

CITATION: Imperial Tobacco Limited, 2025 ONSC 1375
COURT FILE NOS.: CV-19-615862-00CL, CV-19-616077-00CL and CV-19-616779-00CL
DATE: 2025-03-03

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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

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.

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Craig Lockwood, Deborah Glendinning, Marc Wasserman and Martino Calvaruso*, for Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Natasha MacParland and Chanakya Sethi, for FTI Consulting Canada Inc. in its capacity as court-appointed Monitor of Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited

Robert Thornton, for JTI-Macdonald Corp.

Linc Rogers, for Deloitte Restructuring Inc. in its capacity as Monitor of JTI-Macdonald Corp.

Jamey Gage and Trevor Courtis, for Rothmans, Benson & Hedges Inc.

R. Shayne Kukulowicz and Monique Sassi, for Ernst & Young Inc., in its capacity as court-appointed Monitor of Rothmans, Benson & Hedges Inc.

Jacqueline Wall, for the Province of Ontario

Sam Cotton, for the Heart and Stroke Foundation

Jesse Mighton, Jeffrey Leon, Mike Eizenga and Preet Gill, for the Province of British Columbia, Province of Manitoba, Province of New Brunswick, Province of Nova Scotia, Province of Prince Edward Island, Province of Saskatchewan,

Government of Northwest Territories, Government of Nunavut and Government of Yukon in their capacities as Plaintiffs in the HCCR Legislation Claims

André I.G. Michael, for the Consortium of Provinces and Territories

Brett Harrison and Guneev Bhinder, for the Province of Quebec

HEARD: March 3, 2025

ENDORSEMENT

[1] This endorsement concerns the ongoing *Companies' Creditors Arrangement Act* ("CCAA") proceedings involving JTI-Macdonald Corp. ("JTI"), Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, "Imperial" and Rothmans Benson & Hedges Inc. ("RBH")). JTI, Imperial and RBH are collectively referred to as the "Tobacco Companies". This endorsement relates to all three Tobacco Companies.

[2] Each of Deloitte Restructuring Inc. ("Deloitte"), in its capacity as Court-appointed Monitor of JTI, FTI Consulting Canada Inc. ("FTI"), in its capacity as Court-appointed Monitor of Imperial and Ernst & Young Inc. ("EY") in its capacity as Court-appointed Monitor of RBH brought a motion for an order (CCAA Plan Amendment Order No. 1) approving the proposed amendments as reflected in the Third Amended and Restated Plan of Compromise and Arrangement in each of the CCAA proceedings.

[3] CCAA Plans were unanimously approved by voting creditors at three separate, sequential meetings of Affected Creditors of JTI, Imperial and RBH (the "Meetings") on December 12, 2024. The Monitors then brought motions for orders sanctioning the CCAA Plans and ancillary relief, which were heard from January 29 to 31, 2025 (the "Sanction Hearing").

[4] The Court's decision on the Sanction Hearing is under reserve.

[5] At the Sanction Hearing, the Tobacco Companies advised that the issue of allocation under the CCAA Plans remains unresolved as between them.

[6] The Tobacco Companies have now reached an agreement in principle to resolve the allocation issue.

[7] Pursuant to the CCAA Plans, the Tobacco Companies are to make upfront contributions on or before the Plan Implementation date equal to the aggregate of each Tobacco Companies' cash and cash equivalents generated from all sources by each Tobacco Company prior to the Plan Implementation Date, plus cash security deposits, less the sum of \$750 million.

[8] The allocation of the \$750 million holdback to be retained by the Tobacco Companies to fund working capital (the "Working Capital Holdback") remained unresolved at the time of the Sanction Hearing. The Tobacco Companies have now agreed in principle that on the Plan

Implementation Date, RBH will retain the entire Working Capital Holdback. In exchange for RBH, JTI and JTI Macdonald TM Corp. (“JTI-TM”) have agreed to withdraw all of their objections to the sanctioning of the CCAA Plans.

[9] Pursuant to section 20.4(a) of the CCAA Plans, the Monitors now move for CCAA Plan Amendment Orders to approve certain amendments to the CCAA Plans to implement this agreement in principle (the “Amendments”).

[10] As a result of the agreement in principle, the Tobacco Companies take the position that section 5.2 of the CCAA Plans is to be intentionally deleted.

[11] In addition, the Tobacco Companies require that section 5.4 of the CCAA Plans be amended to: (i) provide that the Working Capital Holdback is to be retained by RBH as the “RBH Retained Amount”, (ii) permit RBH to deal with the RBH Retained Amount in its sole discretion, including to transfer or distribute such monies outside of Canada in such manner as RBH may determine; and (iii) clarify that any such transfers or distributions of the RBH Retained Amount will be deemed to be permitted transfers for the sole purpose of Article 11 of the CCAA Plans.

[12] Certain administrative changes to effect the Amendments may also be required.

[13] None of the amendments affect any Affected Creditor or Unaffected Creditor. The amendments only impact the allocation of the Working Capital Holdback among the Tobacco Companies.

[14] No Claimants oppose the motions.

[15] The only opposition to the requested relief is from the Heart and Stroke Foundation (Heart & Stroke”).

[16] Heart & Stroke makes its submissions as a social stakeholder. It submits that the CCAA Plan Amendment Orders should not be granted because the proposed amendments to the CCAA Plans do not cure the unfairness and unreasonableness of the CCAA Plans arising from the narrow scope of the *Cy-près* Foundation.

[17] In making its submissions, Heart & Stroke relies on the Responding Factum that was referenced at the Sanction Hearing, oral arguments made at the Sanction Hearing and its written submissions for this motion. Heart & Stroke does not raise any new issues on this motion.

[18] The Province of Ontario submitted that Heart & Stroke’s objection to the proposed amendment to the Plan constituted an abuse of process.

[19] Abuse of process is a flexible doctrine which grants the court inherent power to prevent the misuse of its procedure in a way that would bring the administration of justice into disrepute. It may be used to bar the relitigation of issues previously decided and to promote judicial economy and the integrity of the court’s process: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at paras. 37, 51.

[20] Heart & Stroke previously brought a motion for leave to appoint representative counsel for “Future Tobacco Harms Stakeholders” in this proceeding. In a decision dated June 23, 2023, McEwen J. dismissed that motion, in part on the basis that any claims of the Future Tobacco Harms Stakeholders were no different in nature from the unascertained and unasserted claims of the Pan-Canadian Claimants: 2023 ONSC 2347, at para. 86.

[21] As a result of McEwen J.’s decision, Future Tobacco Harms Stakeholders do not constitute a distinct class of creditors in this CCAA process. Heart & Stroke is neither an Affected Creditor nor an Unaffected Creditor. The court need not consider whether the proposed amendments to the plan are materially prejudicial to their interests.

[22] Heart & Stroke opposes the amendments to the plan on the basis that they do not adequately address the needs of Future Tobacco Harms Stakeholders. If the court were to adopt this argument, the effect would be to treat Future Tobacco Harms Stakeholders as a class of creditors whose approval is required to sanction the plan. In this way, Heart & Stroke’s submissions are an improper attempt to undermine McEwen J.’s decision.

[23] Heart and Stroke is a social stakeholder in this proceeding, but its status does not give it standing to raise objections on issues that do not affect it. In *Parsons v. Canadian Red Cross Society* (2001), 140 O.A.C. 348, the Court of Appeal held that, where a party has no legal rights that are impacted by a particular decision, that party has no standing to appeal that decision. By analogy, where a party’s rights are not impacted by an amendment to a proposed plan of arrangement, that party has no standing to object to the amendment.

[24] The proposed amendments to the plan fix the allocation of the Working Capital Holdback. None of the amendments sought on this motion affect Heart & Stroke as a social stakeholder. The proposed amendments have no impact on the scope of the *Cy-près* Foundation. The issues raised by Heart & Stroke on this motion were raised in the Sanction Hearing. The court’s decision on the motion to sanction the plan is under reserve. Heart & Stroke’s objections will be addressed in the court’s decision on that motion.

[25] Heart & Stroke advanced arguments that had no bearing on the question of whether the motion to amend the plan should be granted, and which challenged the court’s previous decision regarding the status of Future Tobacco Harms Stakeholders. For these reasons, Ontario’s abuse of process concern was not without merit.

[26] In my view, Heart & Stroke’s submissions were ill-advised and are rejected.

[27] The sole issue on these motions is whether the court should grant the CCAA Plan Amendment Orders.

[28] Section 20.4(a) of the CCAA Plan requires the Monitors to notify Affected Creditors and the Tobacco Companies and obtain court approval of any amendment, restatement, modification or supplement to be made following the Meeting Orders that is not solely: (i) administrative; or (ii) error correcting.

[29] The Monitors submit that the proposed amendments are substantive and not merely curative and therefore that the court approve them. They submit that the amendments do not affect and are not materially adverse to the financial or economic interests of Affected Creditors or Unaffected Creditors. The amendments only impact the allocation of the Working Capital Holdback among the Tobacco Companies. The Affected Creditors and Tobacco Companies received notice of these motions on February 27, 2025. All three Tobacco Companies, along with JTI-TM, support the amendments.

[30] Sections 6 and 7 of the CCAA provide the court with authority to sanction a plan or to alter or modify its terms. When amendments are proposed after the creditors meeting, section 7 of the CCAA gives the court the discretion to sanction an amended plan without convening an additional creditors meeting if the court is satisfied that the creditors or shareholders are not adversely affected by the proposed amendments.

[31] I accept the submissions of the Monitor. I am satisfied that no Affected Creditor or Unaffected Creditor will be affected by the amendments. I am also satisfied that each of the Monitors has adhered to section 20.4(a) of the CCAA Plans by providing notice to the common service list and moving for the court's approval of the amendments.

[32] Each of the Monitors has filed a report recommending that the court approve the amendments and grant the CCAA Plan Amendment Order No. 1.

[33] I am satisfied that the evidence establishes that the requested relief is appropriate in the circumstances. The motions of the Monitors are granted and the orders have been signed.

[34] For greater certainty, the existing Stay of Proceedings remains in effect until such time as the decision on the Sanction Hearing has been released.



Chief Justice Geoffrey B. Morawetz

Date: March 3, 2025