

CANADA
PROVINCE OF QUEBEC
MONTREAL SEAT

COURT OF APPEAL

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

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

v.

**CONSEIL QUÉBÉCOIS SUR LE TABAC
ET LA SANTÉ**

-and-
JEAN-YVES BLAIS
-and-
CÉCILIA LÉTOURNEAU
RESPONDENTS / Plaintiffs

-and-

FTI CONSULTING CANADA INC., in its
capacity as Monitor and CCAA Plan
Administrator of Imperial Tobacco
Canada Limited and Imperial Tobacco
Company Limited

-and-

ERNST & YOUNG INC., in its capacity as
Monitor and CCAA Plan Administrator of
Rothmans, Benson & Hedges Inc.
INTERVENERS / Monitors

-and-

JTI-MACDONALD CORP.
MISE EN CAUSE / Defendant

-and-

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

-and-

PROCUREUR GÉNÉRAL DU QUÉBEC,
with an establishment at 1, rue Notre-
Dame Est, Montréal, Québec, H2Y 1B6

MISE EN CAUSE

AMENDED JOINT APPLICATION TO RELEASE AND WITHDRAW
THE CASH SECURITY DEPOSITS

(Articles 18, 25, 49, 364 and 390 C.C.P.)

(Article 1584 C.C.Q.)

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

A. OVERVIEW¹

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

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

(collectively, the “**Cash Security Deposits**”).

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

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

2. This request is being made in order to satisfy one of the conditions that must be met in order for the CCAA Plans (hereafter defined) to be implemented; namely, that the Cash Security Deposits shall be released from suretyship and deposited into dedicated trust accounts for the benefit of the creditors of the Tobacco Companies (hereafter defined) (the “**Global Settlement Trust Accounts**”, as defined in each of the CCAA Plans).
3. The CCAA Plans will result in amounts being paid to settle the claims of the class members in the present Court files (the “**Class Members**”).

B. PROCEDURAL HISTORY AND THE FURNISHING OF THE SURETYSHIP

4. By judgment dated May 27, 2015, rectified on June 9, 2015, (the “**Riordan Judgment**”), the Superior Court of Quebec decided in favour of the Respondents QCAP and condemned the Appellants ITCAN, RBH and JTI-Macdonald Corp. (“**JTIM**”) to pay damages, with interest and additional indemnity, amounting to more than \$15 billion.
5. On June 26, 2015, the Appellants ITCAN, RBH and JTIM each appealed the Riordan Judgment.
6. By judgment dated October 27, 2015 (the “**Schrager Judgment**”), filed herewith as **Exhibit M-1**, Schrager J.A. ordered that the appeals by the Appellants ITCAN and RBH were subject to the provision of security (suretyship) to guarantee, in part, payment of the judgment debt. In this regard, ITCAN was ordered to furnish as suretyship the aggregate amount of approximately \$758 million and RBH was ordered to furnish the aggregate amount of approximately \$226 million, by way of equal consecutive quarterly instalments.
7. ITCAN satisfied its obligations pursuant to the Schrager Judgment by making the following deposits, each in the amount of \$108,285,000, at the Registry of the

Court of Appeal of Quebec as agent for the (...) Ministre des Finances, as appears from Court file 500-09-025385-154 and the following deposit certificates filed herewith:²

- a. Certificate 396415 dated December 30, 2015, **Exhibit M-2a**;
 - b. Certificate 396443 dated March 30, 2016, **Exhibit M-2b**;
 - c. Certificate 396450 dated June 29, 2016, **Exhibit M-2c**;
 - d. Certificate 396458 dated September 29, 2016, **Exhibit M-2d**;
 - e. Certificate 396567 dated December 29, 2016, **Exhibit M-2e**;
 - f. Certificate 0408716 dated March 31, 2017, **Exhibit M-2f**; and
 - g. Certificate 0408868 dated June 28, 2017, **Exhibit M-2g**.
8. RBH satisfied its obligations pursuant to the Schrager Judgment by making the following deposits, each in the amount of \$37,666,000, at the Registry of the Court of Appeal of Quebec as agent for the (...) Ministre des Finances, as appears from Court file 500-09-025387-150 and the following deposit certificates filed herewith:
- a. Certificate 396417 dated December 30, 2015, **Exhibit M-3a**;
 - b. Certificate 396441 dated March 29, 2016, **Exhibit M-3b**;
 - c. Certificate 396449 dated June 29, 2016, **Exhibit M-3c**;
 - d. Certificate 396559 dated September 30, 2016, **Exhibit M-3d**;
 - e. Certificate 396189 dated December 28, 2016, **Exhibit M-3e**; and
 - f. Certificate 0408861 dated March 30, 2017, **Exhibit M-3f**.
9. In accordance with the Schrager Judgment, the Cash Security Deposits became payable to the Respondents upon a final judgment of the Court of Appeal of Quebec:

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

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

10. On March 1, 2019, this Court substantially upheld the Riordan Judgment (the “**Appeal Judgment**”), filed herewith as **Exhibit M-4**.
11. Immediately following the release of the Appeal Judgment, the Respondents QCAP filed a motion before this Court seeking the release of the Cash Security Deposits, and ITCAN and RBH made urgent motions before this Court for stays of execution of the Appeal Judgment. Those motions were both scheduled to be heard, but have since been stayed as a result of the CCAA proceedings described hereafter.

C. THE APPELLANTS’ CCAA PROCEEDINGS AND CCAA PLANS

12. Shortly after the release of the Appeal Judgment, in March 2019, Imperial, RBH and JTIM (collectively, the “**Tobacco Companies**”) sought and were granted protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) before the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) and have benefitted from a stay of proceedings ever since.
13. On October 17, 2024, in the context of the Tobacco Companies’ CCAA proceedings (in CCAA Court files CV-19-616077-00CL, CV-19-616779-00CL and CV-19-615862-00CL), three substantially identical plans of compromise and arrangement were filed by the Monitors and the Court-Appointed Mediator in respect of each of the Tobacco Companies, which were thereafter amended and restated, including by way of the Third Amended and Restated Court-Appointed Mediator’s and Monitors’ CCAA Plans of Compromise and Arrangement dated February 27, 2025 (the “**CCAA Plans**”). The CCAA Plans (without schedules) are filed *en liasse* as **Exhibit M-5**.
14. The CCAA Plans provide that the Tobacco Companies must pay an aggregate Global Settlement Amount of \$32.5 billion into three separate Global Settlement Trust Accounts over multiple years, by way of upfront contributions at plan

implementation and annual contributions over time, which will be used to satisfy the claims of the Tobacco Companies' creditors in the manner provided for therein.

15. In respect of the claims of Class Members in the present Court files, the CCAA Plans provide that an amount of \$4.25 billion will be paid from the Global Settlement Amount to settle their claims, with \$4.119 billion being allocated to satisfy the claims of the Class Members in court file 500-06-000076-980 (the "**Blais Class Members**"), and \$131 million being contributed to a Cy-près Foundation to indirectly satisfy the claims of the Class Members in court file 500-06-000070-983 (*Létourneau*).
16. As appears from the CCAA Plans, the Cash Security Deposits:
 - a. form part of the therein defined "Upfront Contributions" that the Tobacco Companies are required to make on or before the Plan Implementation Date; and
 - b. must be released from suretyship prior to the Plan Implementation Date and deposited into the Global Settlement Trust Accounts.
17. In particular, Section 5.4 of each of the CCAA Plans provides:

5.4 Upfront Contributions

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

[emphasis added]

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

7.3 Release of Cash Security Deposits

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

19. Section 19.3 of each of the CCAA Plans further provides that the release and deposit of the Cash Security Deposits into the Global Settlement Trust Accounts is one of the “Plan Implementation Conditions” as therein defined. Specifically, section 19.3(n) of the CCAA Plans provides that the implementation of the CCAA Plans shall be conditional upon the satisfaction, prior to or at the Effective Time (as defined therein), of the condition precedent that ITCAN’s and RBH’s Cash Security Deposits will have been released from suretyship and deposited into the Global Settlement Trust Accounts in respect of Imperial and RBH respectively.
20. The CCAA Plans were unanimously approved by the creditors voting thereon at meetings held on December 12, 2024, and were subsequently sanctioned by the CCAA Court on March 6, 2025 (the “**Sanction Orders**”). The Sanction Orders (without schedules) are filed *en liasse* as **Exhibit M-6**.
21. The CCAA Plans also provide for an ongoing role for the Monitors, including FTI (in respect of Imperial) and EY (in respect of RBH), in the administration of the CCAA Plans as “CCAA Plan Administrators”, whose responsibilities include overseeing the management of all trust accounts to be established pursuant to the CCAA Plans, including the Global Settlement Trust Accounts.
22. In that regard, concurrently with the issuance of the Sanction Orders, the CCAA Court also issued the CCAA Plan Administrator Appointment Orders, which formally appointed EY and FTI as CCAA Plan Administrator in respect of the CCAA Plans of RBH and Imperial, respectively. The CCAA Plan Administrator Appointment Orders are filed *en liasse* as **Exhibit M-7**.

D. THE REQUEST TO RELEASE THE CASH SECURITY DEPOSITS

23. As appears from the foregoing, the Cash Security Deposits must be released and deposited into the Global Settlement Trust Accounts in order for the CCAA Plans to be implemented.
24. In the Sanction Orders, the CCAA Court requested the aid and assistance of other courts, as follows:

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

25. On June 18, 2025, the CCAA Court issued two orders (one in respect of Imperial and one in respect of RBH), filed herewith *en liasse* as **Exhibit M-8**, partially lifting the stay of proceedings with respect to Imperial and RBH, solely to the extent required to allow the Imperial Monitor and the RBH Monitor, with the support of ITCAN, RBH and the QCAP, to commence the present Application to this Honourable Court in order to seek the release of the Cash Security Deposits and their deposit into the Global Settlement Trust Accounts in accordance with the provisions of the CCAA Plans.
26. Moreover, this Court's authorization pursuant to Article 1584 C.C.Q. is sought because certain proceedings, namely, the stay motions of Imperial and RBH referred to in paragraph 11 have not been formally terminated in light of the stay of proceedings ordered by the CCAA Court.
27. It is in the interests of justice that the CCAA Plans be implemented as rapidly as possible in order that the Quebec Class Action Administration Plan can commence

and *Blais* Class Members can finally start receiving the compensation that they have been waiting for since the issuance of the Riordan Judgment a decade ago.

28. Accordingly, the Imperial Monitor, the RBH Monitor and the QCAP jointly request an order from this Court directing the Ministre des Finances (...) to release the Cash Security Deposits to a trustee to be designated by the Imperial Monitor and the RBH Monitor for deposit into the Global Settlement Trust Accounts, once established.
29. Given that the amounts of the Cash Security Deposits to be released are in excess of \$980 million, and the deposit of such sums by cheque is not feasible, the Imperial Monitor, the RBH Monitor and the QCAP request an Order of this Court ordering the (...) Ministre des Finances to transfer and deposit the amounts to be released by wire transfer into the bank accounts designated by the Imperial Monitor and the RBH Monitor in accordance with the wire instructions to be provided by the Imperial Monitor and the RBH Monitor after the establishment of the Global Settlement Trust Accounts.
30. As a result, the Imperial Monitor, the RBH Monitor and the QCAP request that the Registry of the Court of Appeal of Quebec, as agent for the Ministre des Finances, be required to accept the *demande de retrait de dépôt judiciaire* forms (SJ-366) as amended to provide for wire instructions for payment (in lieu of a cheque), as appears from the example of the form filed as **Exhibit M-9** (the “**Demand Form**”), but which shall be completed with the wire instructions to be provided by the Imperial Monitor and the RBH Monitor following the establishment of the Global Settlement Trust Accounts.
31. Because the Demand Forms (once completed) will include confidential details relating to the coordinates of the Global Settlement Trust Accounts, a sealing order in respect of these Demand Forms is necessary and requested.
32. The present Application is well-founded in fact and in law.

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

ORDER the Ministre des Finances du Québec, Bureau général de dépôts pour le Québec (...) to release:

- i) to the trustee to be designated by FTI Consulting Canada Inc., in its capacity as Monitor and CCAA Plan Administrator of Imperial Tobacco Canada Ltd. and Imperial Tobacco Company Limited, the amount of \$757,995,000; and
- ii) to the trustee to be designated by Ernst & Young Inc., in its capacity as Monitor and CCAA Plan Administrator of Rothmans, Benson & Hedges Inc., the amount of \$225,996,000

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

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

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

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

Montréal, July 25 (...), 2025

*Fishman Flanz Meland Paquin
Trudel Johnston & Lespérance*

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TRUDEL JOHNSTON & LESPÉRANCE**

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Montréal, July 25 (...), 2025

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Montréal, July 25 (...), 2025

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Hedges Inc.

AFFIDAVIT

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

1. I am one of the attorneys representing the Quebec Class Action Plaintiffs.
2. All of the facts alleged in the *Amended Joint Application to Release and Withdraw the Cash Security Deposits* are true.

SWORN before me at the City of Montreal,
in the Province of Quebec, this 25th day of
July, 2025.

B. Bouthillette



Commissioner of Oaths for Quebec

Philippe Trudel

Philippe Trudel (Jul 25, 2025 11:30:29 EDT)

PHILIPPE TRUDEL

NEW NOTICE OF PRESENTATION

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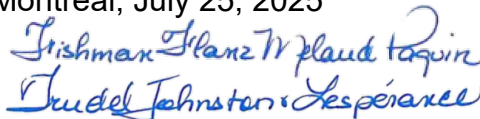
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NOTICE IS HEREBY GIVEN that the *Amended Joint Application to Release and Withdraw the Cash Security Deposits* will be presented before a judge of the Court of Appeal of Quebec sitting at the Ernest-Cormier Building, located at 100 Notre-Dame Street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

PLEASE ACT ACCORDINGLY

Montréal, July 25, 2025



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

Montréal, July 25, 2025

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Montréal, July 25, 2025

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District of Montreal**

IMPERIAL TOBACCO CANADA LTD. et al.

Appellants/Defendants

v.

CONSEIL QUÉBÉCOIS SUR LE TABAC ET LA SANTÉ et al.

Respondents/Plaintiffs

-and-

FTI CONSULTING CANADA INC. et al.

Interveners/Monitors

-and-

JTI MACDONALD CORP.

Mise en cause/Defendant

-and-

DELOITTE RESTRUCTURING INC.

Mise en cause

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AMENDED JOINT APPLICATION TO RELEASE AND WITHDRAW THE CASH SECURITY DEPOSITS