees, costs, and part of the extrajudicial fees, and I undertake to collaborate with him for the purposes of this application for financial assistance and any application for additional financial assistance throughout the duration of this class action.

3. It is also agreed that neither the undersigned, nor the **Council** or the class members, will be required, at the end of the class action, to pay any fees, costs or expenses other than those provided for in paragraph 1 of this agreement.

4. In the event that the FONDS D'AIDE AUX RECOURS COLLECTIFS refuses to provide financial assistance at any stage of the class action, the parties may amend this mandate, without the undersigned, the **Council** and the class members being required to pay any money whatsoever.

5. The parties undertake to notify the FONDS D'AIDE AUX RECOURS COLLECTIFS in writing of any amendment to this agreement.

SIGNED IN MONTRÉAL
ON [handwritten:] *October 30* 1998

[signature]
Marcel Boulanger, Chair
For the Conseil québécois sur le tabac et la santé

[signature]
LAUZON BÉLANGER

RECOURS COLLECTIF

MANDAT PROFESSIONNEL ET
CONVENTION D'HONORAIRES EXTRAJUDICIAIRES

Je, soussigné, **Monsieur Marcel Boulanger**, président du **Conseil québécois sur le tabac et la santé** (ci-après nommé le **Conseil**), dûment autorisé par résolution du conseil exécutif du **Conseil**, tenue le 15 juillet 1998, mandate, par les présentes, *LAUZON BÉLANGER* (ci-après nommé: le procureur) pour intenter, au nom du **Conseil,** un recours collectif, en désignant comme membre désigné pour les fins du recours, Monsieur Jean-Yves Blais, pour le compte des membres du groupe ci-après décrit.

Le groupe peut être décrit et désigné comme suit:

> «*Toutes les personnes qui sont ou ont été victimes d'un cancer du poumon, du larynx ou de la gorge après avoir inhalé de la fumée de cigarettes sur une période de temps prolongée ;*
>
> *Ainsi que les ayants droit et/ou héritiers des personnes décédées qui autrement auraient fait partie du groupe ;*
>
> *Exception faite des personnes qui auraient été exposées sur une période de temps significative à des produits ou matières contenants de l'amiante, de l'uranium, du radon, du chrome ou de l'arsenic».*

1. Je consens à ce qu'il soit retenu sur les argents ou bénéfices perçus ou économies réalisées par mon procureur pour le compte du **Conseil**, le membre désigné ou pour les membres du groupe, s'il y a lieu, des honoraires extrajudiciaires d'un montant égal à vingt pour cent (20%) de la somme ou bénéfices perçus ou économies réalisées en relation au présent recours collectif, de quelque source que ce soit, par transaction ou à la suite d'un jugement. Ces honoraires extrajudiciaires s'étendent aux sommes perçues pour et au nom de tout le groupe visé par le présent recours collectif, et sont en sus des honoraires judiciaires qui pourraient être attribués audit procureur et payés par la partie adverse. Ces honoraires sont sujets à approbation par le tribunal.

2. Je mandate également mon procureur pour présenter une demande d'aide financière au FONDS D'AIDE AUX RECOURS COLLECTIFS pour le paiement des déboursés judiciaires et extrajudiciaires, des frais d'expert, des dépens et partie des honoraires extrajudiciaires et m'engage à collaborer avec lui aux fins de cette demande d'aide financière et de toute demande d'aide financière additionnelle pendant toute la durée du présent recours collectif.

3. Il est également convenu que ni le soussigné, ni le **Conseil** ou les membres du groupe, n'auront, à la fin du recours collectif, à payer des honoraires, frais ou déboursés autres que ceux prévus au paragraphe 1 de la présente convention.

4. Dans l'éventualité où le FONDS D'AIDE AUX RECOURS COLLECTIFS refuserait d'attribuer une aide financière à quelque étape du recours collectif, les parties pourront modifier le présent mandat, sans que le soussigné, le **Conseil** et les membres du groupe n'aient à débourser quelque argent que ce soit.

5. Les parties s'engagent à aviser par écrit le Fonds d'aide aux recours collectifs de toute modification à la présente convention.

SIGNÉ, À MONTRÉAL,
LE 20 octobre 1998

Marcel Boulanger c.r.

Marcel Boulanger prés.
Pour le Conseil québécois sur le tabac te la santé

Lauzon Bélanger

LAUZON BÉLANGER

THIS IS SCHEDULE "C"
TO THE AFFIDAVIT OF DR. ANDRÉ-H. DANDAVINO
(January 9, 2025)

FEE AGREEMENT, CURRENT VERSION (2017) BETWEEN THE CQTS AND ITS LAWYERS (QUEBEC CLASS COUNSEL) AND TRANSLATION THEREOF

SWORN BEFORE ME
THIS 9th DAY OF JANUARY 2025

Eléonore Loupforest
Commissioner of Oaths for Quebec

AMENDEMENT ET MISE À JOUR DU MANDAT PROFESSIONNEL ET DE LA CONVENTION D'HONORAIRES DU 30 OCTOBRE 1998

CONSIDÉRANT le mandat professionnel et la convention d'honoraires extrajudiciaires intervenus le 30 octobre 1998 entre le Conseil québécois sur le tabac et la santé (ci-après « CQTS ») et le bureau Lauzon Bélanger visant l'institution de l'action collective portant le numéro de la Cour supérieure 500-06-000076-980;

CONSIDÉRANT que le bureau Lauzon Bélanger a été dissout en mai 2015 et que le bureau Trudel Johnston & Lespérance (ci-après « TJL ») agit maintenant pour le compte du CQTS;

CONSIDÉRANT le jugement du 27 mai 2015 donnant gain de cause au CQTS et la définition du groupe visé par le recours du CQTS dans le jugement ;

CONSIDÉRANT le jugement de l'honorable Mark Schrager du 25 octobre 2015 en vertu duquel deux compagnies de tabac doivent verser un cautionnement totalisant environ 984 millions de dollars;

CONSIDÉRANT que la cause a été plaidée en appel à l'automne 2016 et que la Cour d'appel a présentement la cause en délibéré, et pourrait rendre jugement à tout moment;

CONSIDÉRANT que les compagnies de tabac ont annoncé leur intention de contester la remise du cautionnement pour le bénéfice des membres;

CONSIDÉRANT l'ampleur du dossier à piloter par TJL et la stratégie adoptée par les défenderesses de continuellement retarder, alourdir et complexifier les procédures;

CONSIDÉRANT que les défenderesses ont clairement manifesté leur intention de prendre des procédures judiciaires afin de suspendre l'exécution de tout jugement qui serait prononcé contre elles, notamment des procédures suivant la *Loi sur la faillite et l'insolvabilité* (ci-après « LFI ») ou la *Loi sur les arrangements avec les créanciers des compagnies* (ci-après « LACC »);

CONSIDÉRANT que TJL considère qu'il est possible, voire probable que de telles procédures soient intentées devant non seulement la Cour supérieure du Québec mais aussi celle de l'Ontario;

CONSIDÉRANT qu'il est dans l'intérêt des membres que TJL s'adjoigne les services de bureaux spécialisés en matière de faillite, insolvabilité et arrangements en vertu de la LACC à Montréal et à Toronto afin de protéger les droits des membres;

CONSIDÉRANT l'importance des ressources que TJL devra immédiatement déployer pour contrer toutes tentatives des défenderesses de suspendre les effets d'un jugement favorable;

CONSIDÉRANT qu'il y a lieu d'amender la convention d'honoraires;

LES PARTIES CONVIENNENT DE CE QUI SUIT :

1. Les membres pour lesquels un mandat est donné sont décrits par la définition du groupe retenue par le juge Brian Riordan dans son jugement du 27 mai 2015:

> «Toutes les personnes résidant au Québec qui satisfont aux critères suivants:
>
> 1) Avoir fumé, avant 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).
>
> Par exemple, 12 paquets/année égale:
>
> 20 cigarettes par jour pendant 12 ans (20 X 365 X 12 = 87 600) ou
>
> 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 = 87 600);
>
> 2) Avoir été diagnostiquées avant le 12 mars 2012 avec:
>
> 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. »

2. L'article 1 de la convention du 30 octobre 1998 est modifié par l'addition de ce qui suit :

1.1 En sus du pourcentage de vingt pour cent (20%) mentionné au paragraphe 1, le CQTS consent à ce qu'un maximum de deux pour cent (2%) additionnels soit retenu à même les sommes ou bénéfices perçus ou économies réalisées

en relation au présent recours collectif, de quelque source que ce soit, par transaction ou à la suite d'un jugement, uniquement pour les services de bureaux spécialisés en matière de faillite, insolvabilité et arrangements en vertu de la LACC;

1.2 Pour plus de clarté, les taxes applicables sur les honoraires professionnels seront également retenues à même les bénéfices perçus en relation au présent recours collectif;

Je soussigné, André-H. Dandavino, président du CQTS, dûment autorisé par résolution du conseil d'administration du CQTS, tenue le 16 mars 2017, confirme le mandat de TRUDEL JOHNSTON & LESPÉRANCE pour poursuivre le recours collectif portant le numéro de la Cour supérieure 500-06-000076-980 en conjonction avec le recours collectif portant le numéro 500-06-000070-983.

SIGNÉ à Montréal ce 16 jour de mars 2017.

André-H. Dandavino
Pour le Conseil québécois sur le tabac et la santé

TRUDEL JOHNSTON & LESPÉRANCE
BRUCE JOHNSTON

I certify the following three pages to be an accurate translation of a digital copy of the French-language agreement entitled "Amendement et mise à jour du mandate professionnel et de la convention d'honoraires du 30 octobre 1998," shown below.

Translated by Margaret Sankey, C. Tr., Member No. 29300 of the Ordre des traducteurs, terminologues et interprètes agréés du Québec (OTTIAQ), on Sunday, January 12, 2025.

AMENDMENT AND UPDATE OF THE PROFESSIONAL MANDATE AND AGREEMENT ON FEES DATED OCTOBER 30, 1998

CONSIDERING the professional mandate and agreement on extrajudicial fees entered into on October 30, 1998, between the Conseil québécois sur le tabac et la santé [Quebec council on tobacco and health], hereinafter the "CQTS", and the firm Lauzon Bélanger for the institution of the class action bearing Superior Court number 500-06-000076-980;

CONSIDERING that the firm Lauzon Bélanger was dissolved in May 2015 and the firm Trudel Johnston & Lespérance, hereinafter "TJL", is now acting on behalf of the CQTS;

CONSIDERING the judgment rendered on May 27, 2015, in favour of the CQTS, and the definition of the class covered by the CQTS' action in said judgment;

CONSIDERING the judgment by the Honourable Mark Schrager, dated October 25, 2015, under which two tobacco companies must post a surety bond totalling approximately 984 million dollars;

CONSIDERING that the case was argued on appeal in fall 2016 and the Court of Appeal is currently in deliberation on the case, and could render its judgment at any time;

CONSIDERING that the tobacco companies have announced their intention to contest the payment of the surety bond for the benefit of the members;

CONSIDERING the scope of the case to be handled by TJL and the defendants' chosen strategy of continually delaying the proceedings and rendering them more cumbersome and more complex;

CONSIDERING that the defendants have clearly expressed their intention to institute legal proceedings in order to suspend the execution of any judgment that may be rendered against them, in particular proceedings under the *Bankruptcy and Insolvency Act* (hereinafter referred to as the "BIA") or the *Companies' Creditors Arrangement Act* (hereinafter referred to as the "CCAA");

CONSIDERING that TJL believes it to be possible, even likely, that such proceedings will be brought before not only the Superior Court of Québec but also that of Ontario;

CONSIDERING that it is in the interest of the members that TJL retain the services of firms specializing in bankruptcy, insolvency and arrangements under the CCAA in Montréal and in Toronto to protect the rights of the members;

CONSIDERING the significant resources that TJL will have to immediately invest to counter any attempts by the defendants to suspend the effects of a favourable judgment;

CONSIDERING that there is good reason to amend the fee agreement;

THE PARTIES AGREE AS FOLLOWS:

1. The members for whom a mandate is given are described by the definition of the class given by Justice Brian Riordan in his judgment dated May 27, 2015:

"All persons residing in Quebec who meet the following criteria:

(1) Prior to November 20, 1998, have smoked a minimum of 12 packs/year of cigarettes manufactured by the defendants (the equivalent of a minimum of 87,600 cigarettes, i.e., any combination of the number of cigarettes smoked in one day multiplied by the number of days of consumption such that the total is equal to or greater than 87,600 cigarettes).

For example, 12 packs/year equals:
20 cigarettes per day for 12 years (20 X 365 X 12 = 87,600) or
30 cigarettes per day for 8 years (30 X 365 X 8 = 87,600) or
10 cigarettes per day for 24 years (10 X 365 X 24 = 87,600);

(2) Have been diagnosed before March 12, 2012, with:
- (a) Lung cancer, or
- (b) Cancer (squamous cell carcinoma) of the throat, namely of the larynx, the oropharynx or the hypopharynx, or
- (c) Emphysema.

The class also includes the heirs of persons who died after November 20, 1998, and who meet the criteria described above.

2. Article 1 of the agreement dated October 30, 1998, is amended by adding the following:

1.1 In addition to the percentage of twenty percent (20%) mentioned in paragraph 1, the CQTS agrees for additional deductions of a maximum of two percent (2%) to be retained

from the sums or benefits received or the savings realized in connection with this class action, from any source whatsoever, through a settlement or further to a judgment, solely for the services of firms specializing in bankruptcy, insolvency and arrangements under the CCAA;

1.2 For greater clarity, the applicable taxes on such professional fees will also be deducted from the benefits received in connection with this class action.

I, the undersigned, André-H. Dandavino, Chair of the CQTS, duly authorized by a resolution of the Board of Directors of the CQTS, held on March 16, 2017, confirm the mandate of TRUDEL JOHNSTON & LESPÉRANCE to pursue the class action bearing Superior Court number 500-06-000076-980 in conjunction with the class action bearing number 500-06-000070-983.

SIGNED in Montréal this [handwritten:] *16th* day of March 2017.

[signature]
André-H. Dandavino
For the Conseil québécois sur le tabac et la santé

[signature]
TRUDEL JOHNSTON & LESPÉRANCE
[handwritten:] *BRUCE JOHNSTON*

AMENDEMENT ET MISE À JOUR DU MANDAT PROFESSIONNEL ET DE LA CONVENTION D'HONORAIRES DU 30 OCTOBRE 1998

CONSIDÉRANT le mandat professionnel et la convention d'honoraires extrajudiciaires intervenus le 30 octobre 1998 entre le Conseil québécois sur le tabac et la santé (ci-après « CQTS ») et le bureau Lauzon Bélanger visant l'institution de l'action collective portant le numéro de la Cour supérieure 500-06-000076-980;

CONSIDÉRANT que le bureau Lauzon Bélanger a été dissout en mai 2015 et que le bureau Trudel Johnston & Lespérance (ci-après « TJL ») agit maintenant pour le compte du CQTS;

CONSIDÉRANT le jugement du 27 mai 2015 donnant gain de cause au CQTS et la définition du groupe visé par le recours du CQTS dans le jugement ;

CONSIDÉRANT le jugement de l'honorable Mark Schrager du 25 octobre 2015 en vertu duquel deux compagnies de tabac doivent verser un cautionnement totalisant environ 984 millions de dollars;

CONSIDÉRANT que la cause a été plaidée en appel à l'automne 2016 et que la Cour d'appel a présentement la cause en délibéré, et pourrait rendre jugement à tout moment;

CONSIDÉRANT que les compagnies de tabac ont annoncé leur intention de contester la remise du cautionnement pour le bénéfice des membres;

CONSIDÉRANT l'ampleur du dossier à piloter par TJL et la stratégie adoptée par les défenderesses de continuellement retarder, alourdir et complexifier les procédures;

CONSIDÉRANT que les défenderesses ont clairement manifesté leur intention de prendre des procédures judiciaires afin de suspendre l'exécution de tout jugement qui serait prononcé contre elles, notamment des procédures suivant la *Loi sur la faillite et l'insolvabilité* (ci-après « LFI ») ou la *Loi sur les arrangements avec les créanciers des compagnies* (ci-après « LACC »);

CONSIDÉRANT que TJL considère qu'il est possible, voire probable que de telles procédures soient intentées devant non seulement la Cour supérieure du Québec mais aussi celle de l'Ontario;

CONSIDÉRANT qu'il est dans l'intérêt des membres que TJL s'adjoigne les services de bureaux spécialisés en matière de faillite, insolvabilité et arrangements en vertu de la LACC à Montréal et à Toronto afin de protéger les droits des membres;

CONSIDÉRANT l'importance des ressources que TJL devra immédiatement déployer pour contrer toutes tentatives des défenderesses de suspendre les effets d'un jugement favorable;

CONSIDÉRANT qu'il y a lieu d'amender la convention d'honoraires;

LES PARTIES CONVIENNENT DE CE QUI SUIT :

1. Les membres pour lesquels un mandat est donné sont décrits par la définition du groupe retenue par le juge Brian Riordan dans son jugement du 27 mai 2015:

> «Toutes les personnes résidant au Québec qui satisfont aux critères suivants:
>
> 1) Avoir fumé, avant 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).
>
> Par exemple, 12 paquets/année égale:
>
> 20 cigarettes par jour pendant 12 ans (20 X 365 X 12 = 87 600) ou
>
> 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 = 87 600);
>
> 2) Avoir été diagnostiquées avant le 12 mars 2012 avec:
>
> 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. »

2. L'article 1 de la convention du 30 octobre 1998 est modifié par l'addition de ce qui suit :

1.1 En sus du pourcentage de vingt pour cent (20%) mentionné au paragraphe 1, le CQTS consent à ce qu'un maximum de deux pour cent (2%) additionnels soit retenu à même les sommes ou bénéfices perçus ou économies réalisées

en relation au présent recours collectif, de quelque source que ce soit, par transaction ou à la suite d'un jugement, uniquement pour les services de bureaux spécialisés en matière de faillite, insolvabilité et arrangements en vertu de la LACC;

1.2 Pour plus de clarté, les taxes applicables sur les honoraires professionnels seront également retenues à même les bénéfices perçus en relation au présent recours collectif;

Je soussigné, André-H. Dandavino, président du CQTS, dûment autorisé par résolution du conseil d'administration du CQTS, tenue le 16 mars 2017, confirme le mandat de TRUDEL JOHNSTON & LESPÉRANCE pour poursuivre le recours collectif portant le numéro de la Cour supérieure 500-06-000076-980 en conjonction avec le recours collectif portant le numéro 500-06-000070-983.

SIGNÉ à Montréal ce 16 jour de mars 2017.

André-H. Dandavino
Pour le Conseil québécois sur le tabac et la santé

TRUDEL JOHNSTON & LESPÉRANCE
BRUCE JOHNSTON

Court File Nos. 19-CV-615862-00CL
19-CV-616077-00CL
19-CV-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**
Applicants

AFFIDAVIT OF LISE BOYER BLAIS
(sworn January 13, 2025)

I, Lise Boyer Blais, of the City of Brossard, in the Province of Quebec, MAKE OATH AND SAY:

1. I am the widow and heir of the late Jean-Yves Blais, who, until his death in August 2012, was the designated class member in the *CQTS/Blais* class action,[1] a case advanced on behalf of Quebec smokers who developed lung cancer, throat cancer or emphysema as a result of smoking cigarettes made by Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively "**Imperial**"), Rothmans, Benson & Hedges Inc. ("**RBH**"), and JTI-MacDonald Corp. ("**JTIM**") (collectively, the "**Tobacco Companies**" or "**the defendants**" in the actions described below).

2. I swear this affidavit in support of the Quebec Class Counsel's *Motion for the Approval of the Quebec Class Counsel Fee* (the "**QCAP Fee Motion**").[2] Pursuant to

[1] *Jean-Yves Blais and the Conseil québécois sur le tabac et la santé v. Imperial Tobacco Canada Ltd., et al.* (500-06-000076-980).
[2] As defined in the Plans, "**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., LLP and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P.

section 14.9(f) of the Plans, the QCAP Fee Motion is to be presented at the Sanction Hearing.

3. I have personal knowledge of the matters to which I depose herein. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

4. Unless otherwise defined herein, all defined terms used in the present affidavit have the same meanings as ascribed to them in the Plans.

5. In 1997, my husband was diagnosed with lung cancer caused by smoking. His illness was long and caused him excruciating suffering.

6. The diagnosis was made following an x-ray performed on him after he consulted with a doctor for back pain that had begun to bother him at work. He was a taxi driver. We were fortunate that his early diagnosis likely allowed him to live longer.

7. In the Fall of 1997, his doctors removed one of the lobes from his right lung.

8. Between 1997 and 2012, he underwent several treatments for his cancer. The kinds of treatments and suffering he experienced are described by Justice Riordan in the Superior Court's trial decision.[3]

9. My husband was also later diagnosed with emphysema.

10. In early 2012, he received another lung cancer diagnosis. He died from lung cancer caused by tobacco in August of that year.

11. My husband believed that no one should ever have to go through what he had experienced as a result of his tobacco use, especially not young people. In 1998, he agreed to act as the designated member against the tobacco industry in the *CQTS/Blais* class action.

[3] *Létourneau c. JTI-MacDonald Corp.*, para. 979-986.

12. In the early 2000s, he was examined on discovery for many days by the tobacco companies' lawyers, both prior to and after the authorization of the class action. They obtained all of his medical records.

13. He agreed to undergo an extensive medical examination and to make his life and health status part of the public record in support of the class action.

14. He attended many days of the hearing on the authorization of the class action in 2004, and despite his illness he attended a few days of the trial that began on March 12, 2012.

15. He died a few months later, before either of the judgments of the Quebec Superior Court or the Quebec Court of Appeal ruling in his favour were rendered. He would have very much liked to know the outcome of his long battle.

16. I had the opportunity to follow my husband's journey as the designated class member closely. He was proud of the important role he had agreed to take on. Along with my son Martin Blais, we often talked about it as a family. We all closely followed the case, including the work of the Quebec Class Counsel and the Conseil québécois sur le tabac et la santé ("**CQTS**"), with whom my husband was frequently in contact.

17. After his death, I agreed to continue his fight until the end, despite my own advanced age and health challenges. Since 2012, I have often acted as a spokesperson for victims and their families, including at many press conferences. My son has supported me throughout this process.

18. Having experienced the work and efforts by the Quebec Class Counsel and the CQTS firsthand and as part of a close community of victims and their families, I consider myself well-positioned to assess their involvement over the last quarter-century.

19. When the Plans were publicly released, I participated in a press conference on October 18, 2024 and explained the litigation journey that my late husband had been a part of for so many years. My son and I also expressed our personal gratitude to the Quebec Class Counsel team for their unwavering efforts to achieve this result, and our

satisfaction that the class members were close to finally receiving compensation after all these years.

20. The work of the Quebec Class Counsel is accurately summarized and presented in the QCAP Fee Motion and in the affidavits filed by the Quebec Class Counsel with the Court to the best of my knowledge.

21. Having in mind the consistency of their involvement, the countless challenges they have faced, and the time they have invested, of which I have been partly a direct witness, I have no difficulty in confirming the extent of their total commitment to this matter as described in the Motion.

22. It also appears clear to me that without them and without their unwavering commitment and dedication to the file, we would not have achieved a favorable outcome, and the victims would never have been compensated.

23. Consequently, it is without hesitation that I support the QCAP Fee Motion and ask that the amounts that Quebec Class Counsel are requesting in accordance with the terms of their agreement with the CQTS be approved by the CCAA Court.

AND I HAVE SIGNED, THIS 13th DAY OF JANUARY, 2025

AND I HAVE SIGNED

Lise Boyer Blais

Solemnly declared before me by electronic means at Montréal, Province of Québec, this 13th day of January, 2025

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

Commissioner of Oaths for the Province of Québec

Court File Nos. 19-CV-615862-00CL
19-CV-616077-00CL
19-CV-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

AFFIDAVIT OF MARC BEAUCHEMIN
(sworn January 7, 2025)

I, Marc Beauchemin, of the City of Montreal, in the Province of Quebec, MAKE OATH AND SAY:

1. I am a partner at the law practice of De Grandpré Chait, a leading Montreal-based law firm focused on corporate and commercial matters.

2. De Grandpré Chait is one of the four law firms designated as Quebec Class Counsel[1] in the Court-Appointed Mediator's and Monitors' *CCAA* Plans of Compromise and Arrangement (each a "***CCAA* Plan**" and collectively the "**Plans**") in respect of (i) Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively "**Imperial**"), (ii) Rothmans, Benson & Hedges Inc. ("**RBH**"), and (iii) JTI-MacDonald Corp. ("**JTIM**") (collectively, the "**Tobacco Companies**" or "**the defendants**" in the actions described below).

[1] As defined in the Plans, "**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., LLP and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P.

3. Quebec Class Counsel represent the members of two class action lawsuits instituted in Quebec in 1998 (the "**Quebec Class Actions**") on behalf of (i) Quebec smokers who developed lung cancer, throat cancer or emphysema as a result of smoking the Tobacco Companies' cigarettes (the "***CQTS/Blais* Class Action**")[2] and (ii) Quebec smokers who became addicted to the nicotine contained in the cigarettes made by the Tobacco Companies (the "***Létourneau* Class Action**")[3] (collectively, the "**Quebec Class Action Plaintiffs**", "**QCAPs**" or "**class members**").[4]

4. It was in direct response to the judgments in the Quebec Class Actions, at first instance (May 27, 2015) and on appeal (March 1, 2019), condemning the Tobacco Companies to pay damages to the QCAPs in excess of $13.5 billion that the Tobacco Companies filed their proceedings in March 2019 (only days following the appeal decision) under the *Companies' Creditors Arrangement Act* ("***CCAA***"), which have now culminated in the $32.5 billion global settlement set forth in the Plans that are currently before this Honorable Court for approval.

5. I swear this affidavit in support of the Quebec Class Counsel's *Motion for the Approval of the Quebec Class Counsel Fee* (the "**QCAP Fee Motion**"). Pursuant to section 14.9(f) of the Plans, the QCAP Fee Motion is to be dealt with at the Sanction Hearing.

6. I have personal knowledge of the matters to which I depose herein. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

7. Unless otherwise defined herein, all defined terms used in the present affidavit have the same meanings as ascribed to them in the Plans.

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[2] *Jean-Yves Blais and the Conseil québécois sur le tabac et la santé v. Imperial Tobacco Canada Ltd., et al.* (500-06-000076-980).
[3] *Cecilia Létourneau v. Imperial Tobacco Canada Ltd., et al.* (500-06-000070-983).
[4] The eligibility requirements for class members in the *CQTS/Blais* Class Action and the *Létourneau* Class Action are set forth in the judgment of Mr. Justice Brian Riordan J.S.C. and are contained in the definitions of *Blais* Class Members and *Létourneau* Class Members in the Plans.

8. In support of the Motion, this affidavit offer details on the following themes:

a. **Personal Background:** My professional background and personal involvement in the litigation;

b. **Involvement in the Class Actions:** The nature and complexity of the work I carried out in relation to the litigation between 1999 to present, with a focus on the legal and strategic challenges that rendered involvement in the class actions a profoundly high-risk endeavour;

c. **Time and Resources Invested:** The number of hours and other resources I invested in relation to the litigation between 1999 to present, as well as the relevant information regarding De Grandpré Chait's investment in the class actions;

d. **Financial Risks and Obligations:** The financial risks and opportunity costs incurred as a result of our involvement in the litigation;

e. **Impact and Significance:** The results and significance of the time, resources and effort invested in the litigation for class members, the public, and the justice system.

9. My affidavit should be read in conjunction with the affidavits sworn by other Quebec Class Counsel lawyers and others in support of the QCAP Fee Motion.

A. Personal Background

10. I have attached hereto as **Schedule "A"** my *curriculum vitae* which sets forth my professional background and experience.

11. In summary, I received a Bachelor of Civil Law (L.L.L.) degree from the Université de Montréal's Faculty of Law in 1985.

12. I was called to the bar in the Province of Quebec in 1986. I have been a member in good standing since that time.

13. The firm now known as De Grandpré Chait has existed in some form for nearly 100 years. Its current incarnation is the result of the merger of two longstanding Montreal firms — one predominantly francophone (De Grandpré Godin) and the other predominantly anglophone (Chait Amyot) in 1993.

14. De Grandpré Chait offers specialized, boutique legal services in the areas of litigation, class actions, real estate, business, construction, taxation, municipal and expropriation, insolvency and restructuring law. The firm is home to over 80 practising lawyers, many among the top in their fields. Over 30 lawyers from across the firm's legal sectors are currently listed in *Chambers* and *The Best Lawyers in Canada* directory.

15. I joined the firm as an articling student in 1986 and have remained ever since, developing a career in litigation, particularly in the field of class actions.

B. Involvement in the Class Actions

16. In this section, I describe the nature, extent and complexity of the work I carried out in relation to the Quebec class actions between approximately 1999 to present.

17. Quebec Class Counsel understood that in order to succeed against the Tobacco Companies it was necessary to work as a team, to set out and adhere to a defined litigation strategy, and then for each of us to fulfil particular roles to execute that strategy.

18. As discussed in greater detail below, the Quebec Class Counsel team determined that I would be one of the primary lawyers responsible for many dozens of motions and appeals over the course of the class actions' history; to assist with the trial preparation process at every stage (including issues related to discovery, expert witnesses, and decision-making around legal and strategic issues arising prior to trial); to lead the drafting process for many key materials (including motions, plans of argument, factums, contracts and notices), and to provide feedback and assistance in the drafting process on others' work on a routine basis, at every stage of proceedings.

19. Though this account is by no means exhaustive, I discuss some of my most significant contributions to the work of the Quebec Class Counsel team in the sections

that follow, with a focus on some of the most difficult and complex interlocutory matters prior to and during the trial.

20. While this affidavit will focus on my personal involvement of more than a quarter of a century in these class actions, it is important to emphasize the collective nature of this effort. Quebec Class Counsel's success was made possible by the fact that each lawyer fully embraced the responsibilities entrusted to them and exceeded expectations in carrying out those responsibilities over many years. The solutions adopted in response to each of the challenges that arose — there were so many — reflect the intelligence, experience and insight of each of the lawyers involved, combined and shared without regard to ego, in order to achieve our common goals: to have these class actions authorized, to obtain a judgment on the merits compensating the victims through a collective recovery process, and ultimately to ensure that the victims receive the compensation to which they are entitled.

21. All of the judgments in the Quebec Class Actions referenced in the present affidavit are described in Schedules "B" and "C" to the affidavit of Bruce W. Johnston. Where appropriate, relevant judgments are also referenced by hyperlink in footnotes.

Prior to Authorization

22. Relatively early in my career at De Grandpré Chait, I began receiving litigation mandates from the Attorney General of Quebec on complex public law issues. The first such case involved the legality and constitutionality of the *Loi instituant le fonds spécial de financement des activités locales et modifiant la Loi sur la fiscalité municipale*, zero-deficit legislation which had been adopted by the National Assembly in 1997.[5] I also represented the Attorney General of Quebec in a major claim brought by Cree plaintiffs invoking their ancestral, environmental and constitutional rights.[6]

23. Parallel to this work, and as part of my municipal law practice, I had developed an expertise in environmental law. In that context I met Michel Bélanger, who was the co-

[5] *Anjou (Ville) c. Québec (Procureur général)*, 2001 CanLII 16817 (QC CS).
[6] *Lord c. Administrateur provincial nommé en vertu du chapitre 22 de la Convention de la Baie James et du Nord québécois*, 1999 CanLII 11970 (QC CS).

founder of the Centre québécois du droit de l'environnement (the "**CQDE**").[7] The CQDE is a non-profit organization with a mission to promote compliance with environmental law, protect environmental rights and ensure access to justice in this area.

24. I had been a member in the CQDE and represented the organization as part of several intervener mandates. At a certain point, Michel approached me and asked whether I would be interested in replacing him as the organization's president. I ended up taking on that role for a period, leading a variety of strategic litigation efforts in support of the CQDE's public interest mission. This relationship with Michel is what led to my involvement in the Quebec Class Actions.

25. In 1996, Michel had co-founded a firm specialized in class actions and environmental law with his partner Yves Lauzon, then called Lauzon Bélanger (and later Lauzon Bélanger Lespérance).

26. At the time, their firm was the leading firm acting for plaintiffs in class actions in Quebec. I had already worked with them on several important mandates. Yves was the undisputed expert in the field at the time, and had been involved in class actions since 1978, when the legislative reforms permitting class proceedings had first been adopted in the province. He had been the first lawyer hired by the Fonds d'aide aux actions collectives and had developed a remarkable private practice in the years that followed. He was also the author of the definitive text on class actions at the time.[8]

27. In 1998, Michel told me that Lauzon Bélanger had been approached by Dr. Marcel Boulanger from the Conseil québecois sur le tabac et la santé (the "**CQTS**") to launch a class action against the tobacco industry. It was an extraordinarily ambitious idea at the time, even for lawyers accustomed to working on complex public interest matters.

28. The initial motion for authorization in the *CQTS/Blais* matter was filed by Lauzon Bélanger in the fall of 1998. However, it came a few months after two other lawyers —

7 In English, the Quebec Environmental Law Center.
8 Yves Lauzon, *Le recours collectif* (Cowansville: Éditions Yvon Blais, 2001).

Bruce Johnston and Philippe Trudel — had filed a motion for authorization on behalf of their own client in the *Létourneau* file against the same three tobacco companies.

29. While the *CQTS/Blais* file focused on tobacco-related diseases and the *Létourneau* file focused on addiction, there was a degree of overlap in the class definitions and in the causes of action that exposed both teams to challenges. The practical effect was that the Tobacco Companies were able to argue that there was an issue of *lis pendens* triggering the application of the "first to file" rule under Quebec law. This strategy was successful at first instance, and the *CQTS/Blais* file was suspended as a result. Had the first instance judgment on that issue been upheld, the class action would have essentially ended in 1999.

30. My first real involvement in the litigation was when Michel approached me to argue the appeal of that decision. He asked whether I was ready to be a serious partner in the file, and to fully invest myself in the effort, just as much as he and Yves had. I consulted my colleagues at De Grandpré Chait, because I knew the case would not bring in any money for many years, if ever. Despite the fact that there was absolutely no business case for my involvement, they were encouraging. They felt that the litigation was a good cause and would be a good learning opportunity, particularly given that opposing counsel would include some of the best lawyers in Canada. I said yes to Michel and Yves. I was only in my mid-30s, and had just become a Partner at De Grandpré Chait that year.

31. Ultimately, we were successful in defeating the suspension before the Court of Appeal. That decision led to a joinder of the *CQTS/Blais* and *Létourneau* files, which meant that both class actions would proceed to the authorization stage together.[9] It was not an easy debate, particularly given that the Court of Appeal had just rendered its decision in *Servier* a few months prior — a decision confirming the "first to file" rule in Quebec.[10] As discussed below, this issue was only the first of countless existential threats to the litigation over the course of the coming decades, any one of which, had we not prevailed, could have put an end to the class actions entirely.

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[9] *Conseil québécois sur le tabac et la santé c. J.T.I.-MacDonald Corp.,* 2000 CanLII 28985 (QC CA).
[10] *Hotte c. Servier Canada inc.,* 1999 CanLII 13363 (QC CA).

32. One of the practical and ultimately extremely positive results of the Court of Appeal's judgment in 2000 was that it required us to collaborate with Bruce and Philippe, the lawyers in the *Létourneau* file. However, the relationship was not a natural alliance at first. Michel, Yves and I did not know Bruce and Philippe, and had no idea whether they had the experience required to succeed in these class actions.

33. Moreover, while the *Blais* case was seeking compensatory damages for victims, the *Létourneau* file had been anchored around a free-standing claim for punitive damages. Though this kind of claim is now well established in Quebec human rights and consumer protection law, at the time the strategy seemed novel and untested. It was not clear to us that it would work — and if it did, we were concerned that it would add significant complexity to the litigation in exchange for marginal benefits.

34. In the years between the Court of Appeal's decision in 2000 and the 14-day authorization hearing in 2004, we nonetheless advanced the files very much as two separate class actions. Still, we were always aware of the vital strategic risk that the two class actions could potentially harm each other's chances.

35. The steps leading up to the authorization hearing were demanding as we were forced to debate many preliminary motions at an early stage. With support from a senior partner at De Grandpré Chait, I managed all of the preliminary motions and the pre-authorization examinations of the designated member, Jean-Yves Blais, as well as those of the CTQS's representative, Dr. Marcel Boulanger. The two witnesses faced a barrage of questions over many days by very capable lawyers.

36. We knew from the beginning that the Tobacco Companies would vigorously oppose our efforts at every step, and that we would have to be ready to fight. There were indeed a great many motions to debate, all of which delayed and complicated the authorization process. There was no case management judge assigned at the outset, so we were arguing all of these issues before different judges, which increased the risk and uncertainty.

37. Preparing for the hearing on the motion for authorization required a great deal of work. We had to properly determine how to frame the very complex issues at the core of the class actions within the framework of the applicable authorization criteria. The Tobacco Companies, for their part, worked very hard to shift the debate to the merits of the dispute. It was during this process that we began to build our theory of the cases, both with regard to the manufacturer's liability issues and to all matters related to harm and collective causation.

38. In the lead up to the authorization hearing, Michel and I met with Bruce and Philippe at Michel's office in Old Montreal. Both groups were reeling from the decision in the *Caputo* case, in which the Court had just refused to certify a major tobacco class action in Ontario.[11] Bruce and Philippe had asked for the meeting and their proposal was bold. They suggested we merge the two class actions and go into the authorization as a single team.

39. We discussed our reservations with the way they had framed their case. They had reservations of their own with our legal strategy, particularly with the ability to prove causation on a class-wide basis.

40. Although the complexity of merging the cases was too significant to be implemented at that stage, we nonetheless agreed that both teams would argue that the two class actions met the applicable criteria and should be authorized. That meeting was the first step on the road to building a highly cohesive litigation team, without which success would have been impossible.

41. Given that every aspect of the class actions — whether procedural, legal or purely factual — was contested by the Tobacco Companies, we had to try to foresee every challenge in advance.

42. At the authorization hearing, I led the oral arguments for the *CQTS/Blais* file over the course of several consecutive days while Bruce led the argument for the *Létourneau* file, also for many days. The 14-day authorization hearing — which normally lasts a few

[11] *Caputo v. Imperial Tobacco Ltd.*, 2004 CanLII 24753 (ON SC).

days at most in Quebec — was unprecedented in the province's history. Yves Lauzon, who was incredibly skilled regarding the procedural mechanics of class actions, filled in the gaps of my arguments.

43. Retrospectively, it's clear to me that a number of the legal problems at play during the authorization hearing were not only unresolved in the jurisprudence at the time, but that they would remain unresolved for many years.

44. For example, the Tobacco Companies argued that Cécilia Létourneau did not have sufficient standing to act as the representative plaintiff for the proposed class because she had only smoked cigarettes manufactured by one of the three defendants — and thus had no direct cause of action against the others.[12] The Superior Court had just decided a case called *Agropur*[13] a few months prior (confirmed by the Court of Appeal the following year[14]) which stood for the proposition that a representative plaintiff in a class action must have a cause of action against each defendant. Both class actions were authorized despite this challenge, but the legal issue would come back later on — and would not be fully resolved until Bruce, Philippe and André Lespérance won an entirely different class action called *Marcotte* before the Supreme Court of Canada a decade later.[15]

45. Making matters even more complicated was the fact that, as mentioned, in the months prior to the authorization hearing, the Ontario Superior Court had refused to certify a tobacco class action in *Caputo*,[16] as discussed in the affidavit of Bruce W. Johnston. Suffice to say that it radically increased the risk and complexity of the debate at authorization.

46. We were aware of these challenges and had collectively decided that it was necessary to establish a framework for analysis based on the unique character of the

[12] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2005 CanLII 4070 (QC CS), para. 32.
[13] *Bouchard c. Agropur Coopérative*, 2004 CanLII 56942 (QC CS).
[14] *Bouchard c. Agropur Coopérative*, 2006 QCCA 1342.
[15] *Bank of Montreal v. Marcotte*, 2014 SCC 55, para. 29 et seq.
[16] *Caputo v. Imperial Tobacco Ltd.*, 2004 CanLII 24753 (ON SC).

class actions and on the very particular facts driving them. We therefore needed to be creative while maintaining an extremely rigorous approach to the law.

47. In early 2005, Justice Pierre Jasmin rendered a judgment authorizing the two class actions — over 6 years after the applications were initially filed.[17] Though the cases were allowed to proceed, the kinds of arguments raised at authorization in respect of causation and individuality foreshadowed the profoundly complex legal, evidentiary, and philosophical debates that continued to define the case on the merits until the Court of Appeal's final judgment in 2019.

Following the Authorization Judgment

48. The authorization hearing gave us an opportunity to build trust and work more closely with Bruce and Philippe, as well as with Gordon Kugler, a highly respected senior litigator who had been brought on to advise their team. Following the authorization judgment, our two groups began working in much closer collaboration, and gradually merged into a single team with the goal of winning both class actions together. In that context, I was given a significant role dealing with the interlocutory issues, as described below.

49. During the period from 2008 to the start of the trial in 2012, we had to reassess our staffing regarding the lawyers assigned to the case. Starting in 2008, significant questions arose on the one hand about the strategy for discovery, including how we would be able to handle the enormous volumes of material eventually disclosed, and on the other hand, about highly complex scientific and legal issues surrounding our ability to prove causation on a collective basis.

50. In response, Michel and I approached André Lespérance, who had built an impressive career at Justice Canada, about joining us. André accepted, and quickly became a key member of the team, taking a leadership role on these two central issues.

[17] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2005 CanLII 4070 (QC CS).

51. From the moment he arrived, André's involvement was crucial. The documentary disclosure from the Tobacco Companies ended up consisting of many tens of thousands of documents, amounting to several million pages, transmitted in a disorganized, haphazard, and unnecessarily complex fashion. Likewise, the causation issue was one of the greatest legal and factual issues we faced, and carried with it the risk of an effective defeat even after a victory on the merits.

52. The Superior Court judgments in the years immediately following authorization are numerous and lengthy. Taken together, these decisions demonstrate both the complexity of the substantive issues and the recurring problems of case management in the early years.

53. Early on, the Tobacco Companies had filed many lengthy and intricate preliminary motions, often reiterating arguments first made at the authorization hearing and adding a series of new ones. These included motions for particulars, to strike allegations, for the production of documents and to stay the proceedings, in part or entirely[18] and to examine our experts on discovery.

54. The *Agropur* "standing" issue resurfaced in 2007, when we were faced with five similar motions to dismiss different portions of the two class actions. In the *Létourneau* case, the originating application referred only to the fact that the representative plaintiff had smoked cigarettes manufactured by Imperial Tobacco, so the co-defendants JTIM and RBH argued that the actions against them should be dismissed for lack of standing. In the *CQTS/Blais* file, Mr. Blais had only smoked cigarettes manufactured by JTIM, and he had been diagnosed with lung cancer. In response, JTI-Macdonald requested that the action be dismissed with respect to the other diseases from which he did not suffer (cancer of the larynx and throat, and emphysema). The other two defendants sought to dismiss the *CQTS/Blais* case against them for lack of standing entirely.[19] All of the motions to dismiss relied on the Court of Appeal's recent judgment in *Agropur*.[20]

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[18] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2006 QCCS 1098, para. 16-17.
[19] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2007 QCCS 645, para. 24 et seq.
[20] *Bouchard c. Agropur Coopérative*, 2006 QCCA 1342.

55. The debate represented a huge risk, both at first instance and on appeal. We had to convince the Court that the judgment it had just rendered in *Agropur* on standing did not apply to our case, and distinguish our position from its holding to the effect that bare allegations of conspiracy did not establish a right to sue all potential co-conspirators. We won both at first instance and on appeal — demonstrating that the alleged causes of action and the nature of the coordination that had existed between the Tobacco Companies made our case fundamentally different from *Agropur*.[21] Had we lost, the result would have drastically narrowed the scope of the litigation in both files and put an end to the class actions as we know them today.

56. Another recurring issue was the Tobacco Companies' repeated efforts to put class members on trial, including through motions to obtain a list of members, compel the disclosure of their medical records, and subject them to examinations on discovery. This strategy was a way of playing up the individual and heterogenous aspects of the claims of class members — a mindset that, if adopted by the Court, would have been fatal to our case. It also risked derailing the entire course of the litigation on a practical level, threatening to add years of multi-day examinations, debates over objections, third-party production requests, reports on individualized medical expertise, and more.

57. In 2009 for example, the Tobacco Companies had sought the Superior Court's permission to examine 150 members of the two classes prior to trial — 100 members in the *Létourneau* file (out of nearly two million individuals who would have comprised the class at the time) and 50 in the *QCTS/Blais* class action (out of some 100,000 members). Justice Riordan, who was by that time our designated judge, dismissed the motion,[22] but the Tobacco Companies sought leave to appeal.

58. This appeal was one of the most high-risk moments prior to trial, because the jurisprudence — including a recently decided case called *Brochu* — appeared to support the Tobacco Companies' right to examine class members out of court.[23] Relying on the

[21] *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2007 QCCA 694, para. 16 et seq.
[22] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2009 QCCS 830.
[23] *Brochu c. Société des loteries du Québec (Loto-Québec),* 2005 CanLII 29434 (QC CS).

particular facts of these cases as the driving force of our argument, we convinced the Court of Appeal not to intervene in Justice Riordan's ruling.[24]

59. The issue of examining class members came back again the following year, when Justice Riordan dismissed a new motion from ITL to obtain a copy of the list of class members and other related information in the hands of class counsel.[25] The decision was then appealed, and leave was again refused in 2010.[26] This appeal is an example of a pattern throughout the litigation — no matter how many times we won certain debates they would come back in a different form later on.

60. Indeed, the following year we were back for a third time at the Court of Appeal on this same issue, after another motion — in which ITL sought the list of members, the right to meet with class members in the absence of class counsel, the ability to request medical records of members and an order requiring class members to provide those records — was defeated at the Superior Court.[27]

61. This was one of the most difficult issues with the highest stakes. At this point, everyone had already reserved several years of trial dates in their calendars. We knew that if the Tobacco Companies won this motion, it would have upended the entire calendar, and that we could have lost our trial dates entirely. This time, the Court of Appeal granted leave,[28] perhaps in part because interlocutory motions seeking access to members' medical records had become such a persistent problem. The judgment granting leave speaks volumes about the difficulty and importance of the issues raised [translation]:

> [2] (…)This motion raises a number of questions, some of which are of principle. Without enumerating them all, this is the case, for example, with the question of whether certain determinations made by a trial judge in interlocutory judgments are res judicata.

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[24] *Rothmans, Benson & Hedges inc. c. Létourneau,* 2009 QCCA 796.
[25] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2010 QCCS 4759.
[26] *Imperial Tobacco Canada Ltd. c. Létourneau*, 2010 QCCA 2312.
[27] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.*, 2011 QCCS 4090.
[28] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2011 QCCA 1714.

> [3] Depending on whether there is res judicata in this case, the question then arises as to whether a client-lawyer relationship can be established between the members of the group targeted by a class action and the lawyer acting for the representatives of this group, a question that is also one of principle. The same applies to the question of the right of the defendant in a class action to question members of the group, in particular with a view to establishing, under article 1031 *C.C.P.*, the inappropriateness of a collective recovery.
>
> [4] In the context of actions whose underlying theme is the health problems of group members, the question also arises of the relevance of the state of health or medical records of the group members, or of some of them, in the context.
>
> [5] The case also raises the question of the limits to the broad discretion conferred on the managing judge of a class action.

62. In the end, it took until October 2012 to resolve the issue, a full year between the decision granting leave to appeal and the reasons dismissing it — at which point the trial had already begun. The Superior Court judgment was affirmed, and the appeal dismissed. Justice Wagner (as he then was) wrote for a unanimous bench, rendering a landmark decision on the unique ethical relationship between class counsel and members of the class.[29]

63. That decision was significant for several reasons. Most importantly, it read as a very clear signal of the Court's deference towards Justice Riordan as the class actions' case management and trial judge, and expressly rejected the Tobacco Companies' highly individualized approach to the class proceedings. That said, and while it put an end to the debate on pre-trial discovery of class members, it also left the door open to the possibility that the Tobacco Companies could subpoena class members to testify at trial later on.

64. Another major issue on appeal during this period was a decision rendered by Justice Riordan regarding a rogatory commission in the United Kingdom. The issue concerned a line of inquiry regarding the extent to which representatives of British American Tobacco had been involved in the destruction of documents by ITL. Rogatory commissions are rarely authorized to begin with, and the one we sought to hold involved

[29] *Imperial Tobacco Canada Ltd. c. Létourneau*, 2012 QCCA 2013.

additional difficulties because the witnesses to be examined were British lawyers and thus raised issues of solicitor-client privilege in a foreign jurisdiction.

65. We won the motion and the appeal on that issue. The appeal decision is also notable because it further reinforced Justice Riordan's authority as case management judge in a file that Justice Bich (J.C.A.) described as a:

> "complex and unique proceeding of extraordinary scope" [whose] "exorbitant nature justifies a certain amount of procedural creativity and flexibility" [translation].[30]

66. Decisions like this one over the years speak not only to the complexity of the file and the Court of Appeal's commitment to maintain a certain degree of discipline in interlocutory matters, but also to the reality that the litigation was constantly testing the limits of the civil justice system — not to mention the limits of our own resources.

67. In the year before trial, I was also involved in drafting the settlement agreement with the Attorney General of Canada, discussed in detail in my colleagues' affidavits. While this agreement was ultimately not approved by Justice Riordan,[31] it was a complicated deal — legally and politically — that took an enormous amount of time.

68. It is important to reiterate that during all of the years between 2005 and 2012, there were upwards of 85 case conferences before Justice Julien and later Justice Riordan. These generally lasted a full day, sometimes two, and in addition to all of the reported judgments, we would face a barrage of interlocutory motions at nearly every one of them.[32] The decisions on those motions, which often raised complex legal and procedural issues and required written plans of argument, were often only recorded in the minutes of the case conferences.

69. In parallel, André, Bruce and I worked on developing the strategy and identifying the evidence required to prove causation on a collective basis in the *CQTS/Blais* case.

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[30] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé,* 2011 QCCA 1356, para. 6.
[31] *Conseil québécois sur le tabac et la santé c. JTI-MacDonald Corp.,* 2011 QCCS 4981.
[32] These case conferences are generally noted in the "Plumitifs" included as Schedule "D" to the affidavit of Bruce W. Johnston.

This was particularly challenging considering that, as far as we knew, no one had ever established causation on a class-wide basis in a product liability case anywhere in the world. Additionally, while the diseases that our class members had contracted (cancer and emphysema) were clearly caused by smoking, they are also well-known to have multifactorial origins.

70. In collaboration with the leading expert in the field, Dr. Jack Siemiatycki, we developed a framework to address this vital evidentiary challenge. We spent hundreds of hours learning complex concepts, particularly in the area of epidemiology, before settling on a strategy. Had we failed on this issue at trial, we risked having to bring tens of thousands of “mini-trials” to prove causation on an individual basis — a disastrous outcome which would have overwhelmed not only our own resources, but those of the courts as well.

71. This difficult and time-consuming learning process also applied to the work of all the lawyers responsible for experts in the fields of addiction, oncology, pneumology, pathology, toxicology, chemistry, psychiatry, history, marketing, public opinion, political economics and econometrics, each of which was the subject of complex and contested expert evidence at trial.

During the Trial on the Merits

72. As the trial progressed, I was routinely consulted on questions of law and strategy. We determined that I would prepare and plead most if not all of the appeals of interlocutory decisions.

73. We needed to avoid the risk that an interlocutory debate would derail the orderly conduct of the trial. As a result, we had tried to organize our team such that there was always one person available to go to the Court of Appeal while the trial was unfolding before the Superior Court. That was my job.

74. These appeals ended up being an enormous responsibility — not only due to their frequency, but because of the sheer number and complexity of the issues that were raised.

75. This role made sense for me because I was simply not in a position to spend two and a half years in a continuous trial with no other source of revenue. Unlike some of the other firms involved, my remuneration at De Grandpré Chait was essentially based on the revenue I brought to the firm. No matter how committed to the file I was, I was not in a position to ask my partners to pay me on a purely discretionary basis for a three year period — it had never happened in the history of the firm, and it was not an option given the business model and the strict terms of the partnership agreement.

76. The role assigned to me nonetheless ended up requiring much more time than anyone could have imagined. We ended up facing 30 appeals between the start of the trial and the Court of Appeal's final judgment — often with only a few weeks between them. As a result, the workload was incredibly demanding, even if I was acting in what was supposed to be a "reduced" capacity.

77. The trial began on March 12, 2012. Three days later, we were already before the Court of Appeal regarding Justice Riordan's refusal to quash a subpoena for the very first witness we had sought to call on the destruction of scientific documents.[33]

78. We returned to the Court of Appeal on March 27, 2012 to debate another critical issue.[34] Just a few weeks before the first day of the hearing on the merits, ITL had asked that the trial be postponed or, more precisely, that the trial be fundamentally reorganized so that certain issues could be dealt with *in limine litis* (including issues related to the confidentiality of documents, parliamentary immunity, threshold debates related to the admissibility of documents without witnesses, the production of documents, etc.). Many of these questions opened the door to appeals all the way up to the Supreme Court of Canada, and we felt that if the motion to address them first was granted, the trial would never truly be allowed to begin.

79. Justice Riordan dismissed ITL's motion except to postpone the beginning of the trial by one week, and the Court of Appeal upheld his judgment. Here again, the Court of Appeal insisted on the importance of showing deference towards the first instance judge

[33] *R.A. c. Conseil québécois sur le tabac et la santé*, 2012 QCCA 504.
[34] *Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 622.

and on the need for a degree of procedural flexibility in order to keep the litigation manageable.

80. Justice Bich's decision is lucid in this regard. She writes that [translation]:

> [5] It must first be acknowledged that the litigation in which the parties are engaged is of uncommon complexity, particularly from a procedural point of view. In paragraph 27 of his judgment, Justice Riordan uses the adjective 'gargantuan', and even that appears to be an understatement. This complexity necessarily means that while the ordinary rules of procedure must not be abandoned or sacrificed, they must be modulated and adapted, creatively and flexibly, to a situation which is undoubtedly beyond the scope of ordinary judicial affairs.[35]

81. Later in the decision she reproduces the entirety of paragraph 27 from Justice Riordan's judgment, in which he writes:

> [27] In an ideal world, the parties to a case, even one as gargantuan as this one, would have all relevant documents neatly bound, carefully read and colourfully highlighted before walking into the courtroom on the first day of trial. Alas, modern-day litigation, especially in class actions of this nature, hijack jurists into a parallel world to the ideal one, but it is a world where we have to find a way to survive. If one is ever to hope to get to – and through – a trial of this sort, it is essential to forsake the ideal for the "reasonably possible". Falling that, justice could never be rendered.

82. In that same appeal judgment, Justice Bich describes the defendants' approach to the litigation as inappropriately "microscopic" and "literalist", concluding that Justice Riordan's decision represents "a call for realism and moderation in fact, despite the general context of excessiveness … [that] can be applied to the entire case and the parties would do well to reflect on it" [translation].[36]

83. Of course, that was only the second of dozens of times we would go to the Court of Appeal between the start of the trial and its landmark 2019 decision — so once the trial began in earnest, I had no shortage of work to do.

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[35] *Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 622, para. 5.
[36] *Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 622, para. 17.

84. For example, in May 2012, the Court of Appeal referred a debate on objections regarding the smuggling of tobacco products to a full panel,[37] which was ultimately dismissed at the end of September.[38] In the meantime, the Court of Appeal rendered no fewer than 5 other decisions, including a decision dismissing a motion for leave to appeal on the scope of a sealing order[39] and a complex decision by a three-judge panel, resolving an issue regarding disclosure of federal statistics that had been debated a few months before trial.[40]

85. On June 4, 2012, Justice Marie St-Pierre, writing for the Court, also rendered three critically important judgments interpreting article 29 of the *Code of Civil Procedure,* which governs the scope of interlocutory decisions during the course of a trial.[41] Our efforts in this regard ended up establishing a kind of meta-jurisprudence that limited the scope of permissible appeals during the trial going forward. For example, shortly after Justice Wagner's landmark October 9 judgment discussed above, Justice Hilton relied on Justice St-Pierre's June 4th decisions to dismiss ITL and RBH's motions for leave to appeal regarding the disclosure of financial records.[42]

86. This tendency was reinforced again a few months later, when a three-judge panel issued reasons confirming a strict reading of the situations in which an immediate appeal of an interlocutory judgment rendered during a trial is permissible.[43] This development in the law of appellate civil procedure was significant enough that I authored and presented a conference paper on the theme at the National Class Actions Conference in 2013.[44]

87. Another important Court of Appeal decision concerned a series of orders at trial which authorized the production of documents in the absence of a witness under article

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[37] *JTI-MacDonald Corp. c. Létourneau*, 2012 QCCA 810.
[38] *Imperial Tobacco Canada Ltd. c. Létourneau*, 2012 QCCA 1756.
[39] *Imperial Tobacco Canada Ltd. c. Létourneau*, 2012 QCCA 1477.
[40] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2012 QCCA 1641.
[41] *Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 1015*; Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 1009; *JTI-MacDonald Corp. c. Létourneau*, 2012 QCCA 1008.
[42] *Imperial Tobacco Ltd. c. Conseil québécois sur le tabac et la santé*, 2012 QCCA 1847; *Rothmans, Benson & Hedges inc. c. Conseil québécois sur le tabac et la santé*, 2012 QCCA 1848.
[43] *Imperial Tobacco Canada ltée c. Létourneau*, 2012 QCCA 2260.
[44] Marc Beauchemin, "L'article 29 C.p.c. : ou dire si peu pour signifier autant – l'expérience du recours collectif contre les cigarettiers canadiens," *Colloque national sur les recours collectifs* (2013), p. 27-59.

2870 of the *Civil Code of Quebec*. The issue was critical because our trial strategy depended on our ability to file internal documents from the tobacco industry, some of which we received from the tobacco defendants, but some of which we obtained on public repositories of tobacco documents such as Legacy. The appeal judgment confirmed the Court of Appeal's circumscribed role during the course of a trial.[45]

88. As explained above, the year 2012 alone involved more than a dozen appeals on important issues. This situation was one of the manifestations of the procedural war of attrition that we knew the tobacco industry had promised to anyone who dared to challenge them in court. They conceded almost nothing and appealed almost everything, all while the trial advanced before the Superior Court. The same was true in the years that followed.

89. Once closing arguments were heard, I was heavily involved in drafting the written arguments and authorities, including the sections dealing with the civil law rules governing product liability.

90. In the process of preparing these submissions, I attended several meetings with eminent civil law professors from Quebec's major law faculties, who had been retained to help us to correctly interpret and apply the complex rules arising from the reform of the *Civil Code* — indeed, the class actions were so complex and covered such a long period of time that they required the application of both the *Civil Code of Lower Canada* and the new *Civil Code of Quebec* (which had come into force in 1994).

91. In collaboration with my colleagues, I personally devoted hundreds of hours to this arduous task, which was made all the more difficult by the fact that the new rules governing the assumption of risk were unclear and the case-law was directionless on the issue. We therefore understood that in order to succeed, we would need to break new ground in several fundamental areas of civil law.

Following the Judgment on the Merits and the Appeal

[45] *Imperial Tobacco Canada Ltd. c. Létourneau*, 2013 QCCA 1139.

92. The Superior Court's judgment on the merits was, of course, appealed. Almost all the issues addressed by the Superior Court and giving rise to the imposing volume of evidence and argument presented were therefore the subject of a second crucial test before the Quebec Court of Appeal.

93. The team assigned me the task of drafting the section of the factum dealing with the intricate rules of civil law at issue in the class actions. Since we chose not to cross-appeal, we had to defend the judgment as rendered — which differed in many respects from our initial contentions — we couldn't simply reproduce what had been done at first instance. The choice not to appeal certain elements of the trial judgment constituted another critical and difficult strategic decision.

94. Once again, the task was complex and arduous, requiring an enormous investment in time and intense effort.

During the Course of the CCAA Proceedings

95. My role during the course of the *CCAA* proceedings from 2019 onwards was somewhat more limited, given André's tireless work and the intense involvement of specialist lawyers from FFMP. I nonetheless conducted legal research, prepared opinions, and advised other members of the team on issues within my expertise during this period. I also participated in numerous extensive strategic discussions and decision-making processes regarding every aspect of the file with all members of the team.

C. Time and Resources Invested

96. In this section, I estimate the number of hours and other resources I invested, along with the other lawyers from my firm, in relation to the litigation between 1999 to present.

97. In preparing this affidavit, I carried out a complete review of all entries of De Grandpré Chait's timesheets between 1999 and early 2024 in relation to the class actions. These records will be available at the hearing on the QCAP Fee Motion if the Court wishes

to review them, in which case we would ask that they be filed under seal due to the privileged and confidential information contained therein.

98. I estimate having personally worked at least 8,152 hours since my first involvement in the litigation. Other senior, junior lawyers and articling students of the firm docketed approximately 3,000 hours, for a total number of approximately 11,152 hours.

99. The detailed timesheets show that over 60 lawyers and articling students from our firm docketed time to the litigation since 2000. The following is a list, including full name and year of call to the Barreau du Québec, of those individuals:

Me Jean-Jacques Gagnon	1959
Me André P. Asselin	1969
Me Alain Robichaud	1974
Me Hélène Mondoux	1983
Me Marc Beauchemin	1986
Me François Marchand	1995
Me Julie Bourduas	1990
Me Rachel Laferrière	2001
Me Stéphanie La Rocque	2002
Me Vincent Piazza	1996
Me Martin Raymond	2003
Me Sylvain Choinière	2004
Me Bianca Picard Turcot	2005
Me Pierre-Jude Thermidor	2006
Me Julie Lanteigne	1993
Me Ana Catarina Silva	2007
Me Daniel Blondin Stewart	2008
Me Ronald L. Stein	1982
Me Ouassim Tadlaoui	2007
Me Martin Daniel Boily	1992
Me Ashley Kandestin	2012
Me François-Olivier Bouchard	2013
Me Gary Rosen	1988
Me Jean-Daniel Lamy	2016
Me Roger Cheaib	2015
Me Tiffany Hanskamp	2015
Me Evelyne Gauvin	2017
Me Cassandre Hamel	2012
Me Silvia Ortan	2015
Me Florence Péloquin	2015

Me Vanessa Clusiau	2018
Me Éric Lalanne	1987
Me Mathieu Santos-Bouffard	2016
Me Julia Portelance	2016
Me Martin Tétreault	1991
Me Elizabeth Innis-Triboul	2018
Me Juliano Rodriguez-Daoust	2017
Me Samuel Lavoie	2018
Me Alba Stella Zuniga Ramos	2017
Me Agnès Pignoly	2013
Me Philippe Lachance	2018
Me Steffi Georges	2018
Me Martin Gélinas	2019
Me Mohamed Kaisserli	2019
Me Louise Houle	1982
Me Rafaella Arapovic	2021
Me Yaelle Lyman	2020
Me Marie-Pier Leroux	2022
Me Laurie Comtois	2023
Me Michel Maalouf	2023
Me Ari Yan Sorek	2005
Me Jean-Philippe Lincourt	2004
Me Sophie Brisson	2003
Me Jean-Philippe Simard	2003
Me Michael Stern	2005
Me Steve Boucratie	2006
Me Martin Bizzarro	2008
Me Étienne Chauvin	2010
Me Amélie Deguire	2009
Me Christine Moushian	2011
Me Annie Chagnon	2012
Me Adeeb Jouhar	2011
Me Mathieu Kissin	2012
Me Adel Khalaf	2011
Me Guillaume Pelegrin	2013
Me Olivier Poulette	2013

D. Financial Risks and Obligations

100. As mentioned above, De Grandpré Chait's business model remunerates partners on the basis of the actual revenue brought in to the firm in a given year. As a result, while

I was afforded considerable flexibility about how I spent my time, I have never been paid for any hour worked in these class actions.

101. I turned away cases, projects, and clients in order to prioritize the class actions, and put the development of large parts of my practice on hold to accommodate the enormous workload associated with these files.

102. The practical effect of my involvement was that over the years, my compensation was far more limited than what I would have otherwise earned — particularly in the period leading up to and during the trial. While I do not regret these choices in the least, there is no doubt that they altered the course of my legal career and came with a degree of personal and financial sacrifice.

103. At the same time, I did not take on financial risk to the same degree as some of the other members of the Quebec Class Counsel team, in the sense that my firm did not assume the consequences of my choices. In this sense, the greatest financial cost to De Grandpré Chait as a result of these files was the opportunity cost arising from my own involvement and other lawyers' involvement, which could have been spent on the firm's existing files or on developing new clientele over the last two and a half decades. Every member of our firm took on indirect costs as a consequence.

104. I would add that De Grandpré Chait has covered $34,244.88 in disbursements in relation to these matters since 2008. None of these disbursements have been reimbursed by the Fonds d'aide aux actions collectives or any other entity. They will only be repaid out of the proceeds of the Quebec Class Counsel Fee. A detailed accounting of these disbursements will be available at the hearing on the QCAP Fee Motion if the Court wishes to review them, in which case we would ask that they be filed under seal due to the privileged and confidential information contained therein.

105. De Grandpré Chait has no other outstanding financial obligations (e.g., loans, conditional debts) arising from the litigation that are contingent on the approval of the Quebec Class Counsel Fee.

E. Impact and Significance

106. As a general comment about the appellate strategy in these two class actions, I would add the following. We knew from the outset that we would have to be incredibly careful about what issues were appealed. In fact, very early on we agreed that we would not appeal any interlocutory decision unless the issue threatened the survival of the litigation or if it was going to render the advancement of the case so fundamentally unworkable that it amounted to a threat to the litigation's survival.

107. As a result, throughout the entire history of the litigation, we did not appeal a single judgment of the Superior Court, either prior to or during the trial. This is not to say that we did not sometimes disagree with the Court. We did, for example, when Justice Riordan refused to approve our proposed settlement agreement with the Attorney General of Canada. But even when a ruling was not in our favour, the strategic calculation almost always favoured a decision to live with the consequences — the risk of additional delay, or of derailing proceedings on a side issue, was simply too great. In this sense, we understood that any appeal was an advantage for the Tobacco Companies and a cost to us. The analysis was always driven by the goal of getting to a judgment on the merits and compensation for class members.

108. Debates often arose over issues that did not appear to be serious problems at first glance, but if lost would have postponed the class actions' readiness for trial indefinitely or made the conduct of the trial itself extremely cumbersome. The reality is that neither the Superior Court nor the Court of Appeal had ever been faced with a trial involving issues of this magnitude, volume or complexity.

109. We had a great deal of confidence in the fairness of Justice Riordan. Consequently, the decision to avoid interlocutory appeals was also in part guided by the fact that we did not want to do anything that would create additional hurdles for the Court or compromise the spirit of collaboration we had sought to establish at trial. But more than that, we felt this was a case in which we were asking the justice system to do something extraordinary and unprecedented in a very difficult context. In order to make it work, we tried to be exemplary officers of the Court. In that context, we are all extremely grateful

for the immense efforts made by the Superior Court and the Court of Appeal to ensure that the cases remained workable.

110. Stepping back, one of the great legacies of this litigation in Quebec is the manner in which it forced the courts to modernize their approach to the rules of civil procedure and to insist on proportionality, deference and flexibility as guiding principles in civil matters. Without the courts' willingness to accommodate and evolve in response to the unique challenges imposed by this case, there is no way we would have ever made it to trial — let alone to such a significant result for class members.

111. The dedication and independence of the Quebec Superior Court and the Quebec Court of Appeal over the course of decades proved the resilience of our legal institutions.

112. The law is an important vector for change. In this matter, the time, energy and skill devoted by our team will have demonstrated that the law prevails for all, and that no entity, however rich and powerful, is immune from its application or its consequences. This important lesson benefits every person in Canada, and we have been proud to play our part.

AND I HAVE SIGNED, THIS 7th DAY OF JANUARY, 2025.

_____
Marc Beauchemin

Solemnly declared before me by electronic means at Montreal,
Province of Québec, this 7th day of January, 2025

_____
Commissioner of Oaths for the Province of Québec

LIST OF SCHEDULES

"A" *Curriculum vitae* of Marc Beauchemin

DOCUMENTS AVAILABLE TO THE COURT UPON REQUEST

1. Timesheets in relation to the Quebec Class Actions for the law firm of De Grandpré Chait

2. Accounting of disbursements in relation to the Quebec Class Actions for the law firm of De Grandpré Chait

THIS IS SCHEDULE "A"
TO THE AFFIDAVIT OF MARC BEAUCHEMIN
(January 7, 2025)

CURRICULUM VITAE

SWORN BEFORE ME
THIS 7th DAY OF JANUARY 2025

_____

Commissioner of Oaths for Quebec

DEGRANDPRÉ CHAIT

MARC BEAUCHEMIN Partner, De Grandpré Chait

PRACTICE

De Grandpré Chait, Partner	1999 to present
De Grandpré Godin, Associate	1986 to 1999

EDUCATION

Barreau du Québec, Admitted to the Bar	1986
Université de Montréal, LL.B., Faculty of Law	1985

RECOGNITION

Best Lawyers® in Canada
Lawyer of the Year in Expropriation- 2023, 2025
Lawyer of the Year in Municipal Law – 2022, 2024
Class Action Litigation – 2020 to 2025
Expropriation Law – 2022 to 2025
Municipal Law – 2022 to 2025

Chambers Canada
Real Estate: Zoning and Land Use
“Band 1” in Quebec – 2020 to 2025
“Spotlight Table” in Quebec – 2019

Prix Jean-Pierre-Bélanger
Awarded for his work in the tobacco class actions in 2015.

CONFERENCES AND ARTICLES

L’expropriation déguisée en droit québécois, Colloque juridique et évaluation de l’actif de l’Association canadienne de taxe foncière, 2020

Without municipal resolution, what about your extras? De Grandpré Chait Construction Law Conference, 2018

Les meilleures pratiques pour faire approuver vos projets, Urban & Real Estate Development Forum, 2016

Marc Beauchemin, “L’article 29 C.p.c. : ou dire si peu pour signifier autant – l’expérience du recours collectif contre les cigarettiers canadiens," Colloque national sur les recours collectifs, 2013

La responsabilité de l’acheteur d’un immeuble contaminé depuis l’entrée en vigueur de la Loi 72, The Canadian Institute, 2004

Le recours hypothécaire sur un bien contaminé : la responsabilité de l'institution financière est-elle menacée depuis l'entrée en vigueur de la Loi 72, The Canadian Institute, 2004

La portée au Québec de l'arrêt *John Hollick c. Ville de Toronto*, Insight Conference, 2002

Les aspects du recours collectif au Québec, The Canadian Institute, 2001

OTHER SERVICE

Marc Beauchemin is a regular conference speaker on class actions and public law debates.

He is a member of the Barreau du Québec's Disciplinary Board member and served as the Chairman of the Municipal Law Section of the Canadian Bar Association – Quebec from 2004 to 2007.

Court File Nos. 19-CV-615862-00CL
19-CV-616077-00CL
19-CV-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**

Applicants

AFFIDAVIT OF GORDON KUGLER
(sworn January 10, 2025)

I, Gordon Kugler, of the City of Montreal, in the Province of Quebec, MAKE OATH AND SAY:

1. I am Counsel at the law practice of Kugler Kandestin LLP, a premier Montreal-based boutique law firm.

2. Kugler Kandestin is one of the four law firms designated as Quebec Class Counsel[1] in the Court-Appointed Mediator's and Monitors' *CCAA* Plans of Compromise and Arrangement (each a "***CCAA* Plan**" and collectively the "**Plans**") in respect of (i) Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively "**Imperial**"), (ii) Rothmans, Benson & Hedges Inc. ("**RBH**"), and (iii) JTI-MacDonald Corp. ("**JTIM**") (collectively, the "**Tobacco Companies**" or "**the defendants**" in the actions described below).

[1] As defined in the Plans, "**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., LLP and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P.

3. Quebec Class Counsel represent the members of two class action lawsuits instituted in Quebec in 1998 (the "**Quebec Class Actions**") on behalf of (i) Quebec smokers who developed lung cancer, throat cancer or emphysema as a result of smoking the Tobacco Companies' cigarettes (the "***CQTS/Blais* Class Action**")[2] and (ii) Quebec smokers who became addicted to the nicotine contained in the cigarettes made by the Tobacco Companies (the "***Létourneau* Class Action**")[3] (collectively, the "**Quebec Class Action Plaintiffs**", "**QCAPs**" or "**class members**").[4]

4. It was in direct response to the judgments in the Quebec Class Actions, at first instance (May 27, 2015) and on appeal (March 1, 2019), condemning the Tobacco Companies to pay damages to the QCAPs in excess of $13.5 billion that the Tobacco Companies filed their proceedings in March 2019 (only days following the appeal decision) under the *Companies' Creditors Arrangement Act* ("***CCAA***"), which have now culminated in the $32.5 billion global settlement set forth in the Plans that are currently before this Honorable Court for approval.

5. I swear this affidavit in support of the Quebec Class Counsel's *Motion for the Approval of the Quebec Class Counsel Fee* (the "**QCAP Fee Motion**"). Pursuant to section 14.9(f) of the Plans, the QCAP Fee Motion is to be dealt with at the Sanction Hearing.

6. I have personal knowledge of the matters to which I depose herein. Where I do not possess personal knowledge, I have stated the source of my knowledge and believe it to be true.

7. Unless otherwise defined herein, all defined terms used in the present affidavit have the same meanings as ascribed to them in the Plans.

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[2] *Jean-Yves Blais and the Conseil québécois sur le tabac et la santé v. Imperial Tobacco Canada Ltd., et al.* (500-06-000076-980).
[3] *Cecilia Létourneau v. Imperial Tobacco Canada Ltd., et al.* (500-06-000070-983).
[4] The eligibility requirements for class members in the *CQTS/Blais* Class Action and the *Létourneau* Class Action are set forth in the judgment of Mr. Justice Brian Riordan J.S.C. and are contained in the definitions of *Blais* Class Members and *Létourneau* Class Members in the Plans.

8. In support of the Motion, this affidavit offers details regarding the following themes:

a. **Personal Background:** My professional background and personal involvement in the litigation, as well as the relevant information regarding Kugler Kandestin and the firm's involvement in the litigation;

b. **Work Completed:** The nature and complexity of the work carried out in relation to the litigation by me personally and by others at Kugler Kandestin between 2000 to the present;

c. **Time and Resources Invested:** The number of hours and other resources invested in relation to the litigation by me personally and by others at Kugler Kandestin between 2000 to the present;

d. **Financial Risks and Obligations:** The financial risks and opportunity costs incurred by me personally and by Kugler Kandestin as a result of our involvement in the litigation;

e. **Litigation Risks:** The legal, factual, strategic and other challenges that rendered involvement in the litigation a profoundly high-risk endeavour;

f. **Impact and Significance:** The results and significance of the time, resources and effort invested in the litigation for class members, the public, and the justice system.

9. My affidavit should be read in conjunction with the affidavits sworn by other Quebec Class Counsel lawyers and others in support of the QCAP Fee Motion.

A. Personal Background

10. I have attached hereto as **Schedule "A"** my *curriculum vitae* which sets forth my professional background and experience.

11. In summary, I was called to the bar in the Province of Quebec in 1967. I have been a member in good standing since that time.

12. I received a Bachelor of Civil Law (B.C.L.) from the Faculty of Law of McGill University in 1966. I also hold a Bachelor of Arts in Economics and Political Science (First Class Honours), which I received from McGill University in 1963.

13. The firm now known as Kugler Kandestin LLP has existed in some form for almost 100 years. I completed my articles at the firm in 1966 and have remained there as a practicing lawyer for over 57 years.

14. Following my articling term, I was hired into an Associate position. I was rapidly made a Partner, and by 1998 I was the firm's Managing Partner.

15. I have been part of the firm's senior leadership since that time. I am currently Counsel to the firm and have occupied this role since approximately 2014.

16. Over the years, Kugler Kandestin has deliberately crafted its practice areas to include the largest bodily and personal injury practice in Quebec, a top-tier civil and commercial litigation group — with a noted presence in the areas of medical malpractice and class actions — as well as a renowned expertise in bankruptcy, insolvency, restructuring, and commercial transactions. The firm has a well-established reputation as a leading boutique law firm.

17. The firm presently includes 20 lawyers, who act both for plaintiffs and defendants in all areas of our practice, including in class actions. Our lawyers work on both an hourly and contingency basis depending on the nature of the file and other factors.

18. The firm has been recognized as a leading law firm both nationally and in Quebec. For example, in *Best Lawyers'* inaugural publication in 2024 of *Best Law Firms – Canada*, our firm received a Tier 1 national ranking in class actions litigation, as well as Tier 1 provincial rankings in alternative dispute resolution, asset-based lending practice, banking and finance law, bet-the-company litigation, class action litigation, corporate and commercial litigation, insurance law, legal malpractice law, personal injury litigation, and product liability law.

19. When I was in charge of the litigation team, my own practice focused on matters of medical malpractice, class actions, professional and product liability, insurance litigation and commercial litigation. I have appeared before all levels of court, including several times before the Supreme Court of Canada.

B. Work Completed

20. In this section, I describe the nature, volume and complexity of the work carried out in relation to the relevant matters by myself personally and by others at Kugler Kandestin between 2000 and the present.

Initial Involvement

21. In 1998, I was the lead attorney for the Barreau du Québec's professional liability insurance provider. I first met Bruce Johnston and Philippe Trudel in this capacity. At the time, they were two up-and-coming litigators who had left relatively secure and prestigious jobs to form their own small law firm, Trudel & Johnston.

22. In the spring of 1999, Bruce and Philippe had accepted a mandate representing Anne-Marie Péladeau, the daughter of Pierre Péladeau (the founder of Quebecor Inc.) and the sister of the businessmen and billionaires Érik Péladeau and Pierre Karl Péladeau (also the former leader of the Parti Québecois).

23. The dispute involved a fight over Ms. Péladeau's share of her father's succession, representing tens of millions of dollars. Bruce and Philippe had instituted legal proceedings on her behalf, in which her brothers were accused of various wrongful acts in relation to their father's estate.

24. Shortly after the case was filed, the Péladeau brothers hired Gérald Tremblay, one of the most well-known lawyers in Quebec, to sue Bruce and Philippe for the allegations made in the court procedures. The suit claimed $21 million in damages for defamation, an amount which they decidedly did not have. I believe it was the largest defamation suit ever filed against lawyers in Canada at that time. Bruce and Philippe were undeterred.

25. The Fonds d'assurance du Barreau (the not-for-profit professional liability insurer for members of the Quebec Bar) was initially reluctant to extend coverage because Bruce and Philippe refused to cease acting for their client. After reviewing the file and meeting with Bruce and Philippe, I determined that their case was meritorious, and I recommended that they be allowed to continue acting for their client. I was named to defend them, and was ultimately successful. While no formal "anti-SLAPP" legislation existed in Quebec at the time, the case was essentially a SLAPP suit — an effort to deter Bruce and Philippe from continuing their work in the other file in which they ultimately achieved an extremely favourable outcome for their client.[5]

26. A few months later, Bruce and Philippe contacted me to discuss the tobacco litigation, informing me that they had filed an application for authorization in the *Létourneau* file the year prior.

27. We met for lunch and they asked whether I would consider acting as Counsel to their firm and partnering with them in the file. Despite the fact that they were serious young professionals, they understood that both their age and relative inexperience would put them at a disadvantage in court. They felt they needed a senior and well-respected member of the litigation bar to help them oppose the roster of experienced counsel representing the three Tobacco Companies.

28. This was not an insignificant ask. Bruce and Philippe explained that they had taken the mandate on a contingency fee basis, and that they personally had little, if any financial resources to fund the litigation. They explained that they could not pay me or my firm any legal fees and that I would have to share the expenses of the litigation.

29. It was clear not only that they would need my own guidance and advice, but that I would need to designate another attorney from my firm to work full time on the litigation during certain periods. From the outset, everyone understood that the class actions would

[5] The history of that litigation, which ultimately went on for over 20 years, is summarized by the Quebec Court of Appeal here: *Placements Péladeau inc. c. Péladeau*, 2021 QCCA 1702.

become protracted and profoundly complex, that the Tobacco Companies would oppose at every step, and that they would never settle.

30. I asked Bruce and Philippe several questions about their litigation strategy, theory of the case, and professional experience. They conceded that they had little evidence to support their claims and that they hoped to make their case essentially through discovery. When I met them, they had only retained one expert (on addiction) and his involvement had been limited due to their lack of resources. They also acknowledged that there had never been a single successful lawsuit anywhere in the world holding tobacco companies liable for an individual smoker's addiction or disease.

31. While I admired their courage and determination, it was clear to me that these young attorneys were facing seemingly insurmountable obstacles to winning the class action. Indeed, at that time it was difficult to imagine that anyone — even the most established and well-funded lawyers in the country — could win a class action of this nature against the tobacco industry.

32. My partners at Kugler Kandestin were initially opposed to Bruce and Philippe's request that our firm act as Counsel in the file. The class action was perceived as a serious potential drain on the firm and perhaps doomed to fail. The risk of losing the case was far too high, especially given the significant and long term investment of resources that would be required and the fact that the firm would not be paid unless we were successful at every step.

33. Despite the fact that my law partners were essentially correct regarding the risks, I was impressed by Bruce and Philippe, who — their youth notwithstanding — were extremely thorough, conscientious, and prepared for a long fight.

34. I also saw this as an opportunity to make a difference: I knew I was well-positioned to help them take on an industry whose products had killed hundreds of thousands of Quebecers and Canadians, and were continuing to do so, year after year. I felt a strong moral and professional obligation to do what I could to contribute to the protection of public health and to hold the Tobacco Companies accountable for their conduct.

35. At first, my law partners at Kugler Kandestin were very concerned with my decision to act as Counsel in the tobacco litigation. As Managing Partner, I had the latitude to accept the role despite their disagreement, but they felt that my work in the file would prevent me from taking on other matters, and that my limited time and resources would compromise my productivity elsewhere.

36. Over time, my colleagues grew to accept and support the decades-long partnership between our two firms (and which later included the firms of Lauzon Belanger Lespérance, De Grandpré Chait and Fishman Flanz Meland Paquin as well). Today, our involvement in these class actions is a source of pride.

My Role in the Litigation

37. Throughout the entire 26 year history of the file, my most significant role has been as a highly involved advisor, source of strategic guidance, and mentor for the entire litigation team. I have also carried out significant substantive legal work at every stage of proceedings, including on some of the most delicate and complex issues.

38. Kugler Kandestin also needed a lawyer to lead our firm's involvement in the litigation on a day-to-day basis. I designated Pierre Boivin, a partner at the firm, for this role. Pierre is an extremely accomplished class actions litigator in his own right, having secured numerous multi-million dollar judgments and settlements in major class actions, in particular for survivors of institutional abuse and sexual violence and in the consumer protection context. His role is described in greater detail below.

39. In order to provide a representative description of my own involvement in the file, I would highlight the following contributions in rough chronological order (without in any way attempting to provide an exhaustive record of my involvement):

a. Beginning in the early 2000s, I was closely involved with Philippe and Bruce's effort to build an alliance with counsel for the *Blais* class action. Conflict between the two class actions would have been very dangerous and we succeeded in first defining clear roles for each of the firms involved and eventually in becoming a single highly cohesive litigation team in the

prosecution of the two class actions. I am convinced that the formation of a cohesive team of lawyers dedicated to the case was critical in allowing us to achieve the excellent result that is now before the Court;

b. In the period leading up to the hearing on the application for authorization — including in relation to all preliminary exceptions raised by the defendants — I provided feedback, reviewed written materials, and assisted Philippe and Bruce on all major issues;

c. I participated in every day of the 14-day authorization hearing (of unprecedented length and complexity in Quebec) which took place a full six years after the applications for authorization were initially filed;

d. As the litigation teams for the two class actions gradually joined forces, I provided strategic guidance and support to all members of that team regarding key steps in the litigation — on issues as large as the overall theory of the case, and as granular as the particular timing of motions, wording of the orders sought, and phrasing of specific questions to be posed in pre-trial examinations;

e. In the years following the authorization judgment, I was extensively consulted regarding the exhaustive documentary review being carried out by the team at Trudel Johnston & Lespérance regarding, among other sources, the hundreds of thousands of pages of documents made public as a result of the U.S. decision in the Philip Morris litigation[6] — many of which would become essential exhibits at trial;

f. The team agreed that I should lead outreach with the American attorneys who had acted on behalf of various states against Philip Morris in the above-mentioned litigation as well as a prominent mediator involved in the disputes, work which included travel to Minnesota to meet senior counsel,

[6] *United States v. Philip Morris USA Inc.*, 9F. Supp. 2d 1 (D.D.C. 2006), discussed in the affidavit of Bruce W. Johnston.

reviewing files and transcripts of trial testimony and discussing key elements of strategy;

g. I participated in extensive strategic discussions to determine which employees or former employees of the Tobacco Companies to examine on discovery, as well as prepared for many of the examinations on discovery;

h. I participated in extensive strategic discussions and decision-making with the team related to repeated efforts from the Tobacco Companies to examine class members both prior to and during the trial, to force the disclosure of their medical records and to obtain the members' list, playing a key role in the ultimately pivotal effort to resist those attempts at all costs;

i. I provided feedback and assistance in the drafting process on significant written outputs, including plans of argument, factums, motions, and other key materials, throughout the litigation;

j. I attended and participated in many of the case conferences prior to trial;

k. I attended and participated in at least 15 major Superior Court hearings and 25 Court of Appeal hearings on interlocutory motions, and the team had me plead a certain number of them personally before both the Superior Court and Court of Appeal;

l. I was deeply involved in many delicate strategic calls regarding the examination of witnesses at trial, for example:

    i. I led the development of the strategy for how to lead evidence of the destruction of scientific documents without calling the lead attorney for RBH as a witness (by instead examining Lyndon Barnes — senior litigation partner at Osler, Hoskin & Harcourt in Toronto — in order to demonstrate that research documents linking smoking and health hazards were destroyed in Montreal under the direction of ITL's attorneys);

ii. I led the development of the strategy to establish that the public could not have known the full extent of the health hazards of smoking (by using testimony from current and former employees of the Tobacco Companies to the effect that to *their* knowledge, there was no evidence or research confirming those hazards, and in this manner, eliminating the risk of needing to examine individual class members);

m. I was highly involved in the trial preparation process and in most major strategic decisions during the trial, including the process of preparing expert witnesses;

n. I attended large portions of the trial itself, generally at critical moments;

o. I prepared for and examined some of the key witnesses at trial, including three of the main executives of the Tobacco Companies, namely the retired General Counsel of ITL, Roger Ackman (April 2012), the then-current President of RBH, John Barnett (November 2012), and the former President of RBH John Fennell (October 2012) — these examinations were reproduced in the trial judgment;

p. I leveraged my trial experience to support the team at critical moments. For example, the President of RBH had been scheduled to testify for two whole days, but during his testimony I managed to get him to confirm that the company agreed that smoking caused cancer, that the fact was also true 60 years prior, that RBH had never disclosed that fact to the public during the relevant period and that it had in fact publicly denied it — his cross-examination ended after 20 minutes;

q. I prepared and presented an influential portion of the closing arguments at trial;

r. I provided detailed feedback on the plan of argument filed by the team at trial, which was hundreds of pages long and written on a nearly-impossible timeframe;

s. I was extensively involved in major strategic decisions related to the appeal, including the answer to a complex question posed by the Court of Appeal prior to the hearing regarding latent defects;

t. I was highly involved in the preparation of the appeal factum as well as the preparation of oral arguments for the appeal, and organized a mock hearing involving three former judges of the Quebec Court of Appeal;

u. I prepared and presented a key portion of the oral arguments on appeal;

v. I developed the litigation strategy, drafted the motion, and presented oral arguments to the Court of Appeal seeking $1 billion dollars in security from the Tobacco Companies — a motion which represented an unprecedented outcome in Canadian history (the next largest such order in Quebec had been around $15 million at the time);[7]

w. I participated in extensive strategic discussions and decision-making regarding the potential withdrawal of the funds designated as security by the Court of Appeal, a process which included an independent legal opinion from a former judge of the Quebec Court of Appeal;

x. During the period leading up to the Tobacco Companies' applications under the *CCAA* and in the years following, I helped identify the firms that were ultimately retained to support us in the CCAA Proceedings, reviewed and provided feedback on certain motions, the Plans of Arrangement, and other materials related to the CCAA Proceedings;

y. I also attended many formal and informal internal strategy sessions regarding the CCAA Proceedings, as well as certain meetings with the Mediator, the Monitors and the parties and several hearings (including a hearing in Toronto before Justice McEwen).

[7] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1737.

40. A detailed accounting regarding Pierre Boivin's involvement in the litigation is also essential to understand the role played — and the risks taken — by Kugler Kandestin as a firm.

41. Pierre Boivin holds an L.L.B. from the Université de Montréal (1986) and an L.L.M. from London University (King's College) (1988). He was called to the bar in 1989. After he completed his articles at McCarthy Tétrault he was hired as an associate by Kugler Kandestin.

42. Pierre's primary areas of practice include class actions, civil liability, and insurance law. He has represented diverse groups of victims of sexual abuse, consumers, and non-profit organizations in files relating to human rights and freedoms, consumer law, manufacturer's liability, and civil liability.

43. His involvement in the files was extensive and spans nearly two decades:

a. Pierre worked with me on the file from nearly the very beginning. He participated extensively in the pre-authorization stage, including in the examination of Ms. Létourneau, the judicial review of the Fonds d'aide aux actions collectives' initial decision not to finance the two class actions, extensive document review and debates on preliminary motions. He was present with me at the entire authorization hearing;

b. Following the authorization of the class actions, he assisted in the drafting of the originating application, the analysis of the Tobacco Companies' complex written defences, and the preparation of responses to extensive requests for undertakings as part of the discovery process. He also participated in many further debates on preliminary motions and attended the large majority of case conferences;

c. Pierre was particularly instrumental to the litigation during the three years of trial before the Superior Court of Quebec (2012-2014) and in the time leading up to that trial. Indeed, during this period he was essentially

dedicated to the tobacco litigation on a full-time basis on behalf of Kugler Kandestin and relieved of his duties in nearly every other file;

d. In the period leading up to the trial and during the trial, Pierre worked extensively with André Lespérance, who led the team's document review efforts. Among many other mandates, he reviewed every page of every transcript in the Minnesota litigation described above. The summaries and background materials he prepared in this respect were instrumental to the litigation strategy;

e. He was involved to some degree in background research on nearly every witness at trial and examined nearly a dozen himself, including one witness requiring travel to Vancouver (James Hogg);

f. He was central to fundamental debates at trial surrounding the application of article 403 of the former *Code of Civil Procedure* and article 2870 of the *Civil Code of Quebec*. These were highly technical arguments regarding the admissibility and probative value of tens of thousands of documents to which the Tobacco Companies had objected;

g. In addition to attending nearly every day of trial during those three years and all of his obligations as part of the core trial litigation team, Pierre reported directly to me at the end of each day, ensuring that I had all information necessary to carry out my own work during the trial period and was briefed to discuss key strategic issues with André, Philippe and Bruce on a daily basis;

h. On appeal, Pierre was involved in strategic discussions and the preparation of the factum, particularly on the themes in which he specialized at trial;

44. In addition to Pierre's unique role in the litigation, I would add that every senior partner in our firm was consulted or had some involvement in this matter at some point in the litigation's history, as discussed below.

C. Time and Resources Invested

45. In this section, I estimate the number of hours and other resources invested in relation to the litigation by myself personally and by other lawyers at Kugler Kandestin between 2000 to present.

46. I will begin with a comment that I have spent the vast majority of my career working on contingency and percentage-based agreements.

47. In class actions in particular, percentage-based compensation is the only practicable and fair way to compensate class counsel, and better aligns the incentives between lawyers and class members. In my experience working on contingency class actions in Quebec, the percentage that is being claimed in the present Motion is well below the industry average given the nature, duration, risk and complexity of the files.

48. This approach to litigation work fundamentally changes how I see the value of my work. In contingency files, I do not consider that I am “selling my time”. Rather, my goal is to provide concrete results that benefit my clients. I believe there is no serious doubt that we have been able to deliver those results in this litigation.

49. In order to assist the Court as much as possible in evaluating the Motion, I have nonetheless reviewed the hours docketed by Kugler Kandestin lawyers between 2000 and 2024 in relation to the class actions. These records will be available at the hearing on the QCAP Fee Motion if the Court wishes to review them, in which case we would ask that they be filed under seal due to the privileged and confidential information contained therein.

50. Those records indicate that Kugler Kandestin lawyers docketed 17,828 hours during that time period. I will note however that despite working actively in the files since that time (particularly in relation to the procedures before the Court of Appeal following the trial judgment), my own hours have not been recorded since 2016. As a result, the number is underinclusive in that respect.

51. Including myself, these 17,828 hours were docketed by 17 different lawyers at Kugler Kandestin who worked in these class actions since 2000. The individuals who worked significant hours are listed here:

a. **Pierre Boivin**, who has worked at Kugler Kandestin from 1989 to the present. As mentioned above**,** he was called to the bar in 1989, was hired as an Associate and later became a Partner. His involvement in the file is described above;

b. **Caitlin Szymberski**, who worked at Kugler Kandestin from 2011 to 2014. She was hired as a student, called to the bar in 2013 and then hired as an Associate. She carried out research in several areas of the file, with a focus on the interlocutory issues at trial;

c. **Robert Kugler**, who has worked at Kugler Kandestin from 2001 to present. He was hired as a student, then articled at the firm in 2001. He worked as an Associate and was then made Partner. He has been involved in key strategic discussions related to the litigation, including in relation to the CCAA Proceedings;

d. **Sandra Mastrogiuseppe**, who has worked at Kugler Kandestin from 2013 to the present. She was called to the bar in 1996 and later became a Partner. She was instrumental in aspects of the litigation dealing with JTI's payments to their parent corporation as they related to the security obtained before the Court of Appeal;

e. **Jonathan Gottlieb**, who has worked at Kugler Kandestin from 2013 to the present. He was called to the bar in 2008, was hired as an Associate and later became a Partner. He assisted Sandra Mastrogiuseppe in the matters described above;

f. **Olivera Pajani**, who worked at Kugler Kandestin from 2008 to 2022. She was hired as a student, called to the bar in 2009, worked an Associate and later became a Partner. She assisted with several out-of-court examinations

of the Tobacco Companies' representatives and conducted extensive evidentiary research;

g. **William Colish**, who worked at Kugler Kandestin from 2016 to 2023**.** He was called to the bar in 2013 and hired as an Associate. He participated during the appeal stage in the review of the appeal factum;

h. **Alexandre Brosseau-Wery**, who has worked at Kugler Kandestin from 2002 to the present. He was called to the bar in 2002, was hired as an Associate and then later became a Partner. He reviewed the judgment of first instance and carried out specific mandates during the appeal stage.

52. Stuart Kugler, Dominic Cavalière, Jean-François Carpentier, Martine Tremblay, Arthur J. Weschler, Eva Richard, Jeremy Cuttler and Jérémie Longpré have also docketed time in the file.

53. In addition to the work performed by legal professionals, during the period between 2000 and 2024 we employed approximately 20 different paralegal, administrative and support staff. Most, if not all of them, have worked for one of the professionals in these class actions, engaged in tasks as diverse as the printing and preparation of documents, file management, corporate and jurisprudential research, court filings, and more.

D. Financial Risks and Obligations

54. The greatest financial risk Kugler Kandestin accepted as a result of its involvement in these files was undoubtedly the enormous opportunity cost arising from my own involvement, Pierre Boivin's involvement, and the involvement of other members of our team — as described above — over the course of over two decades. Every member of our firm took on some degree of risk as a consequence.

55. For Pierre Boivin in particular, it is hard to imagine many law firms in a position to liberate a partner to work on a trial on a full-time basis for so many years in a file that few considered likely to pay off. This decision caused considerable friction at the firm, because our business model is generally to remunerate lawyers on the basis of the money

we brought in, and complex exceptions had to be made in relation to this file. It also meant that Pierre was asked to make considerable professional sacrifices, as the trial required him to forego mandates he would have otherwise taken on, and delegate trials on behalf of key clients to other colleagues.

56. I would add that Kugler Kandestin has covered $112,177.72 in disbursements in relation to these matters since 2000. $92,172.14 of this amount was not financed by the Fonds d'aide aux actions collectives or any other entity. That amount will only be repaid out of the proceeds of the Quebec Class Counsel Fee. A detailed accounting of these disbursements will be available at the hearing on the QCAP Fee Motion if the Court wishes to review them, in which case we would ask that they be filed under seal due to the privileged and confidential information contained therein.

57. Kugler Kandestin has no other outstanding financial obligations (e.g., loans, conditional debts) arising from the litigation that are contingent on the approval of the Quebec Class Counsel Fee.

E. Litigation Risks

58. I have reviewed the other affidavits in support of the Motion and understand that other affiants will describe the risks faced in the context of this litigation in great detail.

59. While I wish to avoid repetition, I would like to insist that based on my 57 years of experience in civil litigation, these class actions are almost undoubtedly the highest-risk files to ever succeed in Canadian history.

60. At the time they were filed, most serious litigators would not have been willing to accept the risk they represented, as even the possibility that they would succeed seemed too remote.

61. Throughout the course of the litigation, there were countless attempts to thwart and derail the efforts of class counsel. Among the events that stand out most to me in this regard are the early attempts to divide counsel in the two class actions, the fact that the Ontario courts had refused to certify a tobacco class action the same year the

authorization hearing took place, the constitutional challenge of the *Tobacco-Related Damages and Health Care Costs Recovery Act*, the repeated attempts by the Tobacco Companies to have the case dismissed and the trial postponed, the unbelievable number of interlocutory appeals prior to the end of trial, and the repeated attempts to examine tens or hundreds of class members on discovery and at trial and to obtain their medical files.

62. It must be said that several of the strategies adopted by the defendants — had they succeeded — would have put an end to the litigation entirely. There were countless occasions where, if a motion or debate had been lost, the class actions would have essentially been over. This was certainly the case for a large number of the appeals on interlocutory matters in which I participated with Marc Beauchemin. The risks and the stress were very high. We knew that no one — not even the best lawyers — wins every time. And yet, where it counted, we did.

63. The risks related to the passage of time — and the strategies adopted by the Tobacco Companies to add delay and complexity at every turn — should also be emphasized. For example, based on my experience in medical malpractice litigation, I believe that if the motions to obtain hospital records of class members or to examine class members prior to trial had been successful, it would have easily added another five to ten years to the litigation and many months to the trial itself.

64. These delays did not only come at an obvious cost to class members, more of whom were dying from diseases caused by the Tobacco Companies every year, but also to class counsel's practical ability to continue the litigation. The reality is that there are hardly any lawyers in the country able to work so hard for so long without making any money at all in a file. To my mind, the greatest threat was therefore the possibility — very real at several key moments — that Trudel Johnston & Lespérance would not have the financial capacity to bring the files to the finish line, and that without them the file could not succeed. I personally agreed to help Bruce and Philippe financially on a few occasions and was prepared to do so as much as necessary to prevent this outcome. Still, their

capacity and willingness to continue the litigation despite limitless adversity was determinative.

F. Impact and Significance

65. I have reviewed the other affidavits in support of the Motion and understand that other affiants will describe the impact and significance of this litigation in great detail.

66. I will simply add that I am very proud that against all the odds, our team managed to succeed against the best law firms in the country, accomplishing what no one else in the world has achieved for victims of the tobacco industry. The Plan and the compensation obtained for victims of the Tobacco Companies are unprecedented, historic, and a victory for the justice system as a whole.

AND I HAVE SIGNED, THIS 10th DAY OF JANUARY, 2025.

Gordon Kugler (Jan 10, 2025 10:09 EST)

Gordon Kugler

Solemnly declared before me by electronic means at Montreal,
Province of Québec, this 10th day of January, 2025

Eléonore Loupforest
Commissioner of Oaths for the Province of Québec

Eléonore Loupforest
241733
COMMISSAIRE À
L'ASSERMENTATION
Pour le Québec
Québec

LIST OF SCHEDULES

"A" *Curriculum vitae* of Gordon Kugler

DOCUMENTS AVAILABLE TO THE COURT UPON REQUEST

1. Timesheets in relation to the Quebec Class Actions for the law firm of Kugler Kandestin LLP

2. Accounting of disbursements in relation to the Quebec Class Actions for the law firm of Kugler Kandestin LLP

THIS IS SCHEDULE "A"
TO THE AFFIDAVIT OF GORDON KUGLER
(January 10, 2025)

***CURRICULUM VITAE* OF GORDON KUGLER**

SWORN BEFORE ME
THIS 10th DAY OF JANUARY 2025

Eléonore Loupforest
Commissioner of Oaths for Quebec

Gordon Kugler

Counsel, Kugler Kandestin LLP

PRACTICE

Kugler Kandestin LLP 1966—present
Counsel (current title), Managing Partner (1975-2000)
Formerly: Partner, Associate, Articling Student

EDUCATION

Barreau du Québec, Member in Good Standing 1967
Bachelor of Civil Law, McGill University 1966
Bachelor of Arts (Economics and Political Science), McGill University 1963

AREAS OF PRACTICE

Insurance Law

Medical Malpractice

Personal Injury

Class Actions

OTHER SERVICE AND ACCREDITATIONS

Certified Mediator and Arbitrator

Barreau du Québec, Disciplinary Committee

Barreau du Québec, Liaison Committee Quebec Court of Appeal

Governor for Canada, American Trial Lawyers Association

Fellow of American College of Trial Lawyers

Keynote speaker at numerous conferences on medical liability, insurance law, trial and appellate practice, as well as frequent guest lecturer at McGill University's Faculty of Law and Faculty of Medicine

Court File Nos. 19-CV-615862-00CL
19-CV-616077-00CL
19-CV-616779-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **JTI-MACDONALD CORP.**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **IMPERIAL TOBACCO CANADA LIMITED** AND **IMPERIAL TOBACCO COMPANY LIMITED**
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF **ROTHMANS, BENSON & HEDGES INC.**
Applicants

AFFIDAVIT OF AVRAM FISHMAN
(sworn January 12, 2025)

I, Avram Fishman, of the City of Montreal, in the Province of Quebec, MAKE OATH AND SAY:

1. I am the managing partner at Fishman Flanz Meland Paquin LLP ("**FFMP**"), a Montreal-based boutique law firm which is particularly recognized for its expertise in bankruptcy and insolvency matters, as well as in complex commercial litigation.

2. FFMP is one of the four law firms designated as Quebec Class Counsel[1] in the Court-Appointed Mediator's and Monitors' CCAA Plans of Compromise and Arrangement (each a "**CCAA Plan**" and collectively the "**Plans**") in respect of (i) Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively "**Imperial**"), (ii) Rothmans, Benson & Hedges Inc. ("**RBH**"), and (iii) JTI-MacDonald Corp. ("**JTIM**") (collectively, the "**Tobacco Companies**").

[1] As defined in the Plans, "**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., LLP and Fishman Flanz Meland Paquin s.e.n.c.r.l., L.L.P.

3. Quebec Class Counsel represent the members of two class action lawsuits instituted in Quebec in 1998 (the "**Quebec Class Actions**") on behalf of (i) Quebec smokers who developed lung cancer, throat cancer or emphysema as a result of smoking the Tobacco Companies' cigarettes (the "***Blais* Class Action**"), and (ii) Quebec smokers who became addicted to the nicotine contained in the cigarettes made by the Tobacco Companies (the *"**Létourneau* Class Action**") (collectively, the "**Quebec Class Action Plaintiffs**" or "**QCAPs**").[2]

4. It was in direct response to the judgments in the Quebec Class Actions, at first instance (May 27, 2015) and on appeal (March 1, 2019), condemning the Tobacco Companies to pay damages to the QCAPs in excess of $13.5 billion that the Tobacco Companies filed their proceedings in March 2019 (only days following the appeal decision) under the Companies' Creditors Arrangement Act ("**CCAA**"), which have now culminated in the $32.5 billion global settlement set forth in the Plans that are currently before this Honourable Court for approval.

5. I swear this affidavit in support of the Quebec Class Counsel's *Motion for the Approval of the Quebec Class Counsel Fee* (the "**QCAP Fee Motion**"). Pursuant to section 14.9(f) of the Plans, the QCAP Fee Motion is to be dealt with at the Sanction Hearing.

6. I have personal knowledge of the matters to which I depose herein. Where I do not have personal knowledge, I have stated the source of my knowledge and believe it to be true.

7. My affidavit should be read in conjunction with the affidavits sworn by other Quebec Class Counsel in support of the QCAP Fee Motion.

8. Unless otherwise defined herein, all defined terms used in the present Affidavit have the same meanings as ascribed to them in the Plans.

[2] The eligibility requirements for Quebec Class members in the *Blais* Class Action and the *Létourneau* Class Action are set forth in the Judgment of Justice Brian Riordan J.S.C. and are contained in the definitions of *Blais* Class Members and *Létourneau* Class Members in the Plans.

A. *Introduction*

9. As described in the following sections, FFMP has played a very significant role as part of the Quebec Class Counsel team for more than a decade to ensure that the landmark judgments obtained by Quebec Class Counsel against the Tobacco Companies would finally result in meaningful financial compensation for victims, and particularly for the *Blais* Class Members (class members diagnosed with lung cancer, throat cancer or emphysema, and their heirs and even the heirs of their heirs), many of whom have been waiting more than 26 years for justice to be served in their regard.

10. The other firms comprising the Quebec Class Counsel team, Trudel Johnston & Lespérance, Kugler Kandestin and De Grandpré Chait, chose FFMP to join the team because of its sterling reputation and acknowledged expertise in insolvency and commercial law. In fact, FFMP has been a mainstay of the Montreal legal community for over 100 years and has played a major role in many of the largest and most important Canadian insolvency and litigation files, including Olympia & York, Castor Holdings (Coopers & Lybrand), BCE Plan of Arrangement and Air Canada to name but a few. I have attached hereto as **Schedule "A"** my curriculum vitae which sets forth my professional background and experience.

11. The other members of the Quebec Class Counsel team knew that the Tobacco Companies and their stakeholders would be represented by the best available legal talent in the country and they wanted to ensure that their own insolvency lawyers would be able to meet the challenge and be considered a true force to be reckoned with throughout the recovery phase of this case. FFMP has been the principal law firm with insolvency, bankruptcy and CCAA expertise that has acted for the QCAPs at all times prior to and during the CCAA Proceedings, including throughout the intensive, challenging and complex mediation process. Indeed, since insolvency proceedings were expected to ensue at some point, Quebec Class Counsel began preparing for that eventuality several years before the Quebec Court of Appeal rendered its judgment in 2019.

12. The strength of Quebec Class Counsel lies in the different talents and experience of each of its members and our ability to work as a team to use those strengths to their

full advantage. FFMP was honored to have been chosen to collaborate with so many exceptional lawyers over the years who brought the greatest level of personal commitment, integrity, social justice ideals and legal acumen to this epic challenge on behalf of Quebec Tobacco-Victims.

13. In fulfilling our mandate on behalf of the QCAPs, which evolved over the years (the "**FFMP Mandate**"), many lawyers at FFMP dedicated enormous time, energy, devotion and effort, alongside other members of the Quebec Class Counsel team, to ultimately contribute to the achievement of the Mediator and Monitors in arriving at the Global Settlement, which includes the $4.25 billion QCAP Settlement Amount provided for in the Plans.

14. The principal lawyers at FFMP with responsibility for the FFMP Mandate have been the undersigned Avram Fishman and my partners Mark E. Meland and Tina Silverstein; however, many other lawyers, paralegals and staff at our firm contributed greatly to the groundbreaking results achieved.

15. During the lengthy and complex CCAA mediation process, Mr. Meland was named by the Court-Appointed Mediator, the Honourable Warren K. Winkler, to be a member of the select committees entrusted with the negotiation and drafting of the Plans and related materials and he actively and effectively participated in the extensive and demanding multi-year mediation process which culminated in the completion and filing of the historic Plans.

16. In addition to the high caliber "real-time" litigation and restructuring work performed throughout by FFMP, the FFMP Mandate was characterized by the considerable risks assumed by our firm due to the strict contingency fee nature of our mandate and the ongoing uncertainty as to whether and when any payment on account of our legal fees and disbursements would ever be made. Indeed, since the introduction of FFMP to the tobacco file in late 2013 and then throughout the intensive participation of our firm beginning in May 2015 and up to the present time, FFMP has never received any payment whatsoever on account of professional fees and disbursements. We have completely self-

financed our activities in the Quebec Class Actions and in the subsequent CCAA Proceedings throughout that entire period.

17. When FFMP first embarked on its mandate, no one among the Quebec Class Counsel, including ourselves in particular, ever imagined that it would last more than a decade, including nearly six years of CCAA Proceedings. Consequently, no one could truly prepare for the unprecedented scope of the file and the unwavering professional commitment that would be required of all of us.

B. *Risks of the Contingency Fee Arrangement*

18. From the outset of our participation in the Quebec Class Actions on behalf of the QCAPs, FFMP agreed that its entitlement to legal fees and disbursements would be on a strictly contingent basis and that we would only receive compensation from the recoveries achieved on behalf of the QCAPs. This arrangement required us to assume enormous risk in that we would be required to devote great effort with no visibility as to if and when we would receive any payment for our work and that the case demanded a total professional commitment at our most senior level in priority to all other matters.

19. There has been a substantial opportunity cost to our firm as a result of the FFMP Mandate since the required work demanded that it be performed on a top-priority urgent basis and left little, if any, time available for several of our lawyers to devote to other clients or matters. In the case of Mark Meland, the exceptional demands on his time have required him over the past two years to virtually suspend the rest of his successful practice to devote all of his time to this file. Because Mr. Meland will be making submissions on behalf of Quebec Class Counsel on the QCAP Fee Motion, he cannot file an affidavit of his own describing his participation in the FFMP Mandate. Consequently, in this affidavit, in addition to describing my own role and participation, I will endeavor to also describe his substantial contribution to the success achieved by the QCAPs over the past eleven years.

20. The lack of any revenue generated in respect of the FFMP Mandate over a period of more than eleven years has put a heavy financial burden on partners of our firm who

have had to significantly reduce, or eliminate entirely, their partnership draws and self-finance this high risk and uncertain endeavor. Prior to the FFMP Mandate, our firm had never once assumed any comparable risk, especially the risk of devoting many thousands of hours without any assurance of payment.

21. At the time that we embarked on the FFMP Mandate, we were also well aware that the Tobacco Companies had employed a highly aggressive litigation strategy from the outset of the Quebec Class Actions and that no groups of victims anywhere in the world had ever achieved any recoveries from “big tobacco”. However, because of the very meaningful societal importance of the Quebec Class Actions, the fascinating challenge that these files presented and the fact that Quebec Class Counsel were in serious need of assistance in our field of expertise according to their own evaluation, the partners of FFMP decided to assume the monumental risk of taking on this work without any assurance of payment.

22. In all, from the inception of our involvement in the FFMP Mandate in 2013 until January 10, 2025, FFMP has devoted 23,787 hours of professional time. FFMP’s detailed time records will be available at the hearing on the QCAP Fee Motion if the Court wishes to review them, in which case we would ask that they be filed under seal due to the privileged and confidential information contained therein. From January 10, 2025 until the Plan Implementation Date, I estimate that FFMP will be required to devote at least another 1,650 hours, bringing the total as at plan implementation to at least 25,437 hours.

23. Of the aggregate professional time dedicated by FFMP as at January 10, 2025, the vast majority relates to work performed by (i) Mark Meland, who has devoted at least 8,971 hours, (ii) Tina Silverstein, who has devoted at least 4,557 hours, and (iii) the undersigned Avram Fishman, who has devoted at least 4,381 hours, to the FFMP Mandate. In fact, there have been many periods of time over the years when the three of us, together with other members of our firm, have had to drop virtually everything else in order to respond to the pressing issues and demands of this case.

24. Below is a list of the FFMP lawyers and former FFMP lawyers who worked on the FFMP Mandate and their years of call to the bar:

Lawyer	Year of Call
Avram Fishman	1975
Mark E. Meland	1980
Tina Silverstein	2009
Margo R. Siminovitch	1994
Gilles Paquin	1977
Nicolas Beaudin	1984
Jason Dolman	2006
Nicolas Brochu	2009
Betlehem Endale	2010
Noah Zucker	2013
Gabriel Faure	2014
Elise Abramowicz	2016
Louis-Paul Gamache	2017
Matthew Meland	2019
Marc-Andre Lemire	2019
Hugo Carrier L'Italien	2021
Justin Reiter	2022
Andres Frias	2025 (expected)

25. I would add that FFMP will have approximately $90,000 in disbursements relating to this matter, which will only be repaid from the proceeds of the Class Counsel Fee.

C. *FFMP's Involvement in the Quebec Class Actions*

Genesis of the FFMP Mandate

26. FFMP first became involved in the Quebec Class Actions in late 2013 when I was approached by Gordon Kugler of the Montreal law firm Kugler Kandestin LLP, one of the Quebec Class Counsel prosecuting the Quebec Class Actions. At that time, the trial on the merits was progressing before Justice Brian Riordan J.S.C. We were advised that class counsel had filed a motion for a safeguard order to prohibit JTIM from continuing to make certain payments of principal, interest and royalties to its wholly-owned subsidiary, JTI-TM, pursuant to various circular inter-company transactions among JTIM, its

immediate parent and JTI-TM. It was alleged that these transactions were structured to render JTIM "creditor-proof" and to ensure that the profits generated from the sale of JTIM's tobacco products in Canada would be, for the most part, funneled to related corporate entities. FFMP was asked to provide its views regarding the judgment rendered on this motion and Mark Meland and I met with Mr. Kugler and two of his colleagues to discuss the strategy in that regard.

27. In April 2014, Mr. Meland and I met with Quebec Class Counsel, including Philippe Trudel, Bruce Johnston, Gordon Kugler, André Lespérance and Marc Beauchemin to discuss the JTIM issue, the recent decision of the Quebec Court of Appeal denying leave to appeal the judgment of Justice Mongeon, who had refused to grant a safeguard order against JTIM largely for procedural reasons, and other related issues.

28. Shortly thereafter, our firm was asked to assume a more important role in the litigation. I was approached by André Lespérance who explained that the trial at first instance in the Quebec Class Actions had been completed in mid-December 2014 and, although the team was optimistic about the judgment to be issued, they were concerned about the actions that the Tobacco Companies might take in the event they were found to be liable given the amount of money involved. I was asked whether FFMP, as experts in insolvency and bankruptcy law, could provide an opinion on the then hypothetical question as to whether the Tobacco Companies could file for insolvency protection in the event of a judgment in favour of the QCAPs, the proper and/or likely forum where such filings would take place and how best to respond to such an event.

29. Just prior to the release of the Riordan Judgment (defined hereafter) all legal counsel acting on behalf of the parties in the Quebec Class Actions (plaintiffs and defendants) were provided with a draft of the judgment by Justice Riordan, then under short embargo prior to public release. While the embargo was in place, we met with the other Quebec Class Counsel to discuss various anticipated scenarios and we were asked to carefully review the judgment and begin researching and providing opinions on a number of significant insolvency-related questions raised at our meeting.

30. We immediately put together a team of lawyers at our firm and addressed each of the issues on an urgent basis. Our firm conducted extensive legal research and developed a strategy to face any possible insolvency proceedings that the Tobacco Companies may choose to initiate.

Quebec Security Deposit Issue

31. The judgment at first instance dated May 27, 2015 and rectified June 9, 2015 (the "**Riordan Judgment**"[3]) awarded damages that, with interest and the additional indemnity, amounted to approximately $13.5 billion in the aggregate, and ordered provisional execution notwithstanding appeal of a portion thereof (the "**Provisional Execution Order**"[4]). Pursuant to the Provisional Execution Order, the Tobacco Companies were ordered to make deposits in the aggregate amount of approximately $1.131 billion within 60 days of the issuance of the judgment.

32. By June 1, 2015, the Tobacco Companies had announced that they intended to appeal the Riordan Judgment and, more imminently, the Provisional Execution Order on the basis, *inter alia*, that they did not have the financial capacity to satisfy that order. These appeal proceedings were lodged in July, 2015.

33. The Quebec Court of Appeal granted the Tobacco Companies' motion to cancel the Provisional Execution Order on July 23, 2015[5] but, in their reasons, the court left the door open to other potential orders or recourses to achieve a similar result.

34. The Quebec *Code of Civil Procedure* (now article 364, then article 497), empowers the Quebec Court of Appeal to order an appellant to furnish a suretyship (security) "*to guarantee payment of the appeal costs and of the judgment amount if the judgment is affirmed*" if it finds that there is good reason to issue such an order. Accordingly, we began discussions with the other Quebec Class Counsel to consider whether the QCAPs should

[3] *Létourneau v. JTI-MacDonald Corp.*, 2015 QCCS 2382.
[4] *Ibid*, at paras. 1215-1224, 1228 and 1234-1239, 1245.
[5] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1224.

request the provision of a suretyship (security deposit) as a condition of appeal and, if so, for what amount and on what terms.

35. In view of the judgment of the Quebec Court of Appeal cancelling provisional execution, there was a concern, however, that a request in the range of $1 billion of security in the aggregate could be refused by the court because of the affidavits that had been filed by the Tobacco Companies attesting to their financial inability to pay such an amount and since no request of this magnitude had ever been previously made in Quebec.

36. The Quebec Class Counsel team strategized and decided to request security deposits to be made in quarterly instalments over time in order to respond to the objection raised by the Tobacco Companies that paying such an enormous amount all at once would cause them to become insolvent. This was a very novel idea as no one had ever previously obtained such an order in respect of the payment of security at the Quebec Court of Appeal.

37. The QCAPs' Motion for the provision of security (the "**Security Deposit Motion**") was formulated on the basis of requested quarterly instalments and proceeded (against two of the Tobacco Companies) before the Quebec Court of Appeal. The Security Deposit Motion was granted by Justice Mark Schrager, J.C.A. by judgment dated October 27, 2015.[6] In his decision, Justice Schrager ordered that Imperial deposit $757,995,000, and RBH deposit $225,996,000 (in the aggregate, the "**Cash Security Deposits**"[7]) to the Registry of the Quebec Court of Appeal, as agent for the Quebec Minister of Finance, to be provided in quarterly instalments. In his reasons ordering the Cash Security Deposits, Justice Schrager, at paragraph 44, stated that, while the Tobacco Companies continue to generate profits, they have "*structured their affairs in a manner that drastically, if not*

[6] *Imperial Tobacco Canada Ltd. c. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1737. In the Security Judgment, para. 2, the Court stated: "*the motion against JTI-Macdonald Corp ("JTM") was withdrawn because attorneys were unavailable due to health issues*."

[7] Section 7.3 of the Plans indicates "*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*."

completely, reduces their exposure to satisfy any substantial condemnation that might be made against them in this litigation".

38. The amount of the Cash Security Deposits ordered is the largest security award for an appeal ever granted in Quebec and is 58 times greater than the next highest amount of $16.9 million that the Quebec court had granted in the Castor (Coopers & Lybrand) litigation in which FFMP was counsel for the plaintiffs.[8]

39. From then on, FFMP assumed a far greater role as part of the plaintiffs' core litigation team.

Insurance Issues (Prior to the CCAA Proceedings)

40. Following the issuance of the Riordan Judgment in 2015, the FFMP Mandate was expanded to deal with possible claims against the insurers of RBH and Imperial Tobacco Canada Limited and/or its predecessor entities ("**ITL**").[9]

41. This insurance issue arose in July 2015, when Imperial and RBH entered into settlement agreements (the "**Reliance Settlements**") with one of their excess insurers, Reliance Insurance Company of Canada ("**Reliance**"), which was in the process of winding up its operations pursuant to the *Winding Up and Restructuring Act*. When the liquidator of Reliance sought the approval of the Ontario Court of the Reliance Settlements, which sought to settle claims in connection with excess insurance policies issued in favour of ITL and RBH (collectively, the "**Reliance Policies**"), Justice Newbould ordered that all third parties that may be affected, including the QCAPs, be notified of the approval proceeding before it could be presented and approved.

42. FFMP quickly intervened on behalf of the QCAPs to oppose the Reliance Settlements, which would have resulted in the compromise, without compensation, of any potential claims the QCAPs may have had pursuant to the Reliance Policies. We filed proofs of claim on behalf of the QCAPs asserting a direct claim against the insurance policies pursuant to articles 2500 and 2501 of the *Civil Code of Quebec*. In view of such

[8] *Wightman c. Widdrington (Succession de)*, 2011 QCCA 1393.
[9] JTI advised during the trial that it had no insurance policies that were responsive to the claims.

mandatory provisions of law, we argued that only the QCAPs, as injured third persons, had the ability to enter into a settlement agreement with Reliance in relation to the Reliance Policies, therefore the Reliance Settlements, which would have seen the proceeds of insurance being paid directly to the Tobacco Companies, could not be approved. In the face of our objection, as well as objections from other parties, the Ontario Court refused to approve the Reliance Settlements.[10]

43. In November 2016, the QCAPs were made aware that two more insurers of RBH and ITL were in liquidation, when Quebec Class Counsel were notified with a Motion by Northumberland General Insurance Company, in liquidation ("**Northumberland**"), which was seeking to call the QCAPs into proceedings taking place in the context of the liquidation of its reinsurer, Kansa General Insurance Company Ltd. ("**Kansa**"). In that case, Northumberland had filed proofs of claim in the Kansa winding-up proceedings in connection with contingent claims made by ITL that were reinsured by Kansa. The claims were refused by Kansa's liquidator, and proceedings ensued before the Quebec Superior Court in connection with same.

44. After the notification, FFMP filed proofs of claim on behalf of the QCAPs in connection with all of the policies issued by Kansa to both ITL and RBH. Kansa had already settled with ITL and RBH in settlement agreements that were approved by the Quebec Superior Court, and was extremely reluctant to have to settle these policies for a second time. Kansa initially refused the QCAPs' claims, but after several months of contentious, hard-fought proceedings and court appearances in Quebec, as well as extensive negotiations, the parties eventually agreed to a settlement amount to be paid to the QCAPs.

45. In the case of Northumberland, FFMP also eventually entered into a settlement agreement in favour of the QCAPs related to the insurance policies issued by such insurer to ITL.

[10] *Receiver Reliance Insurance Company*, 2015 ONSC 7489.

46. A significant benefit of the Kansa and Northumberland settlements was that the settlement proceeds, in the cumulative amount of $5.5 million, were eventually used (i) to reimburse certain amounts that had been advanced by the Fond d'aides aux actions collectives ("**FAAC**") during the Quebec Class Action proceedings, and (ii) to fund critical outreach to, and correspondence with, thousands of Quebec Class Members throughout the CCAA Proceedings. Without the benefit of these settlement amounts, there would have been insufficient funds available to permit Quebec Class Counsel, through Proactio, a division of Raymond Chabot, to effect the necessary communication program to update Quebec Class Members and to keep them fully informed of developments in the lengthy CCAA Proceedings. As it stands today, the settlement amounts paid to the QCAPs in respect of the insurance proceedings are the only monies ever received by them on account of their claims against the Tobacco Companies over the past 26 years.

47. In addition to the foregoing settlements, FFMP also participated in extensive discussions and negotiations with certain other insurers of the Tobacco Companies. More particularly, a settlement between RBH and its primary insurers was not approved by the Court at the time, the effect of which is that the settlement amount shall now be added to the Upfront Contributions of RBH and will benefit all Claimants by increasing the cash available by $28,280,000.

48. When the Quebec Court of Appeal Judgment was rendered on March 1, 2019, FFMP immediately issued claims notices to all known insurers, and was in the process of fully asserting the QCAPs' claims with them when the Tobacco Companies filed for CCAA protection in March 2019 and obtained a stay of all proceedings.

Quebec Court of Appeal Judgment and Commencement of CCAA Proceedings

49. In the period leading up to the hearing of the appeals of the Riordan Judgment, FFMP worked diligently with the other Quebec Class Counsel and participated with them in countless meetings and mock hearings to prepare for the appeal argument.

50. In addition, in anticipation of a favourable appeal judgment, our firm devoted a great deal of time and effort to research a myriad of legal and factual issues and to

prepare extensive materials, including very detailed draft affidavits and contestations, that could be readily available in the event that CCAA or other insolvency proceedings would be initiated by the Tobacco Companies on a without, or limited, prior notice basis. Numerous legal and factual scenarios were envisaged and FFMP worked with the other Quebec Class Counsel to prepare for all of the various possibilities.

51. On March 1, 2019, five Judges of the Quebec Court of Appeal rendered a unanimous 422 page decision upholding the Riordan Judgment, with minor modifications relating to the class definition and the date to be used for the calculation of interest and the additional indemnity on the award of damages (the "**CA Judgment**").[11] Immediately upon release of the CA Judgment, the QCAPs filed a motion with the Quebec Court of Appeal seeking the withdrawal of the nearly $1 billion of security posted by Imperial and RBH (the "**Security Withdrawal Motion**"), returnable on March 7, 2019. Imperial and RBH each also filed motions to stay execution of the CA Judgment (the "**Stay Motions**"), returnable on March 4, 2019.

52. Quebec Class Counsel attended the hearing on March 4, 2019, before the Honourable Justice Patrick Healy, J.C.A.. Each of the Tobacco Companies was represented by counsel at that hearing, including JTIM. Counsel for RBH informed the court that all counsel had agreed to "*let things calm down*" until the Security Withdrawal Motion and the Imperial/RBH Stay Motions would be heard.

53. After consultation with the parties, Justice Healy informed counsel that the Honourable Justice Stephane Sansfaçon, J.C.A. would be seized of the Stay Motions and the Security Withdrawal Motion, which would be heard on March 25, 2019, and that all amended motions, or any motion that JTIM would want to submit, were to be filed no later than March 15, 2019.

54. Notwithstanding such scheduling, at an *ex parte* hearing before Justice Hainey of the Ontario Court on March 8, 2019, JTIM requested, and was granted an Initial Order, including a stay of proceedings in respect of the Quebec Class Actions that also extended

[11] *Imperial Tobacco Canada ltée c. Conseil québécois sur le tabac et la santé*, 2019 QCCA 358 [unofficial translation].

to the proceedings against Imperial and RBH. The filing of the JTIM application and the issuance of the JTIM Initial Order had the effect of suspending the hearing that had been already scheduled, by consent of the parties, for March 25, 2019 before the Quebec Court of Appeal.

55. After the JTIM Initial Order, Imperial and RBH followed suit shortly thereafter and obtained similar Initial Orders on an *ex parte* basis, each with a similar stay of proceedings.

56. The CCAA Proceedings triggered the involvement of other litigants in tobacco-related actions across Canada, including the provincial and territorial governments with respect to their health-care costs recovery litigation, and certain other parties in respect of various uncertified and moribund class actions in jurisdictions outside of Quebec.

57. Apart from the QCAPs who had aggressively pursued their litigation and obtained the Quebec Judgments, as of March 2019, none of the claims of the other creditors had advanced to a point where a trial was imminent or a judgment was foreseeable in the near future. Consequently, the QCAPs were the only creditor group with quantified and liquidated claims and the only group that had achieved litigation success against the Tobacco Companies – all of which put the QCAPs in a unique position in the CCAA Proceedings.

58. From the first CCAA filing on March 8, 2019, Quebec Class Counsel assigned FFMP a leading role on behalf of the QCAPs in this next, and hopefully final, phase of the tobacco case.

Urgent Motion to Suspend JTIM Payments to JTI-TM

59. The comeback hearing was scheduled for April 4 and 5, 2019 in the three CCAA Proceedings (the "**Comeback Hearing**") and FFMP devoted all of its resources to complete the responding motion materials, detailed affidavits and the factum to be used in support of the QCAPs' contestation.

60. However, prior the Comeback Hearing, a preliminary, but highly consequential issue presented itself and had to be dealt with. In reviewing the JTIM application motion record, the JTIM Initial Order (March 8, 2019) and the JTIM Monitor's report, we noted that JTIM entered the CCAA Proceedings with limited cash and that it intended to continue to make large interest and royalty payments throughout the CCAA Proceedings to its wholly-owned subsidiary, JTI-TM, which was in private receivership as a result of steps taken by JTIM's immediate parent. These transactions had been heavily criticized and described as a sham by Justice Riordan and by the Quebec Court of Appeal in the Quebec Judgments.

61. It was evident to us that much, if not most, of JTIM's earnings would be dissipated over the course of the CCAA Proceedings if these payments were permitted to continue. Consequently, on March 18, 2019, Mark Meland and I argued an urgent motion[12] before Justice McEwen seeking the suspension of the impugned payments, pending the scheduled Comeback Hearing. JTIM's Monitor had not raised any objection to these intercompany payments continuing; therefore the QCAP motion was the only proactive step taken by any stakeholder to try to prevent these payments from being made.

62. On March 19, 2019, Justice McEwen granted the relief sought by the QCAPs and provided written reasons for his decision, including the following: *"… the arguments raised by the Plaintiffs persuade me that there should be a pause in the payments pending the return of the comeback hearing (…) I agree with the Plaintiffs that it is equitable to suspend the payments referred to at Tab DD of Vol 4 of the Application Record, namely the Intercompany Royalty and Interest Payments …"*.

63. The issue of the intercompany payments to JTI-TM was ultimately referred by Justice McEwen to the Mediator. Over the subsequent five and a half years, JTIM complied with the McEwen Judgment and suspended all payments of principal, interest and royalties to JTI-TM. Neither JTIM nor JTI-TM (through its privately-appointed

[12] The QCAPs motion record dated March 15, 2019 contained an explanation of the circular transactions involving JTIM and JTI-TM, extracts from the Quebec judgments, a copy of the initial order issued at the time of JTIM's previous CCAA proceedings and extracts of the debentures giving rise to the impugned debt.

receiver) ever brought this matter back before the CCAA Court to overturn or vary the order issued by Justice McEwen on March 19, 2019.

64. As a direct result of these efforts, an amount of more than $700 million of JTIM cash has been retained and preserved during the CCAA Proceedings. This amount represents a significant portion of the Upfront Contributions that JTIM must make pursuant to the terms of its CCAA Plan. This very important achievement greatly benefits all creditors of the Tobacco Companies.

65. The timely presentation of the motion relating to the JTIM intercompany payments sent a stark and early message to all stakeholders that the QCAPs were going to be a key front-row participant in the CCAA Proceedings and that we would not hesitate to take all necessary actions to protect the rights of our class members.

CCAA Court Appearances

66. FFMP actively participated in numerous court hearings throughout the CCAA Proceedings, from the Motion to suspend JTIM's intercompany payments, the contentious Comeback Hearing, various other motions, and approximately 15 stay extension hearings over nearly 6 years. In connection with most of these appearances, Quebec Class Counsel filed extensive materials in order for the Court to be fully apprised of, and to consider, the position of the QCAPs.

67. At the outset of the CCAA Proceedings, and likely due to the fact that the QCAPs were the only judgment creditor at the table, many of the other creditors adopted positions adverse to ours.

68. At the Comeback Hearing, Quebec Class Counsel took the lead role in contesting certain relief being sought by the Applicants and in exposing to the Court the full history of the war of attrition that had been waged by the Tobacco Companies in the Quebec Class Actions.

69. An important change that was made to the Initial Orders as a result of arguments made at the Comeback Hearing concerned the status of the Quebec Appeal Judgment

and the impact of the CCAA Proceedings on the delays for the Tobacco Companies to file for leave to appeal to the Supreme Court of Canada. Two of the three Tobacco Companies had requested that they be permitted to file appeal materials before the Supreme Court in order to preserve their rights in appeal, but that the QCAPs be stayed from responding. The QCAPs took the position that if any Tobacco Company did seek leave to appeal to the Supreme Court, the CCAA stay of proceedings should be partially suspended so that appropriate terms could be imposed by the Quebec Court of Appeal as a condition of such appeal of its Judgment. In the end, the CCAA Court ordered that both the QCAPs and the Applicants should be stayed from filing any materials on appeal, and tolled the filing delays in the event that the CCAA Proceedings would be terminated.

70. In its Application for an Initial Order, Imperial had proposed the appointment of Mr. Winkler as the "Tobacco Claimant Representative" to assist and coordinate the interests of all Persons, other than the federal, provincial and territorial governments and any Applicants, in connection with the pending litigation and any Tobacco Claims. At the first *ex parte* hearing in the Imperial proceedings, Justice McEwen required that the title be amended to "Tobacco Claimant Coordinator" and the Imperial Initial Order issued on March 12, 2019 contained this change. Regardless of the title, the Imperial Initial Order foresaw that Mr. Winkler's role would be limited to coordinating among the non-governmental Claimants, including the QCAPs, and would not involve the Applicants or the governments.

71. Quebec Class Counsel were of the strong view that if Mr. Winkler was to be appointed, the mediation process had to involve all Claimants as well as all Tobacco Companies (all of whom were specifically excluded in the scope of Mr. Winkler's original mandate set forth in the Initial Order). Consequently, we proposed that the scope of the mandate of Mr. Winkler be broadened to allow for a global mediation among all parties. As set out in the QCAPs' Notice of Motion for the Comeback Hearing dated March 28, 2019 (the "**QCAP Comeback Motion**"), we took the following position before the CCAA Court advocating for an expanded role for Mr. Winkler:

> *21. Although the Quebec Class Action Plaintiffs are of the view that Mr. Winkler can be very helpful to the process of achieving a settlement in this CCAA*

> *Proceeding, the provisions of the ITCAN Initial Order do not describe the role that the Quebec Class Action Plaintiffs believe that he should play nor provide him with the tools he requires to effectively achieve a settlement.*
>
> *23. (…) it is precisely the defendants, respondents and their respective affiliates who should also be assisted by Mr. Winkler in determining the parameters of a possible settlement and he should be a "facilitator" in negotiations to that end. Furthermore, Mr. Winkler should not be precluded from entering into discussions with the government claimants if he believes that it will assist him in achieving a global settlement.*

72. In the QCAPs' factum in support of the QCAP Comeback Motion, we stated that the QCAPs "*have therefore proposed modified language for the mandate of Justice Winkler, which focuses on facilitating a global negotiation*". In the QCAPs' proposed language, we suggested that Mr. Winkler should be empowered to "*assist in the negotiation of a global settlement of the Tobacco Claims*" and, in carrying out his mandate, he should be at liberty to "*consult with Tobacco Claimants, the Monitor, the Applicants, other creditors and stakeholders of the Applicants and any other persons [he] considers appropriate*".

73. Our position was largely accepted and in the Amended and Restated Initial Orders ultimately issued on April 5, 2019, Justice McEwen appointed Mr. Winkler as the Court-Appointed Mediator in the three CCAA files to "*mediate a global settlement of the Tobacco Claims*" and, more importantly, he stipulated that the Tobacco Claimants and the Applicants would be implicated in the mediation. In our view, the expansion of the powers of the Mediator was an extremely important factor in eventually achieving the global settlement evidenced by the Plans.

74. We also had to return before the Court on several occasions in order to fully deal with the issue of the insurance settlements described above. Although the CCAA Court partially lifted the stay of proceedings in order to allow the QCAPs to seek the approval of these settlements from the Quebec Court, counsel to Imperial and RBH later objected to the proposed use of the settlement funds by the QCAPs. We therefore filed a notice of clarification motion seeking an order from the CCAA Court modifying the Insurance Settlement Order, which, if approved, would authorize the implementation of the Insurance Settlement Agreements and the distribution of the proceeds thereof. This

matter was ultimately referred by Justice McEwan to mediation, and resulted in an agreement, memorialized in a judgment which authorized the QCAPs to use the proceeds of the settlement as described above in paragraph 46.

75. While the QCAPs proactively participated in all of the mediation sessions as directed by the Mediator, there were many times that we made the decision that it was necessary to oppose stay extension requests that were made by the Tobacco Companies, and instead requested that the stay extension be of shorter duration in order to force the parties to negotiate with more urgency.

76. On several occasions, Quebec Class Counsel filed extensive and compelling materials describing the significant impact that the delays in concluding a global settlement were having on class members, many of whom had passed away, before even knowing that these CCAA Proceedings would result in meaningful financial recovery for them (and their estates).

77. In respect of the September 2022 stay extension request, the QCAPs objected to the six-month extension requested by the Tobacco Companies and filed an affidavit from Philippe Trudel wherein he affirmed, *inter alia*:

> *5. I have been advised that since March 2019, when the CCAA Proceedings began, at least 670 Quebec Class Members who suffered from lung cancer, throat cancer or emphysema have died. These deaths comprise only those reported among the victims who have registered with us, such that the actual number of Quebec Class Members who have died in the last three and a half years is undoubtedly far greater.*
>
> *6. The dire consequences to Quebec Class Members resulting from delays were addressed by pneumologist Dr. Alain Desjardins in his Affidavit dated June 20, 2019 filed in support of the QCAPs' Notice of Motion dated June 26, 2019 in respect of a previous stay extension request (…) His professional assessments regarding the plight of the diminishing number of living victims remain applicable today and going forward.*

78. In granting the extension until March 31, 2023, Justice McEwen stated in his endorsement dated September 29, 2022:

> *Over the objections of QCAP (supported by the Canadian Cancer Society) I have, somewhat reluctantly, come to the conclusion that the six month stay period proposed by the Applicants is preferable to the three month period*

proposed by QCAP, and is fair and reasonable in the current circumstance of the Court-ordered mediation.

[…]

I do, however, wish to repeat some of my comments at the hearing. Specifically, I urge all parties to the mediation to remain completely focused on resolution and provide The Honourable Mr. Winkler and the Monitors with their full cooperation over the next six months.

79. In respect of the stay extension request made in March, 2023, the QCAPs filed (on March 20, 2023) materials explaining the utter (and increasing) dismay of many of the Quebec Class Members. As part of these materials, Quebec Class Counsel filed a series of emails they had received from their Class Members, an example of which is the following:

February 18, 2023 email (translated from the original French):

Just to clarify the subject and the reality, yes tobacco killed me and this after several years of cessation, since autumn 2022 pneumonia without end, water in the lungs at the same time and recently I asked for medical assistance in dying which will take place at the beginning of March at the Laval hospital. The family is aware and all my children as well as my wife respect my choice and I will stop suffering. I am enjoying these last moments with my family and friends and I feel at peace with myself. Yes tobacco killed me.

Thank you for your understanding and especially for your collaboration to the members

Your very devoted

80. These materials clearly had an impact and in his endorsement dated March 30, 2023 granting the six-month extension until September 29, 2023, Justice McEwan stated:

[…] One cannot review the content of those affidavits [filed by the QCAPs] and not feel genuine sympathy for those affected.

Notwithstanding this however, I am still respectfully of the view that 6 months is fair and reasonable in the difficult circumstances of this case.

[…]

Keeping the QCAP's submissions in mind, however, as I stated at the hearing, I fully expect all parties to the mediation to fully engage in the process and provide the Honourable Mr. Winkler and the Monitors with their full and timely co-operation. Even though 6 months has been granted, it does not meet that negotiations should not be approached without some sense of urgency.

81. When Chief Justice Morawetz took over as the presiding judge of the CCAA Proceedings in the latter part of 2023, he heard the Applicants' 11th request for an extension to the stay of proceedings in September of that year. At that point in time, the mediation was not only at a stalemate, it had, in fact, regressed over the past six months and it appeared to the QCAPs that no resolution was in sight.

82. On September 14, 2023, the QCAPs filed another affidavit from Philippe Trudel explaining that despite the optimism that many parties and the CCAA Court had expressed, a global settlement was not then currently in sight, that "*certain claimants have not provided the Mediator and Monitors with their full cooperation and have not fully engaged in negotiations with any sense of urgency*", and that delay was apparently being used as a tactical advantage. The QCAPs further explained what they were seeking with this stay extension:

> *The QCAPs have reluctantly decided not to oppose this six-month extension request to allow the Mediator and the Monitors an opportunity to seek and put in motion alternative solutions, leading to successful plans of arrangement during the next six months.*

83. We made oral submissions before Chief Justice Morawetz on September 27, 2023 and asked the CCAA Court to grant a six-month extension in order to afford the Mediator and Monitors one last opportunity to develop alternative solutions to achieve successful plans of arrangement during that timeframe. We also respectfully urged Chief Justice Morawetz to turn up the heat on all mediation parties and to send a strong signal that he intends to hold everyone's feet to the fire.

84. Chief Justice Morawetz did, in fact, hold everyone's feet to the fire, imposing an alternative solution which gave the mediation parties the push that was required to bring this matter to a resolution. Recognizing that a major change was required, in his Endorsement dated October 5, 2023, Chief Justice Morawetz directed the Mediator and Monitors on to develop the Plans:

> *[8] In addition, the Affidavit of Mr. Trudel outlines the situation facing a number of claimants and underscores the necessity for progress to be made in the development of the plans of arrangement.*

[…]

[19] In my view, if a successful plan is to be forthcoming, the best chance for the development of such a plan will be achieved by directing neutral parties to collaborate and develop such a plan. In the circumstances, such neutrals are already in place. The three Court-appointed Monitors are well-positioned to collaborate with each other in conjunction with the Court-appointed Mediator to develop such plans.

[20] The existing structure of the mediation can be utilized to facilitate the development of such plans (…)

[…]

[22] Accordingly, I am directing the three Monitors, to work in conjunction with the Honourable Warren K. Winkler, Court-appointed Mediator, to develop Plans of Compromise or Arrangement. […]

85. This decision of Chief Justice Morawetz was the major catalyst for the change in paradigm that ultimately led to the successful conclusion of the Plans that the CCAA Court is now being asked to approve.

86. FFMP assumed an active role in several important hearings before the CCAA Court in relation to the Plans. A notable hearing involved a motion seeking the granting of the Meeting Order which was opposed by JTIM. We filed affidavit materials responding to the JTIM contestation and made representations in favour of the granting of the Meeting Order, which Order was ultimately issued by Chief Justice Morawetz.

87. Another notable hearing related to the QCAPs' Motion for Injunctive Relief that we presented on December 9, 2024 (the "**Injunction Proceeding**"). The Injunction Proceeding arose when Quebec Class Counsel became aware on December 5, 2024 of the existence of a web-page published in English and French (the "**Actis Website**") by Actis Law Group, a small Montreal law firm that purported to offer "settlement representation" to potential class members. The Actis Website was highly misleading, falsely suggested that such firm was responsible for the Quebec Class Actions and invited class members to join for legal representation on a contingency fee basis. Immediately upon becoming aware of the existence of the Actis Website, and the useless and predatory services it advertised, we mobilized and worked throughout the weekend to

prepare a motion record, supporting materials and a factum, seeking injunctive relief on behalf of Quebec Class Members and arranged for an emergency hearing before Chief Justice Morawetz the following Monday December 9, 2024. We also worked with the PCC Representative Counsel to coordinate the preparation and filing of similar proceedings on behalf of the Pan-Canadian Claimants (the "**PCC**").

88. The Injunction was granted by Chief Justice Morawetz by judgment dated December 10, 2024. As a result of that judgment, the Actis Website was taken down, a list of all individuals who had signed up to the Actis Website (the "**Actis List**") was provided to us by Ms. Andrea Grass of the Actis Law Group, and Actis Law Group and Ms. Grass were ordered to cease and desist from soliciting, communicating with, approaching, entering into retainer agreements with and/or providing information or advice to any Tobacco-Victims, including Quebec Class Members, until the Sanction Order is issued or until such later date if the Injunction Order is thereafter extended or made permanent. The Actis List contained names and contact information for 295 individuals who had signed up with them.

The Complexity of the Court-Authorized Mediation Process

89. The complexity of the mediation process in this file is without precedent.

90. The Claimants have asserted approximately $1 trillion of claims in the aggregate, all of which were unliquidated other than in the case of the QCAPs. Determining the global settlement amount as well as allocation thereof amongst the Claimants was a confounding Rubik's cube of a problem that had no easy solutions. We were steadfast in our position that our claim was unlike all of the others and was entitled to different treatment.

91. Among the individual victims, the QCAPs were the only group that had obtained a judgment that upheld their claims and quantified their damages. All other groups of victims were obliged to contend with different legal systems and different legal tests which made success before the Courts highly remote. With only one exception, all of the other pending

class actions outside of Quebec had not progressed beyond the filing of a statement of claim and were essentially inactive.

92. As discussed hereafter, our firm, together with André Lespérance of TJL, worked very closely with the Mediator and the Monitors in the process that culminated with the drafting and filing of the Plans. What distinguished the role of Quebec Class Counsel was that we were prepared to look beyond the direct interests of the Quebec Class Members and work tirelessly to achieve a global resolution that would benefit other constituencies as well –including other victims throughout the country and those who could only be compensated indirectly through the use of a public interest vehicle.

93. Early on in the process, with our support, representative counsel was appointed to represent the interests of all other victims across the country in order to negotiate on their behalf for fair compensation. This was very difficult since the claims or potential claims of such persons were highly uncertain and, contrary to the QCAPs, there were no eligibility criteria for compensation that had been proposed, let alone established. We worked closely with PCC Representative Counsel, and other Claimants and provided significant assistance in modelling the PCC Compensation Plan for victims across Canada, in a manner that mirrors certain eligibility requirements contained in the Quebec Judgments while also taking into consideration the obvious differences in the respective positions of the QCAPs and the PCCs. The QCAPs were always very supportive of achieving a fair compensation for the PCCs since we felt that victims, wherever they lived, should get as much as possible out of the available settlement proceeds.

94. The legal and practical issues among the provinces and territories were also extremely complex, including the quantification of the claims of each jurisdiction for healthcare recovery costs related to cigarette smoking, the determination of how the losses were to be identified and coordinated, as well as differences in legislation among the various jurisdictions and their respective tobacco taxation policies. Furthermore, because it was always contemplated that the Plans would provide for a large portion of the Provinces and Territories Settlement Amount to be paid over a number of years into the future, the provinces and territories were also preoccupied with issues related to

assurance of payment, Contribution Security, Tobacco Company covenants, and dispute resolution, all of which were very difficult to resolve.

95. Another highly complex set of issues revolved around the Cy-près Foundation and how it could satisfy various key objectives. Early on in the process, Quebec Class Counsel advocated for the creation of a robust Cy-près vehicle to resolve claims of those who did not meet the eligibility criteria of the Riordan Judgment. First, it was the justification for the granting of releases in respect of persons who would not be receiving any direct compensation. Second, it would fulfil an important societal role in funding research focused on improving outcomes in Tobacco-related Diseases. Finally, it could be used to settle the *Létourneau* Class Action through contributions made by the QCAPs to this fund. The QCAPs were supportive of an allocation of $1 billion to the Cy-près Foundation.

96. Beyond the Claimants, there were also serious complexities in structuring a settlement due to the apparent differences existing on the side of the Tobacco Companies. These differences were magnified by the fact that each of the three Tobacco Companies was a fierce global competitors, such that any resolution of disputes among them would likely require the intervention of their respective parent companies.

97. These complexities, and many others, contributed to the very lengthy period required by all parties to arrive at a global settlement, and have been noted in virtually every judgment rendered in these CCAA Proceedings:

> **October 18, 2019:**
>
> *Further, much has been accomplished when one considers the* ***enormous complexity*** *of these three significant CCAA proceedings.*
>
> *Since the last stay extension, a number of positive steps have been taken. Chief among them is the progress in the court-ordered mediation.*
>
> *The Hon. Mr. Winkler conducted extensive meetings with the necessary stakeholders and, by the time these reasons are released, will have conducted a plenary session of approximately 80 participants.*
>
> **January 3, 2020:**
>
> *[2] These CCAA proceedings are complex in nature and involve a number of significant tobacco-related actions that have been brought against the*

Applicants as well as a number of potential tobacco-related claims which are currently unasserted or unascertained.

[…]

[42] I agree with the Tobacco Monitors that a single point of contact is critical in these proceedings. As I have previously indicated, these restructurings are amongst the most complex in CCAA history for a number of reasons, which include the vast number and size of the complicated tobacco-related actions that have been, or could be, commenced against the Applicants.

October 5, 2023:

[14] The Record also establishes that these CCAA proceedings are ***extremely complex****.*

[…]

[15] The dollar value of potential claims is astronomical and is clearly beyond the ability for any or all of the Applicants to satisfy these claims from their available assets.

November 24, 2024:

[14] As this court has observed, these CCAA proceedings are among ***the most complex insolvency proceedings in Canadian history*** *(2023 ONSC 2347, at paras. 4, 7 and 14).*

[…]

[15] The CCAA proceedings were precipitated by a $13.5 billion-plus judgement against the Tobacco Companies rendered in the Quebec Superior Court in 2015 and affirmed by the Court of Appeal of Quebec in 2019 (the "Quebec Judgement"). The Quebec Judgement concerned class actions brought on behalf of individual tobacco smokers. The Tobacco Companies' inability to satisfy the Quebec Judgement led to their decision to seek protection from this court under the CCAA.

[…]

[16] Beyond the Quebec Judgement, multiple other claims have been brought against the Tobacco Companies across Canada, totaling more than $1 trillion (inclusive of the Quebec Judgement). (…)

98. The complexity and all-encompassing nature of the mediation process resulted in countless communications, meetings, discussions, research memos, allocation scenarios and draft CCAA documents being exchanged among the law firms representing the QCAPs and within each firm.

FFMP's Role in the Mediation Process

99. Because we are precluded from disclosing confidential details of the mediation, we cannot do justice in this section to the great amount of work and time that we devoted over nearly six years and can only provide a superficial overview of our extensive participation in that process and the challenges we faced and overcame. Suffice it to say, I humbly believe that we played a key role in assisting the Mediator and the Monitors in the development and drafting of the Plans and contributed greatly to the successful resolution of these CCAA Proceedings.

100. After a number of meetings that we had with the Mediator following his appointment in April 2019, he invited the Claimants and the Applicants to prepare mediation briefs to set forth their respective opening positions. The QCAPs' initial mediation brief was submitted on August 1, 2019, at the same time that the briefs of the other mediation parties were communicated. It became apparent that there was a huge gulf between the QCAPs' position and that of various other parties. It also highlighted the risk that Quebec Class Counsel continued to assume in expending so much time and effort on a matter where recovery was so uncertain and precarious.

101. After an initial global settlement proposal was made by the Applicants in December 2019, mediation sessions involving all Claimants' representatives began in earnest in January 2020. It was apparent that the differences between such parties were significant and a global resolution seemed an elusive, and perhaps unattainable, goal.

102. Over the next three years, in addition to periodic court proceedings discussed previously, the mediation process progressed in fits and starts.

103. The Mediator adopted the practice of appointing representatives of each party to participate in meetings which he organized together with the Monitors. In that connection, he formed a committee of representatives of the Claimants to attempt to arrive at consensus positions among the principal creditor groups[13] (the "**Claimants'**

[13] The Claimants' Representatives Committee included representatives of the QCAPs, the Provinces and Territories and the PCC.

Representatives Committee"). During this period (until March, 2023), André Lespérance, an experienced and highly regarded class action lawyer, was the representative of the QCAPs on the Claimants' Representatives Committee. He devoted countless hours and attended a vast number of mediation sessions at which he represented the interests of the QCAPs while also supporting the interests of other Canadian victims who the QCAPs believed deserved fair treatment as well.

104. Mark Meland and the rest of the FFMP team provided constant support to André Lespérance throughout this period, especially in respect of the voluminous documents (and term sheets) that were being negotiated and drafted (and continually re-drafted) on the Claimants' side. In most cases, the various documents being worked on went through numerous iterations, sometimes up to as many as 30 versions, all of which had to be reviewed, revised and/or commented upon by us.

105. In addition, throughout this period, the Mediator made several requests that FFMP provide detailed written opinions on important and novel legal issues that arose during the mediation. Our team performed significant research and devoted substantial efforts to provide the requested opinions to the Mediator and Monitors.

106. Throughout this time, we also worked closely with other members of the Quebec Class Counsel team to develop and draft the extensive, streamlined, non-adversarial, and innovative Quebec Claims Process Protocol (eventually called the "**Quebec Class Action Administration Plan**" or "**Quebec Administration Plan**") that addresses how the claims and distribution process in Quebec will operate once funds are available to be distributed among the *Blais* Class Members.

107. An important success that was achieved during the mediation was to ensure that the benefit of the QCAP allocation be also made accessible to the heirs of heirs of Quebec victims, since so many of our *Blais* Class Members had tragically died while waiting for justice to be served and many of their immediate heirs had also died. For our part, we devoted a significant amount of time and effort in devising a workable and streamlined protocol/plan that would respond to the reality of this case and allow for recoveries where multiple estates or heirs of the same victim were implicated.

FFMP's Enhanced Mediation Role

108. Commencing in April, 2023, Mark Meland was invited by the Mediator to join the Claimants' Representatives Committee and to attend, together with André Lespérance, mediation sessions involving the Claimants' representatives. Significant and highly contentious issues were being addressed at that time, including in connection with the broad releases to be given to the Tobacco Company Groups in the context of an approved CCAA Plan. Mr. Meland's views and insolvency law expertise were highly sought after since the issues were novel and pushed the limits of previous CCAA precedents and called for creative new ideas.

109. After the judgment of Chief Justice Morawetz issued on October 5, 2023 directing the Mediator and Monitors to develop the Plans (discussed above), Mark Meland was appointed by Mr. Winkler as one of the four members of the Claimants' CCAA plan drafting committee (he, together with three representatives of the Provinces and Territories) tasked with assisting the Mediator and Monitors in developing and drafting the Plans and supporting documents (the "**CCAA Plan Drafting Committee**"). The development of Plans to be submitted for the Court's approval by the Mediator and Monitors was a creative and novel approach in CCAA proceedings.

110. In addition, the Mediator constituted a negotiating committee that was composed of lawyers representing the three Tobacco Companies together with Mark Meland and three lawyers representing the Provinces and Territories (the "**Negotiating Committee**"). These joint negotiation sessions involving representatives of both the Claimants and the Tobacco Companies were critical to the resolution by the Mediator and Monitors of the complex and often contentious elements of the global settlement and the Plans.

111. Near the conclusion of the negotiations involving the Claimants and the Tobacco Companies, issues related to the Quebec Administration Plan were added to the agenda of the Negotiating Committee. Mr. Lespérance joined Mr. Meland for those sessions and the two of them spent many days hammering out difficult issues related directly to the Quebec Administration Plan, including mechanisms for dealing with class members' claims in a way that would maximize, rather than impair, the take-up rate of the QCAPs.

112. Once the economics of the Plans appeared to be established, Mr. Meland and Mr. Lespérance acted as the QCAP representatives in the consequential final allocation discussions held with the Mediator, Monitors and other Claimants, which resulted in an amount of $4.25 billion of the Global Settlement Amount being allocated to the QCAPs and $131 million of such amount being contributed to the Cy-près Foundation to settle the judgment debt in the *Létourneau* Class Action. This was the culmination of years of discussions with various other Claimants on this most difficult and contentious matter.

113. At the request of the Mediator, Mark Meland and the rest of the FFMP team were also instrumental in contributing to the resolution of many of the discrete and complicated CCAA issues that had to be addressed and resolved throughout the CCAA Proceedings and the mediation. Without breaching confidentiality requirements, I would simply state that these issues were unbelievably challenging and their resolution required an enormous investment of effort and time on our part. I believe that these efforts were greatly helpful to the Mediator and Monitors who had the unenviable task of developing the Plans and trying to bring together stakeholders with wildly different interests and agendas.

114. When it came to the drafting of the Plans, we assumed an outsized role in tackling many of the most difficult and controversial issues and I believe that the Mediator and Monitors greatly appreciated our contribution. Often, at the behest of the Mediator and other Claimant representatives, Mark Meland was asked to take the lead on and find creative solutions to issues which did not even directly affect the interests of the QCAPs but where consensus needed to be found between various stakeholders. He did so in a highly professional and proactive manner with a view to advancing the process and achieving a global resolution for all parties.

115. In all, Mark Meland participated in more than 180 mediation sessions involving the Mediator and the Monitors and other participants. He also had hundreds of telephone and video calls with the Mediator and other mediation participants throughout the mediation process, in addition to the many thousands of emails and other written communications.

It is difficult to do justice to the intensity of the professional commitment that was required from him and the other members of our firm.

116. The mediation, and especially the portion thereof related to the negotiation and drafting of the Plans, proceeded on a real time basis and all participants had to be available literally seven days a week to respond to the myriad issues which would arise daily. Mark Meland was in constant contact with André Lespérance and other members of the Quebec Class Counsel team in order to strategize the QCAPs' position and to resolve issues as they arose. This was a highly effective collaborative effort between the team members and allowed for quick and decisive decision making.

117. Many members of our firm, including myself, worked diligently with Mr. Meland and Mr. Lespérance in the formulation, drafting and review of the Plans (as well as the numerous related documents, motions and draft orders). At all times, and virtually on a daily basis, Mr. Meland kept me, Tina Silverstein and other members of our firm fully apprised of all developments so that we could work with him extensively to address the myriad issues that constantly presented themselves.

118. Pursuant to the Plans, and based upon a reasonable and informed assumption of the expected take-up rate at the time of negotiations, Quebec Class Members are expected to receive compensation equal to 100% of the capital amounts awarded to them in the Riordan Judgment and the CA Judgment. It is gratifying that the Plans will result in the maximum number of eligible Quebec beneficiaries being able to participate and receive their rightful compensation since the Quebec Administration Plan extends compensation to heirs of heirs and provides for a very streamlined, simple, understandable and non-confrontational claims process.

119. In the rough and tumble of negotiations, Quebec Class Counsel showed meaningful flexibility and compromise. In particular, as an important concession made during the mediation, we agreed to assume the substantial costs of the Quebec claims process agent, Proactio (a division of Raymond Chabot), and to pay those costs out of the Quebec Class Counsel Fee, even though comparable agency costs of Epiq on behalf

of the PCCs will be paid by the Tobacco Companies. After that concession was made, Section 14.9 of the Plans reflected this assumed obligation by Quebec Class Counsel.

120. The Plans were developed largely on the basis of the findings of the Quebec Judgments and, in the case of the Pan-Canadian Claimants, the compensation and eligibility requirements are derivative of the orders contained in the Quebec Judgments. When the Plans were publicly released on October 17, 2024, PCC Representative Counsel stated at a press conference that the PCCs were flying on the wings of the QCAPs. We are proud that victims across Canada will also benefit from our efforts.

121. At the Meetings of Affected Creditors held on December 12, 2024, Mark Meland acted as the proxy for the Quebec Class Members and voted all of their 99,958 votes and $13,706,891,279 of Claims in favour of the approval of the Plans.

122. The unanimous approval of the Plans by the creditors marked a milestone in the process, one that over the preceding years had often appeared unachievable, and was a defining moment of great satisfaction for our team which spared no effort or personal commitment in contributing to that success.

123. Since the Meetings, however, the work intensity has not let up in the least and our FFMP team continues to address the remaining outstanding issues as we prepare for the Sanction Hearing and, hopefully, the final stage of this CCAA process.

D. Concluding Remarks

124. The QCAPs wish to acknowledge the significant efforts of the representatives of the other major stakeholders throughout the mediation process; in particular Jacqueline Wall, lead counsel for the Province of Ontario, as well as the counsel for the other Provinces and Territories, and their active participation and steadfast commitment in arriving at this remarkable result.

125. We also wish to recognize that Mr. Winkler (with the collaboration of the Monitors) was exemplary in the manner in which he led the mediation process and guided the parties (sometimes unwillingly) to compromise on hard-fought and long-held positions.

Without his boundless energy, dedication and creativity, the present global settlement and resulting Plans would clearly not have been possible.

126. The QCAPs' success is a credit to the Canadian judicial system in that this is the first time in the world that tobacco companies have been held liable to pay damages to their victims on a collective basis, and will actually do so.

127. Each one of the law firms comprising the Quebec Class Counsel brought their own individual expertise and talents; however, the success achieved by the QCAPs is the product of numerous hard-working individuals coming together as a cohesive team, with the single-minded focus of acting in the best interests of their clients.

128. The unprecedented commitment and determination of Quebec Class Counsel as well as the historic results achieved by them on behalf of the Quebec Class Members is an accomplishment at the very highest level of achievement of the legal profession and is deserving of the highest level of pride and recognition.

AND I HAVE SIGNED, THIS 12th DAY OF JANUARY, 2025

Avram Fishman

Avram Fishman

Solemnly declared before me by electronic means at Montreal, Province of Québec, this 12th day of January, 2025

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

Commissioner of Oaths for Québec

LIST OF SCHEDULES

"A" *Curriculum vitae* of Avram Fishman

DOCUMENTS AVAILABLE TO THE COURT UPON REQUEST

1. Timesheets in relation to the Quebec Class Actions for the law firm of FFMP

2. Accounting of disbursements in relation to the Quebec Class Actions for the law firm of FFMP

THIS IS SCHEDULE "A"
TO THE AFFIDAVIT OF AVRAM FISHMAN

CV OF AVRAM FISHMAN

SWORN BEFORE ME ON THIS 12TH DAY OF JANUARY 2025

Commission of Oaths for Quebec

CURRICULUM VITAE OF ME AVRAM FISHMAN

Born in Montreal, Province of Quebec, in 1948, Me Fishman received a Bachelor of Arts (1969), Bachelor of Civil Law (l972) and Bachelor of Laws (1978) from McGill University. Upon graduation, he was awarded the MacDonald Travelling Scholarship by McGill University and studied comparative law at the *Université d'Aix-Marseilles* for one year. He has been an active member of the Bar of the Province of Quebec since 1975.

Me Fishman is a *Gouverneur à Vie* of the *Fondation du Barreau du Québec*, as well as a member of the Canadian Bar Association, the Lord Reading Law Society and the Insolvency Institute of Canada, a small group of leading insolvency practitioners. He has practiced his entire career at the boutique law firm, now known as Fishman, Flanz Meland Paquin, where he is the senior partner. Me Fishman is highly regarded as an acknowledged expert in the field of bankruptcy and insolvency and has enjoyed the highest designation of a practicing lawyer awarded by Martindale-Hubbell, the "AV" designation for the highest level of competence and professional integrity, for many years. He has practiced at the summit of the insolvency bar and has been instrumental in the evaluation of jurisprudence in this filed.

Me Fishman has acted as one of the lead counsel in the litigation arising from the bankruptcy of Castor Holdings Ltd., one of the largest bankruptcies in the Province of Quebec. He represented the Estate of the late Peter Widderington in the largest auditor negligence case in Canadian history. On April 14, 2011, the Superior Court rendered a 750 page Judgment which conclusively held that the audited financial statements and related professional opinions of the auditors were negligently prepared and issued. This Judgment was the long awaited result of an 18 year legal battle lead by Me Fishman in which he fought to engage the professional liability on the part of auditors and accountants. The Judgment is the leading case in the Province of Quebec on the standards to be applied to auditors in the Province of Quebec and it clarifies the law of professional negligence in this jurisdiction.

Me Fishman also acted as one of the lead counsel for bondholders in the corporate takeover litigation involving the $52 billion leveraged buyout of BCE Inc. In this case, he pleaded before the Superior Court, the Court of Appeal and the Supreme Court of Canada. This case clarified the fiduciary duties of directors in considering a takeover bid. The Supreme Court held that directors are not to treat the realization of the highest value for shareholders as a priority, but rather to consider and balance the interests of all stakeholders in a corporate takeover. This decision of the Supreme Court of Canada has settled the law on this issue after years of controversy and conflicting decisions.

Me Fishman has also acted as Quebec counsel for the Monitor in the restructuring of Abitibi Bowater Inc. Among other issues, this restructuring involved the constitutionality of provisions of the *Companies' Creditors Arrangement Act* according to which claims of the Provincial Crown for environmental remediation were terminated in the restructuring

process. Certain Provincial Crowns appealed the decisions of the Quebec Superior Court and the Court of Appeal to the Supreme Court of Canada which held that the Province's environmental protection order could be stayed.

Me Fishman has also been involved in other major insolvencies in Canada including the restructuring of Air Canada in which he represented a group of major aircraft lessors, representation of the receiver in the Norshield group of companies and representation of a major accounting firm in a class action arising out of the bankruptcy of Mount Real Corporation. Concurrently, he represents class counsel in major class actions instituted in Quebec against three major tobacco manufacturers. His is also very active in shareholder dispute litigation.

In addition to carrying on an active legal practice, he has been a lecturer at the Quebec Bar School on insolvency, a speaker at the Canadian Institute of Insolvency and Restructuring professionals, and the Lord Reading Law Society. He is also a member of the disciplinary committee of the Bar of the Province of Quebec.

In November 2008, Me Fishman presented a lecture to the Canadian Bar Association entitled "*L'affaire BCE, vue sous l'angle des droits des obligataires*". He presented a seminar to the annual conference of the Insolvency Institute of Canada in 2006 on the topic "The Year in Review – Across Canada Overview of Developments" and to the 2009 annual conference on the subject "Should distressed investors profit on early performance swings on restructured shares?".

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	[●], the [●] day
	)	of [●], 2025
CHIEF JUSTICE 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 **JTI-MACDONALD CORP.**

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

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

QUEBEC CLASS COUNSEL FEE APPROVAL ORDER

THIS MOTION made by Quebec Class Counsel, representing the Quebec Class Action Plaintiffs, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an order approving the retainer agreement dated October 30, 1998, as amended on March 16, 2017, between the representative plaintiff, the CQTS, and Quebec Class Counsel (the "**CQTS Retainer Agreement**") and the payment of the Quebec Class Counsel Fee (defined hereafter) in accordance therewith, was made on •, 2025 in Toronto, Ontario.

WHEREAS the CCAA Plans provide *inter alia* in section 14.9 (f) thereof that 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 this Court and shall be dealt with at the Sanction Hearing, and section 16.2 (note 8) thereof provides that, subject to such approval, the Quebec Class Counsel Fee will be paid in full at the time of plan implementation;

WHEREAS on December 23, 2024, this Court issued the QCAP Notice Protocol Order approving the QCAP Notice and QCAP Notice Protocol established to provide notice to *Blais* Class Members of the request to be made by Quebec Class Counsel at the end of the Sanction Hearing for an order approving the CQTS Retainer Agreement and the payment of the Quebec Class Counsel Fee;

AND ON READING the Notice of Motion for the Approval of the Quebec Class Counsel Fee, as well as the Affidavits of Bruce W. Johnston, Philippe H. Trudel, Dr. André-H Dandavino, Lise Boyer Blais, Gordon Kugler, Marc Beauchemin and Avram Fishman, including the schedules thereto, and on hearing the submissions of counsel for the QCAPs and other such counsel requesting to be heard, all parties having been duly served with the Motion Record, as appears from the Affidavit of Service of Tina Silverstein sworn January 13, 2025;

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that all capitalized terms used herein, unless herein otherwise defined, shall have the meanings ascribed to them in the CCAA Plans.

3. **THIS COURT ORDERS** that the CQTS Retainer Agreement is hereby approved and the Quebec Class Counsel Fee is hereby established and approved in the amount of $901,177,915, plus applicable taxes thereon (the "**Quebec Class Counsel Fee**"), which encompasses:

    a. all fees earned by Quebec Class Counsel throughout the litigation of the

Quebec Class Actions and the CCAA Proceedings, as well as all of their future fees in connection with their role under the Quebec Class Action Administration Plan; and

b. all disbursements and litigation costs incurred by Quebec Class Counsel throughout the Quebec Class Actions and the CCAA Proceedings, all costs to be incurred by them in connection with their role under the Quebec Class Action Administration Plan, and all costs for the services rendered and to be rendered by Proactio, a division of Raymond Chabot, in connection with their engagement by Quebec Class Counsel to facilitate the claims process for *Blais* Class Members.

4. **THIS COURT ORDERS** that the Quebec Class Counsel Fee shall be paid out of and deducted from the QCAP Settlement Amount.

5. **THIS COURT ORDERS** that the CCAA Plan Administrators shall pay the Quebec Class Counsel Fee to Quebec Class Counsel from the QCAP Trust Account at the time of the implementation of the CCAA Plans, based on wire instructions to be provided by Quebec Class Counsel.

6. **THIS COURT ORDERS** Quebec Class Counsel to reimburse the *Fonds d'aide aux actions collectives* the balance of all financial aid received from them in connection with the Quebec Class Actions, namely, the amount of $1,847,876.47, within 10 Business Days of the receipt of the Quebec Class Counsel Fee.

GENERAL

7. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in any other foreign jurisdiction, to give effect to this Order. All courts, tribunals, regulatory and administrative bodies and agencies are hereby respectfully requested to make such

Orders and to provide such assistance, as may be necessary or desirable to give effect to this Order.

_____
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:

JTI-MACDONALD CORP. **Court File No. CV-19-615862-00CL**
IMPERIAL TOBACCO CANADA LIMITED AND **IMPERIAL TOBACCO COMPANY LIMITED** **Court File No. CV-19-616077-00CL**
ROTHMANS, BENSON & HEDGES INC. **Court File No. CV-19-616779-00CL**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

QCAP MOTION RECORD
(Motion for the Approval of the Quebec Class Counsel Fee)
(Returnable January 29, 2025)

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