

CITATION: Imperial Tobacco Company Limited, 2025 ONSC 1876
COURT FILE NO.: CV-19-615862-00CL; CV-19-616077-00CL; CV-19-616779-00CL
DATE: 2025-03-28

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: *Raymond Wagner, K.C. and Kate Boyle*, Representative Counsel for the Pan-Canadian Claimants

André I.G. Michael, 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 (collectively, the "Consortium")

Stacy Petriuk and Laura Comfort, for the Province of Alberta

Avram Fishman and Mark E. Meland, for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Quebec Class Action Plaintiffs)

Jacqueline Wall, for the Province of Ontario

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

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

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

Meena Alnajjar for Rothmans, Benson & Hedges Inc.

Mitch Grossell for JTI-Macdonald Corp.

Robert Cunningham for the Canadian Cancer Society

**HEARD AND
DETERMINED:**

March 26, 2025

REASONS RELEASED: March 28, 2025

ENDORSEMENT

[1] This matter concerns the ongoing insolvency proceedings involving JTI-Macdonald Corp. (“JTI”), Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, “Imperial”) and Rothmans Benson & Hedges Inc. (“RBH”). This endorsement relates to all three applicants.

[2] The Law Practice of Wagner & Associates, Inc., (“PCC Representative Counsel”) brings this motion for the following:

- (i) Compelling AIAG, LLC, carrying on business as Attorney Group, and its named incorporator, organizer, and registered agent, Mr. Lyle Foster, and its named principal, Mr. Anthony Johnson (collectively, “Attorney Group”) to immediately remove, and maintain inaccessible the webpage <https://claim.attorneygroup.com/canadian-tobacco-lawsuit/>, the Facebook page <https://www.facebook.com/TobaccoClaims/>, and any other webpages, websites, social media posts, online advertisements, and any other public communications whatsoever relating to the Canadian Tobacco Lawsuit, the Tobacco Settlement and the claims and distribution processes under the CCAA Plans or the Pan-Canadian Claimants’ Compensation Plan (“PCC Compensation Plan”) (collectively, the “Attorney Group Solicitations”);
- (ii) Prohibiting Attorney Group from soliciting Pan-Canadian Claimants (“PCCs”) in connection with the CCAA Plans and the PCC Compensation Plan;
- (iii) Requiring Attorney Group to provide PCC Representative Counsel a list of all persons who signed up or provided information through the Attorney Group Solicitations (“Attorney Group List”);
- (iv) Mandating the destruction of all copies of the Attorney Group List; and

- (v) Extending this Order to all persons or entities with knowledge or notice of it, requiring them to:
 - a. Immediately take down and remove any solicitations of PCCs and *Blais* Class Members (“QCAPs”) in connection with the CCAA Plans, the PCC Compensation Plan, the Quebec Administration Plan, or any compensation due thereunder; and
 - b. Immediately cease and desist from soliciting PCCs and QCAPs in connection with the CCAA Plans, the PCC Compensation Plan, the Quebec Administration Plan, or any compensation due thereunder.

[3] The injunctive relief sought is to remain in effect until the completion of the Claims Process under the PCC Compensation Plan, including the administration and distribution of all funds thereunder to Claimants, or until otherwise ordered by the Court.

[4] The evidence to support the requested relief is set out in the Affidavit of Kate Boyle, affirmed March 21, 2025 and the Affidavit of Dayna MacGillivray, affirmed March 25, 2025.

[5] The relief sought in this motion is consistent with the relief granted on December 10, 2024, against Actis Law Group, who similarly published a website offering legal representation to Tobacco Victims on a contingency fee basis (the “Actis Injunction Order”). The Court’s endorsement of December 10, 2024 is attached as Schedule “A” (the “Actis Injunction Endorsement”)

[6] The present motion seeks an extension of that relief, which was not addressed in the Actis Injunction Order. Since the date of that the Actis Injunction Order, the Plans of Compromise and Arrangement for each of the Tobacco Companies have been amended and were sanctioned by this Court on March 6, 2025. The Third Amended and Restated CCAA Plans (the “Plans”) expressly prohibit solicitation of PCCs under Section 8.4 (the “Non-Solicitation Provision”):

8.4 No Solicitation of Pan-Canadian Claimants

No Persons other than the PCC Representative Counsel, their agent Epiq, the Claims Administrator, or any Person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit Pan-Canadian Claimants in order to assist them with the preparation or submission of their PCC Claim Packages under the PCC Compensation Plan.

[7] The comparable provision with respect to the *Blais* Class Members (the “QCAPs”) is set out in Section 7.6 of the Plans.

7.6 No Solicitation of Blais Class Members

No persons other than the Quebec Class Counsel, their agent Raymond Chabot, the Claims Administrator, or any Person specifically authorized by any of the foregoing Persons or by the CCAA Court, shall solicit *Blais* Class Members in order to assist them with the preparation or submission of their Proofs of Claim under the Quebec Administration Plan.

[8] Given this express prohibition, PCC Representative Counsel seeks mandatory interlocutory injunctive relief against Attorney Group to enforce this Court’s Sanction Endorsement and Sanction Orders to ensure compliance with Section 8.4 of the Plans. The injunctive relief sought is intended to remain in effect until the completion of the Claims Process under the PCC Compensation Plan, including the administration and distribution of all funds thereunder to Claimants, or until otherwise ordered by this Court. The injunction request therefore has a defined end and will not continue permanently.

[9] PCC Representative Counsel submits that the extension of the Order to all persons and entities with knowledge or notice of the Order is both necessary and warranted. As the Claims Process unfolds and formal notice is disseminated to potential claimants, PCC Representative Counsel contends that it is highly likely that additional solicitations of Tobacco Victims will emerge as the significant individual payments available to PCCs and QCAPs, under the PCC Compensation Plan and Quebec Administration Plan, respectively, make such claims highly attractive to law firms and lawyers seeking to collect contingency fees for nothing more than assisting with the completion of Claim Forms, accessing medical documents and commissioner of oaths services. These services are provided at no cost to PCCs through Epiq, a firm which is acting as agent for the PCC Representative Counsel.

[10] Without this extended relief, PCC Representative Counsel anticipates an ongoing cycle of unauthorized solicitations, each requiring separate enforcement proceedings, thereby unnecessarily consuming this Court’s resources.

[11] The QCAPs support the request made by PCC Representative Counsel that the relief be granted.

[12] The record establishes that the Attorney Group is aware of these proceedings. Communications sent to the Attorney Group prior to the March 26, 2025 hearing and the hearing was held down for fifteen minutes while additional attempts were made to contact both Mr. Foster and Mr. Johnson, by both voicemail and email. No response was received.

PCC Representative Counsel and the CCAA Proceedings

[13] On December 9, 2019, this Court appointed Wagners as PCC Representative Counsel to represent the interests of PCCs in the CCAA Proceedings. The PCC Representative Counsel Order was amended and restated on November 22, 2024, to outline PCC Representative Counsel's role in representing PCCs post-sanction and throughout the implementation of the Plans.

[14] Since appointment, PCC Representative Counsel has actively represented the interests of PCCs, participating in thousands of hours of mediation with the Court-Appointed Mediator, Monitors and other claimants and stakeholders. This extensive and complex mediation culminated in the filing of the Plans on October 17, 2024, which set out a global settlement of all affected claims against the Tobacco Companies, including the claims of PCCs.

[15] The PCC Compensation Plan, an integral part of the global settlement, allocates \$2.52 billion to compensate individual tobacco harm victims across Canada who meet the eligibility criteria.

[16] Pursuant to the PCC Representation Counsel Appointment Orders, and the Plans, PCC Representative Counsel has an exclusive and ongoing mandate to represent PCCs throughout the Claims Process.

[17] The Claims Process under the PCC Compensation Plan was designed so that it is straightforward for PCCs to complete the Claim Form and submit the Claim Package for consideration and approval by the Claims Administrator. The PCC Compensation Plan aims to eliminate the need for legal representation, thereby streamlining the administration process and maximizing the funds available to PCCs.

[18] To ensure PCCs receive free, accurate, and legitimate assistance, PCC Representative Counsel retained Epiq Class Action Services Canada Inc. ("Epiq") as an Agent on September 13, 2024. As Agent, Epiq's role includes:

- a. Operating a bilingual call centre, official website and registration portal for claimants (www.TobaccoClaimsCanada.ca);
- b. Assisting PCCs or their Legal Representatives (e.g. a Power of Attorney or Estate Representative) in preparing Claim Packages, including assisting with obtaining medical records and providing commissioner of oaths services;
- c. Providing support to PCCs before and throughout the Claims Process; and
- d. Reporting to PCC Representative Counsel, the Mediator, and the Monitors.

[19] All fees, costs, disbursements, and expenses incurred by PCC Representative Counsel, including the services of Epiq as Agent, will be paid directly by the Tobacco Companies, and will not be deducted from any compensation awarded to PCCs.

[20] On December 9, 2024, the Court heard parallel motions brought by PCC Representative Counsel and Quebec Class Counsel seeking an interlocutory injunction against Actis Law Group, who had published a website purporting to offer representation to tobacco victims in the Canadian Tobacco Class Action Settlement.

[21] On December 10, 2024, the injunction was granted. Injunction orders were issued against Actis Law Group in each of the Applicants' proceedings.

[22] To protect PCCs and prevent unauthorized solicitation, the Plans introduced the Non-Solicitation Provision at Section 8.4, expressly prohibiting solicitation of PCCs. A parallel provision in relation to solicitation of the QCAPs appears in Section 7.6. These provisions are incorporated into the Plans sanctioned by this Court on March 6, 2025.

Solicitation of PCCs Through the Attorney Group Solicitations

[23] On March 6, 2025, PCC Representative Counsel became aware of solicitations of PCCs through a website and related Facebook advertisements hosted by Attorney Group, purporting to provide settlement representation for the "Tobacco Settlement Canada" (the "Attorney Group Solicitations").

[24] PCC Representative Counsel contends that Attorney Group Solicitations make several false and misleading representations including that they:

- a. Advertise a "32.6 Billion Dollar Tobacco Settlement" from the "Canadian Tobacco Lawsuit", falsely implying that this entire amount is available for claimants, when, in reality, the compensation available for direct compensation to claimants under the PCC Compensation Plan is \$2.52 billion;
- b. State "No upfront costs – we only win when you do", implying that claimants will be required to sign a contingency fee agreement if Attorney Group assists them filing their claim, and also that there is a "case" to be won, rather than a simple Claim Form to fill out;
- c. Create a false sense of urgency for claimants by declaring "Deadline is near! Don't miss this chance. Click Learn More today!", when, in fact, the PCC Claims Process has not yet begun, and the PCC Claims Application Deadline has not yet been determined;
- d. Advertise "Tobacco Settlement Could Pay Canadians up to \$100K", while failing to mention the PCC Eligibility Criteria, in which the maximum compensation available to claimants is \$60,000;

- e. Purport to determine if PCCs are eligible for compensation, despite having no role in the administration of claims;
- f. State “The time you have to pursue a claim is limited. Contact us today”, when, in fact, the PCC Claims Process has not yet begun, and the PCC Claims Application Deadline has not yet been determined;
- g. Claim “There is no cost or obligation to speak with us,” yet fails to disclose that claimants will be required to sign a contingency fee agreement if Attorney Group assists them with submitting their claim;
- h. Specifically target First Nations claimants by emphasizing higher smoking rates within First Nations communities, exploiting vulnerable groups and reinforcing the misleading impression that PCCs must engage Attorney Group to secure compensation;
- i. Provide incomplete eligibility criteria, omitting key requirements including the Twelve-Pack Year smoking requirement, and the requirement that a COPD diagnosis must be Grade III or IV to qualify for compensation; and
- j. Do not mention Epiq’s role as Agent for PCC Representative Counsel, which provides claimants assistance at no cost.

[25] The Terms of Use on the Attorney Group Website also reference that contingency fee agreements are the standard model for representation. The Terms of Use state that while initial consultations are free, any formal representation requires a contract for legal services, which outlines the fees, terms, and potential involvement of affiliated attorneys or law firms. It further specifies that personal injury matters are handled on a contingency basis. PCC Representative Counsel contends that this wording supports the strong suggestion that PCCs would be required to enter a financial arrangement by engaging with Attorney Group.

[26] PCC Representative Counsel submits that these Terms of Use underscore the unreliability and inaccuracy of Attorney Group’s representations about the PCC Compensation Plan and the serious risk of misinformation to PCCs. Claimants relying on the Attorney Group Website may be misled about their rights, the applicable deadlines for submitting a claim, the need for legal representation to make a claim, and the financial implications of engaging Attorney Group, resulting in financial decisions that cause them irreparable harm.

[27] PCC Representative Counsel submits that the Attorney Group’s actions constitute a clear breach of Section 8.4 of the Plans. Attorney Group was not involved in the resolution for PCCs, nor were they authorized by PCC Representative Counsel, Epiq, or the Claims Administrator to solicit claimants.

Request that Attorney Group Cease Unauthorized Solicitation of PCCs

[28] On March 7, 2025, PCC Representative Counsel sent a demand to Mr. Anthony Johnson, the named principal of Attorney Group, requesting the immediate removal of the Attorney Group Solicitations. The letter provided a deadline of March 10, 2025, at 12:00 p.m. EST, for compliance.

[29] Despite this demand, the Attorney Group Solicitations remained active past the deadline.

[30] Further investigation revealed that Mr. Lyle D. Foster, of the law firm Hyden, Miron & Foster, PLLC, was listed as the registered agent for Attorney Group. Accordingly, on March 10, 2025, PCC Representative Counsel sent the same demand to Mr. Foster, copying Mr. Johnson, reiterating the requirement to cease all unauthorized solicitations. That same day, telephone calls were made to both Mr. Johnson and Mr. Foster, but no response was received.

[31] On March 11, 2025, Mr. Johnson responded by email stating that “the pages have been taken down.” However, the other unauthorized solicitations, including the Facebook page and advertisements, remained active.

[32] On March 18, 2025, PCC Representative Counsel determined the Facebook page had been taken down. However, the remaining Attorney Group Solicitations consisting of Facebook advertisements remained active.

[33] On March 19, 2025, PCC Representative Counsel again emailed Mr. Johnson and Mr. Foster, demanding the removal of all Attorney Group Solicitations along with other specified conditions. The email provided a deadline of 1:30 p.m. EST, for compliance.

[34] Despite this demand, the Attorney Group Solicitations remained active past the deadline.

[35] In the evening of March 19, 2025, Mr. Johnson responded by email stating that “Meta ads have been down since last email and status has not changed.” The other specified conditions outlined in PCC Representative Counsel’s email were not acknowledged or addressed.

[36] On March 20, 2025, PCC Representative Counsel determined that the remainder of the Attorney Group Solicitations – three Facebook advertisements – remain active and publicly accessible.

[37] While Attorney Group removed the Attorney Group Website on March 11, 2025, it has not removed all Attorney Group Solicitations.

[38] PCC Representative Counsel submits that it is both just and in the interests of justice that the Claims Process and Administration of the compensation plans under the Plans, including the PCC Compensation Plan, proceed towards implementation without the false and misleading representations of Attorney Group proliferating, causing confusion, misinformation and likely irreparable harm by inducing PCCs into unnecessary, detrimental and financially punitive contingency fee agreements.

[39] PCC Representative Counsel contends that intervention is necessary to prevent further confusion and harm, ensure that accurate information prevails and protect PCCs and QCAPs from exploitation.

Other Known Unauthorized Solicitation of PCCs

[40] PCC Representative Counsel contend that the unauthorized solicitation of PCCs by unapproved third parties is not an isolated occurrence. In addition to the Attorney Group and Actis, PCC Representative Counsel has identified similar activities by other entities soliciting PCCs.

[41] By way of example, a third party recently operated a website with a domain name almost identical to the official claims website, purporting to provide legal assistance for the PCC Compensation Plan. The website suggested that legal representation was necessary to file a claim and contained misleading statements regarding eligibility requirements and the scope of assistance available to PCCs.

[42] PCC Representative Counsel identified the entity responsible for the website and sent a letter demanding its removal, among other conditions. After further correspondence, the third party confirmed on March 7, 2025, that the website had been taken down, and that the other requests had been complied with.

[43] PCC Representative Counsel is concerned that the existence of unauthorized solicitations by various unrelated entities highlights the ongoing risk that additional third parties will likely engage in similar conduct to solicit PCCs and QCAPs in order to lure them into unnecessary representation and contingency fee agreements, particularly as formal notice is disseminated and the Claims Process begins.

Jurisdiction to Grant an Injunction

[44] The jurisdiction to grant a mandatory interlocutory injunction is found at s. 101 of the *Courts of Justice Act* and r. 40.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

The Test for an Interlocutory Injunction

[45] In the Actis Endorsement, I referenced the well-established test for an interlocutory injunction, as set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney-General)*, [1994] 1 S.C.R. 311:

12 The test for an interlocutory injunction is set out by the Supreme Court of Canada in *RJR MacDonalld Inc. v. Canada (Attorney-General)*, at 334. The test requires the moving party to demonstrate that:

- (a) there is a serious issue to be tried;

(b) irreparable harm will result if the relief is not granted;
and

(c) the balance of convenience favours the moving party.

13 This analysis must be contextualized by the ongoing CCAA proceeding. The CCAA creates a single proceeding model to promote the “equitable and orderly resolution of insolvency disputes”. This approach is “intended to mitigate the inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its rights”: *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, 475 D.L.R. (4th) 1, at paras. 54-55.

14 To this end, this Court is empowered under s. 11 of the CCAA to “make any order it considers appropriate in the circumstances”.

[46] The Court has broad discretion under s. 11 of the CCAA to grant orders that preserve the integrity of the insolvency process and prevent unauthorized interference with implementation of the Plans.

[47] In applying the legal test for an interlocutory injunction in the *Actis* Injunction Endorsement, I found that there was a serious issue to be tried.

[48] In assessing irreparable harm, I found that unauthorized solicitation of claimants posed a risk of irreparable harm by disrupting PCC Representative Counsel’s ability to effectively communicate with PCCs and introducing confusion that could undermine the orderly conduct of the CCAA proceedings.

[49] At the time, the Plans were at a critical stage – just prior to the creditors’ meetings to be held on December 12, 2024. I held that allowing third-party solicitation at that stage “is not desirable in this case,”.

[50] In my view, the current stage of the proceedings is even more critical than at the time of the *Actis* Injunction Order. With the sanctioning of the Plans, court-approved notices will be widely disseminated, including information about the PCC Compensation Plan, the Agent’s role and Claims Process. This phase will attract significant public attention and media coverage, increasing the likelihood that PCCs will actively seek information about their rights and next steps.

[51] In my view, it is essential that PCCs receive accurate and reliable information regarding the status of the Claims Process, eligibility criteria and the PCC Claims Application Deadline. The factors that justified injunctive relief in *Actis* also apply at this stage:

- a. PCCs continue to be highly vulnerable, and many have waited decades for compensation;

- b. The PCC Compensation Plan was specifically designed to eliminate the need for private legal representation, and an Agent remains in place to assist PCCs at no cost; and
- c. Unauthorized solicitation still risks misleading and financially harming PCCs.

[52] With the issuance of the Sanction Endorsement and Sanction Orders, the Non-Solicitation Provisions under ss. 8.4 and 7.6 are operative and will endure throughout the PCC Claims Process. This provides a stronger basis for granting injunctive relief against Attorney Group, and any other unauthorized solicitations of PCCs, whose actions now contravene a direct breach of a Court-approved prohibition.

[53] The injunction sought is proposed to endure until the completion of the Claims Process under the PCC Compensation Plan, including the administration and distribution of all funds thereunder to Claimants, or until otherwise ordered by this Court. This ensures the relief remains time-limited while effectively protecting PCCs from irreparable harm and financial exploitation during the Claims Process.

[54] In my view, these risks persist and are only heightened at this stage of the process, warranting consideration of not only an injunction against Attorney Group's unauthorized and misleading solicitation, but also broader relief to deter future violations and ensure compliance with the Court-approved Plans and the Non-Solicitation Provision therein.

The Criteria for Interlocutory Injunctive Relief

(i) Serious Issue to be Tried

[55] PCC Representative Counsel submits that the Attorney Group Solicitations misrepresent and provide inaccurate information regarding the "Canadian Tobacco Lawsuit" (i.e. the compensation available to Tobacco Victims under the Plans) representing a predatory attempt to mislead PCCs into believing that legal representation is required to seek compensation, and that they must act with urgency. This is contrary to the PCC Compensation Plan, which is intentionally structured to not require PCCs to retain third-party counsel to submit a claim for compensation.

[56] PCC Representative Counsel contends that inserting unauthorized and uninformed lawyers and law firms into this streamlined Claims Process is both unnecessary and exploitative of PCCs, many of whom are ill with fatal diseases that underlie their very claims. The interests of PCCs have been considered throughout this proceeding, including by the appointment of PCC Representative Counsel in 2019, the structuring of the Claims Process and the retention of Epiq as Agent to provide fee assistance to PCCs.

[57] I accept these submissions. In my view, there is a serious issue to be tried. I am also satisfied that the PCCs have a strong *prima facie* case. The first part of the test has been satisfied.

(ii) Irreparable Harm

[58] I am satisfied that PCCs who submit information to Attorney Group, and/or any other unauthorized entity soliciting PCCs may believe they will receive accurate and timely updates about the CCAA Proceedings and Claims Process, including important deadlines.

[59] However, Attorney Group is not party to the CCAA Proceedings and is not authorized by PCC Representative Counsel or Epiq to represent PCCs through the Claims Process. Further, the Attorney Group expressly acknowledges that its content may not reflect current legal developments or be accurate. This creates a serious risk that claimants will miss critical communications about their rights and may suffer a real loss simply by placing their confidence in a law firm that is not informed about or involved in the PCC Compensation Plan.

[60] The PCC Compensation Plan is designed so that claimants bear no out-of-pocket legal fees – costs are covered by the Tobacco Companies, not deducted from PCCs' compensation. However, if Attorney Group, and/or any other unauthorized entity soliciting PCCs, mislead claimants into signing contingency fee agreements, their compensation will be reduced, potentially substantially, causing them irreparable financial harm. The second part of the test has been satisfied.

(iii) Balance of Convenience

[61] PCC Representative Counsel submits that failing to prevent Attorney Group from continuing with its misleading and predatory practices may encourage others to adopt similar practices, in direct violation of the Sanction Endorsement and Sanction Orders, which approve of the Non-Solicitation Provision under Section 8.4 of the Plans. Tobacco Victims have the right not to be misled by legal professionals

[62] PCC Representative Counsel submits that there are parallel claims processes for Tobacco-Victims under the Plans – the PCC Compensation Plan and the Quebec Administration Plans. The risk of misinformation and financial detriment associated with entering into unnecessary contingency fee agreements is not limited to PCCs. Unauthorized solicitations pose a threat to PCCs and QCAPs, as misleading representations about eligibility, legal requirements under the respective compensation plans and compensation entitlements may cause claimants to incur unnecessary legal fees or fail to access the compensation to which they are entitled.

[63] The public interest further supports granting the relief as requested. There is a risk that lawyers who are otherwise unconnected to the proceeding may continue to solicit PCCs and QCAPs. This creates a risk that representative counsel will be forced to return to court repeatedly to enforce the terms of the compensation plans. Among other issues, this would represent an unnecessary burden on the court's time and resources. By prohibiting solicitation of PCCs or QCAPs by any third party, this order will hopefully avoid the need for additional motions before the court.

[64] Given the substantial risk of financial loss and exploitation faced by PCCs and QCAPs, I have concluded that the balance of convenience overwhelmingly favors protecting claimants and

enforcing the Sanction Endorsement and Sanction Orders over any purported right of Attorney Group and/or any other unauthorized entity soliciting PCCs and/or QCAPs to engage in misleading solicitation, in violation of the Plans. The third part of the test has been satisfied.

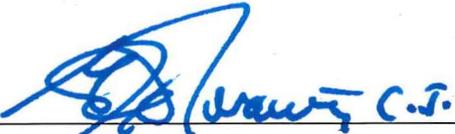
[65] I accept the submissions of PCC Representative Counsel. I have also taken into account the supporting submissions made by counsel on behalf of the QCAPs, the Consortium, the Province of Ontario and the Canadian Cancer Society. I am satisfied that an injunction is necessary not only to restrain the Attorney Group from ongoing violations of the Non-Solicitation Provision in the Court-approved Plans, but also to ensure that future unauthorized solicitations do not compromise the integrity of the Claims Process. Given the financial incentives for third parties to solicit Tobacco Victims, broader relief is warranted to deter and stop further violations, protect PCCs and QCAPs from misleading solicitations, and avoid the need for repeated enforcement proceedings before this Court.

PCC Representative Counsel are Not Required to Provide an Undertaking as to Damages

[66] Given the unique circumstances of this case, including the strength of the PCCs' position and the critical role of PCC Representative Counsel to these CCAA Proceedings, an undertaking as to damages is not required.

Disposition

[67] The motion is granted. The Order has been signed in the form of the draft filed.



Chief Justice Geoffrey B. Morawetz

Date: March 28, 2025

SCHEDULE 'A'

CITATION: Imperial Tobacco Limited, 2024 ONSC 6890
COURT FILE NOS.: CV-19-616077-00CL, CV-19-615862-00CL and CV-19-616779-00CL
DATE: 2024-12-10

SUPERIOR COURT OF JUSTICE - ONTARIO

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

BEFORE: Chief Justice Geoffrey B. Morawetz

COUNSEL: *Mark E. Meland, André Lespérance and Tina Silverstein*, for Conseil québécois sur le tabac et la santé, Jean-Yves Blais and Cécilia Létourneau (Québec Class Action Plaintiffs)

Raymond Wagner, K.C. and Kate Boyle, Representative Counsel for the Pan-Canadian Claimants

Andrea Grass, for Actis Law Group

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

Robert Cunningham, for the Canadian Cancer Society

Jacqueline Wall, for the Province of Ontario

HEARD: December 9, 2024

ENDORSEMENT

[68] This matter concerns the ongoing insolvency proceedings involving JTI-Macdonald Corp. (“JTI”), Imperial Tobacco Canada Limited and Imperial Tobacco Company Limited (collectively, “Imperial”) and Rothmans Benson & Hedges Inc. (“RBH”). This endorsement relates to all three applicants.

[69] The representative counsel for the Pan-Canadian Claimants seeks interlocutory injunctive relief against Actis Law Group and its principal, Andrea Grass (together, “Actis”). For the reasons that follow, the injunction is granted.

Background

[70] In March 2019, JTI, Imperial and RBH commenced insolvency proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “CCAA Proceedings”). The CCAA proceedings were precipitated by a class-action judgment rendered in Québec for over \$13.5 billion.

[71] Since that time, JTI, Imperial, RBH (collectively, the “Tobacco Companies”), their respective monitors, the claimants, and The Honourable Warren K. Winkler, K.C., the Court-appointed Mediator, have spent thousands of hours in hundreds of court-ordered mediation sessions.

[72] These negotiations culminated in proposed CCAA plans for each of the Tobacco Companies. Under these proposed plans, the Tobacco Companies would collectively pay more than \$32.5 billion to be divided among several parties, including class-action plaintiffs and each of the provinces and territories. In exchange for these payments, the Tobacco Companies would be granted a full and final release and emerge as going concerns.

[73] Meeting Orders and Claims Procedure Orders were issued on October 31, 2024. Pursuant to the Meeting Orders, creditors meetings to vote on the CCAA plans are scheduled for this Thursday, December 12.

[74] On December 9, 2019, Wagners was appointed as class counsel for the Pan-Canadian Claimants (PCC) to represent their interests in connection with these proceedings. The Pan-Canadian Claimants are individuals, excluding the Québec Class-Action plaintiffs in relation to the claims in the Québec Class-Action, who have asserted or may be entitled to assert a claim related to, among other things, the development, design, manufacture, production, marketing, advertising, distribution, purchase or sale of tobacco products.

[75] The Respondent Actis published a website purporting to offer representation in the “Canadian Tobacco Class Action Settlement”. This website encouraged individuals to submit their information in order to participate in the class-action. It stated that Actis offers its services on a contingency fee basis. The website was taken down before this hearing, but Actis asserts that there is nothing improper in offering its services in this way.

[76] Wagners, in its capacity as class counsel seeks an interlocutory injunction until the Court renders its decision on any sanction orders in the proceedings. They ask that Actis be required to:

- a. Take down the website advertising services related to the CCAA proceedings;
- b. Cease and desist all solicitation of services or provision of advice to the PCC;
- c. Provide a list of persons who signed up or provided information to Actis in response to its advertising services in connection with the CCAA proceeding;
- d. Destroy records in its possession relating to the CCAA proceeding.

[77] I am satisfied that the test for an interlocutory injunction has been met, pursuant to s. 101 of the *Courts of Justice Act* and Rule 40.01 of the *Rules of Civil Procedure*.

Analysis

[78] Section 101 of the *Courts of Justice Act* provides that an interlocutory injunction or mandatory order may be granted where it appears to a judge of the court to be just or convenient to do so.

[79] The test for an interlocutory injunction is set out by the Supreme Court of Canada in *RJR MacDonald Inc. v. Canada (Attorney-General)*, at 334. The test requires the moving party to demonstrate that:

- a. there is a serious issue to be tried;
- b. irreparable harm will result if the relief is not granted; and
- c. the balance of convenience favours the moving party.

[80] This analysis must be contextualized by the ongoing CCAA proceeding. The CCAA creates a single proceeding model to promote the “equitable and orderly resolution of insolvency disputes”. This approach is “intended to mitigate the inefficiency and chaos that would result if each stakeholder in an insolvency initiated a separate claim to enforce its rights”: *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, 475 D.L.R. (4th) 1, at paras. 54-55.

[81] To this end, this Court is empowered under s. 11 of the CCAA to “make any order it considers appropriate in the circumstances”.

A. Serious Issue to be Tried

[82] The threshold to satisfy this requirement is low. So long as the claim is not frivolous or vexatious, this factor of the test will generally be satisfied: *RJR-MacDonald*, at 335.

[83] I am satisfied that this low threshold is met. Whether an order should be granted under s. 11 of the CCAA presents a serious issue.

[84] The interests of the PCC are represented in this proceeding by the court-appointed class counsel. If the CCAA plan is approved by the creditors and sanctioned by the Court, the PCC will require no additional legal representation. They will be entitled to assert their claims under the PCC Compensation Plan with the support of Wagners and its agents.

[85] By advertising legal services and soliciting retainers, Actis stands to interfere with the equitable and orderly resolution of the CCAA proceedings. It risks confusing the claimants and interfering with their representation by the court-appointed class counsel at a critical point in the proceedings. Claimants may be led to mistakenly believe that they must sign up for Actis's services to obtain their entitlements. They may also fail to sign up to receive information from the court-appointed class counsel on the mistaken belief that they have taken the necessary steps to receive such information.

B. Irreparable Harm

[86] The second element of the *RJR-MacDonald* test is whether the moving parties will suffer irreparable harm if the injunction is not granted. What must be established on this part of the test is whether refusing to grant an injunction will cause harm that cannot be remedied at some later stage: *RJR-MacDonald*, at 341.

[87] I am satisfied that allowing Actis to advertise legal services and solicit retainers in connection with the CCAA proceedings poses a risk of irreparable harm. The CCAA proceedings are in a critical stage, with Creditors Meetings taking place on December 12. The court-appointed class counsel requires the ability to make timely and effective communications with the members of the class it represents. By interposing itself between class counsel and the PCC, Actis can interrupt this communication and risk introducing confusion which may undermine the equitable and orderly conduct of the CCAA proceedings.

[88] Additionally, Actis's participation in this proceeding would interfere with the CCAA Plans as they will be presented to creditors on December 12. It may be appropriate in some claims processes for lawyers to offer their services to help claimants pursue their claims. However, these proceedings and these claims processes are unique.

[89] As counsel to the Province of Ontario noted, the process to file claims has been streamlined and claimants are not responsible for the compensation of PCC Counsel.

[90] Ontario supported the position of PCC Counsel as did The Canadian Cancer Society.

[91] In my view, the offering of Actis, on a category fee basis at this stage of the proceedings, is not desirable in this case.

[92] The claimants in this matter are vulnerable, and some have waited over 26 years to realize their claims. The PCC Compensation Plan is specially crafted to meet these unique circumstances and to reduce any further hardship for the claimants. It is specifically designed to eliminate any need for the services Actis proposes to offer. Wagners has procured an agent to manage its communications with potential claimants and to support them in making their claims. Offering

such services for a fee, when the PCC are entitled to receive them at no cost, would undermine the very purpose of important aspects of the CCAA Plans.

[93] In the context of these CCAA proceedings, which are uniquely complex and span over five years, such harms cannot be remedied once inflicted.

C. Balance of Convenience

[94] The third factor, the balance of convenience, considers which of the parties will suffer the greater harm from the granting or refusal of an interlocutory injunction. I must also consider the public interest at this stage: *RJR-Macdonald*, at 348-49.

[95] I am satisfied the balance of convenience favours granting the injunction. Absent an injunction, there is a serious risk that the PCC's interests and their representation by class counsel will be undermined due to confusion caused by Actis's advertising and soliciting activities. Such confusion in turn risks undermining the orderly and equitable resolution of the insolvency proceedings.

[96] On the other hand, Actis purports to offer services that are within the mandate of class counsel. It proposes to help potential claimants determine their eligibility to make a claim in the proceeding. These are services that class counsel are mandated to provide under the PCC Compensation Plan. In the unique circumstances of these CCAA proceedings and these Compensation Plans, Actis's legitimate interest in offering such services is limited at best.

Notice

[97] Rule 40.02 of the *Rules of Civil Procedure* specifies that an interlocutory injunction granted without notice may not exceed a period of 10 days. However, the Court may dispense with compliance with any rule in the interest of justice: r. 2.03. Moreover, the Supreme Court of Canada has recognized that procedural flexibility is a "hallmark" of insolvency law: *Peace River*, at para. 64.

[98] I am satisfied that notice should be waived in this case. Actis attended the hearing and made submissions on its behalf. The CCAA proceedings are at a critical stage, and it is vital that matters proceed as set out in the Meeting Orders and the Claims Procedure Orders. To that end, it is necessary that Actis be enjoined from advertising legal services or soliciting retainers from claimants until a decision is rendered on any sanction orders in this matter.

Undertaking

[99] Rule 40.03 of the *Rules of Civil Procedure* provides that, on a motion for an interlocutory injunction, "the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party."

[100] The court retains discretion to waive this requirement where appropriate, for instance where the motion is brought by a representative on behalf of a class: *Li et al. v. Barber et. al.*, 2022 ONSC 1176, at para. 38. I am satisfied that it is appropriate to waive the requirement for an undertaking in these circumstances. If compensation is owed to Actis, I am satisfied that it can be adequately addressed when this Court makes a decision regarding any sanction orders.

Disposition

[101] The injunction is granted.

[102] As an Officer of the Court, Ms. Grass – the principal of Actis – will not be required to provide evidence of confirming destruction of all copies of the “Actis List” as defined in the order.

“Chief Justice Geoffrey B. Morawetz”
Chief Justice Geoffrey B. Morawetz

Date: December 10, 2024